

WORLDWIDE AIR TRANSPORT CONFERENCE: CHALLENGES AND OPPORTUNITIES OF LIBERALIZATION

Montreal, 24 to 29 March 2003

- Agenda Item 2: Examination of key regulatory issues in liberalization**
2.1: Air carrier ownership and control

LIBERALIZING AIRLINE OWNERSHIP AND CONTROL

(Presented by Republic of Korea)

SUMMARY

The Republic of Korea believes that the national ownership and control criterion is more appropriate for the bilateral air transport framework, while the principal place of business criterion can be applied more appropriately within the regional air transport framework. The Republic of Korea acknowledges that the principal place of business plus a strong link criterion has safeguards to prevent concerns about the 3rd Party free ride and safety and security. However, a concern about the 3rd Party free ride still remains when a member State of a region concludes a "principal place of business plus a strong link" type of air services agreement with a State outside of the region.

Action by the conference is in paragraph 4.1

1. INTRODUCTION

1.1 The national ownership and control criterion (which requires that airlines should be substantially owned and effectively controlled by a designating State or its nationals) has been adopted mainly under the bilateral regime over the past 50 years to ensure national security and economic interests, and to provide a means of promoting reciprocity in bilateral relations.

1.2 Meanwhile, during the last decade, along with the trend of liberalization and globalization as well as regional economic integration, there has been a growing consensus, especially at the regional level, that airlines need equivalent access to world capital markets and flexibility to serve global markets as those enjoyed by actors of other commercial sectors.

1.3 In this context, some concepts relating to community of interest and principal place of business were introduced to broaden the conditions of airline ownership and control.

1.4 Ultimately, the ICAO Secretariat suggested the new concept of "principal place of business plus a strong link" as a new approach in the working paper ATConf/5-WP/7 to address the problems relating to the 3rd Party free ride and safety and security.

2. DISCUSSION

2.1 The national ownership and control criterion has provided a basis for the bilateral air transport framework on the principle of reciprocity to ensure national interest, safety and security control. They could have also maintained a balance of traffic rights between the bilateral States without the involvement of 3rd Party in the bilateral market.

2.2 The "principal place of business" or "community of interest" criterion has been adopted mainly at the regional level. This criterion is useful for the airlines in an integrated region to permit free access to the regional market without discrimination in the traffic rights and necessary capital for operation.

2.3 However, the principal place of business criterion raises concerns relating to the safety issue and the 3rd Party's free ride problem, particularly at the bilateral level. The 3rd Party air carrier will undermine the traffic rights in the bilateral market and it will bring about an imbalance between the two bilateral States when a member State of a region concludes the "principal place of business" type of air services agreement with a State outside of the region. On such occasion, the third Party air carrier is also likely to show a "flag of convenience".

2.4 Because of the aforementioned reasons, most States, especially at the bilateral level, persist to use the national ownership and control criterion, and only States within an integrated region have adopted the principal place of business criterion at the regional level. Indeed, although the concept of the principal place of business was introduced to broaden and ease the conditions of airline ownership and control, it nevertheless failed to obtain full support from many States.

2.5 The criterion of principal place of business plus a strong link is a broadly based liberal solution that respects the interests of most States. This criterion is more elaborately developed than the principal place of business criterion in that it has many safeguard measures to prevent the "flags of convenience" and the 3rd Party free ride.

2.6 However, in the long run, especially under the liberalized bilateral air services agreement, the 3rd Party airlines will come to undermine the liberalized bilateral market without restriction. So the main concern about the 3rd Party free ride still remains unsolved as it was raised under the principal place of business criterion.

2.7 In this context, the "national ownership and control" criterion is more appropriate for a bilateral air transport regime and the "principal place of business" or "principal place of business plus a strong link" criterion is more appropriate for regional air transport regime. Therefore, the "principal place of business" or "principal place of business plus a strong link" criterion needs further review for application at the bilateral regime.

2.8 In addition to 3rd Party free ride and safety issue, national defense is very closely related to ownership. States need to take full control over their national air carriers, especially in emergency situations such as war. Therefore, national ownership and control is an essential element for national defense.

3. CONCLUSION

3.1 The Conference is invited to conclude that:

- a) The national ownership and control criterion is more appropriate for the bilateral regime to prevent the 3rd Party free ride and safety concerns and to secure national defense.
- b) The principal place of business or the principal place of business plus a strong link criterion is applicable for a regional regime to ensure a free access to the regional market for the traffic rights and financing.
- c) The principal place of business plus a strong link is a broadly based liberal solution that respects the interests of most States, which includes those who wish to maintain the national ownership and control criterion.
- d) However, in the long term and especially under the liberalized air services agreement, concerns about the 3rd Party free ride and national defense still remain under the principal place of business plus a strong link criterion.
- e) Therefore, the model clause of principal place of business plus a strong link suggested by the ICAO Secretariat, should be adopted in the regional or plurilateral air services agreements, and be considered for adoption in the bilateral air services agreement at the option of States.

4. ACTION BY THE CONFERENCE

4.1 The Conference is invited to take these views and conclusions into account for consideration of this item.

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