



# ICAO Symposium on Liberalisation of Air Transport in Asia/Pacific (Shanghai, China, 25-27 May 2005)

## The EU Single Aviation Market and its External Aspects.

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# Presentation Outline

- ✓ **The European Union and its Aviation Industry**
- ✓ **The Single EU Aviation Market**
- ✓ **What have we Achieved so far?**
- ✓ **Remaining Challenges**
- ✓ **Other Key Developments**
- ✓ **EU External Aviation Policy**
- ✓ **ICAO, Liberalisation and the EU**
- ✓ **EU-Asia/Pacific Relations**





# The Enlarging EU

- 25 Member States
- 450 Million Inhabitants
- One Single Market





# The EU Airline Industry

- **A €100bn business (1.2% of EU GDP)**
- **35% of world air passenger traffic**
- **+130 airlines (scheduled passenger carriers)**
- **+450 airports**
- **~4,500 aircrafts in service**
- **Carrying 580 million passengers in 2003 (of which 370 million within EU)**
- **2.8 million indirect jobs (3% of EU workforce)**
  - **30 largest airlines alone employ 360,000 staff**





# EU Aviation Policy: A Brief History

- **1987: Start of air transport market liberalisation in EU**
- **1992: “Third aviation package” establishes a Common Market for air services in EU**
- **1997: Cabotage rights within EU**
- **2003: EU gains external competences in aviation policy**
- **2004: Single European Sky**





# From National Markets to a Common Market

- **Pre-1987: protected and fragmented national markets; State intervention and bilateralism:**
  - EU aviation industry regulated by bilateral agreements
  - To fly between two major cities: little alternative but to fly with one of the two national carriers
- **Three successive packages of liberalisation measures adopted 1987-1992 have gradually completely transformed this landscape**
- **Liberalisation and market integration based on three main Regulations: (i) Air carrier licensing; (ii) Market access and (iii) Fares. Results:**
  - Non-discriminatory air carrier licensing (from national to Community carriers with equal rights)
  - Market access: no capacity restrictions – cargo came first
  - Full cabotage since 1 April 1997
  - Free air fare setting in the Community
  - Public service obligations with possible compensation
  - Any Community carrier can now operate on any route within the EU – and they do!





# What Have We Achieved? (1)

- ✓ Unprecedented development in air traffic: Tripling of air travel 1980-2000. Doubling expected by 2020
  - ✓ More airlines (+25% since 1990)
  - ✓ Emergence of low-cost carriers
    - ✓ 1% of capacity in 1996. +20% in 2004
  - ✓ More competition between air carriers
    - ✓ Massive productivity gains (90% for largest airlines 1990-2002)
    - ✓ Lower fares – price response of traditional carriers to LCC
    - ✓ More – and lower – promotional fares
    - ✓ More routes with more than two competitors (+150% 1992-2004)
  - ✓ More intra-EU routes (+100% 1992-2004)
    - ✓ By 2001, intra-Community traffic overtook domestic traffic
  - ✓ Better quality air services for peripheral regions
- = CHOICE AND BENEFITS FOR CONSUMERS!**





## What Have We Achieved? (2)

- ✓ **Market driven process with minimum intervention**
- ✓ **Success with market integration**
- ✓ **The single European aviation market also covers Norway, Switzerland and Iceland (EFTA members).**
- ✓ **Common EU rules for: allocation of slots (1993); ground handling (1996); noise (2002); security (2002); safety (2003) and ATM (2004)**
- ✓ **Community legislation affecting third countries' airlines exists in many areas:**
  - ✓ **Aviation safety; Aviation security; Ground-handling; Environmental protection; Passenger protection**
- ✓ **From Community to global competition**
  - ✓ **Globalisation, alliances**
  - ✓ **Restrictions on ownership and control creating barriers**





# Common EU Legislation



- **SAFETY**
  - European Aviation Safety Agency (2003)
  - Reg. 1592/2002, 1702/2003, 2042/2003
  
- **SECURITY**
  - After 9/11 common rules introduced
  - Reg. 2320/2002, 622/2003, 1217/2003, 1486/2003, 1138/2004
  
- **CONSUMER PROTECTION**
  - CRSs, air carrier liability, denied boarding
  - New reg. 261/2004 – compensation for denied boarding, flights cancellation and delays
  
- **PROTECTION OF THE ENVIRONMENT**
  - Noise, fuel emissions, taxation





# Remaining Challenges

- Capacity shortcomings (scarcity of slots)
- High cost of airport infrastructure
- Improve transparency of tarification
  - Proliferation of different categories of tariffs
- Passenger protection
- International air services can no longer be regulated at national level
- Non-discriminatory access to 3<sup>rd</sup> countries for EU carriers, wherever they are established
- Recognition of Community dimension on the international stage (including in ICAO)





# EU-ICAO Relations

- **The EU and the Commission are seeking closer co-operation with ICAO**
- **The Community already participates in ICAO work as observer**
- **Community competences expanding in areas such as safety, security, ATM**
- **Therefore natural and likely that the EU's and the Commission's contribution to and co-operation with ICAO will be reinforced**
- **The EC is a major contributor to ICAO-led COSCAP projects**





# EU Aviation More than Liberalisation

## Other Key Developments:

- **The Single European Sky (ATM, SESAME)**
- **Aviation Safety (EASA)**
- **Aviation Security**
- **International Relations/EU External Aviation Policy**





# EU External Aviation Policy

- **The origin**
- **The consequences of the “open skies” judgements of the European Court of Justice**
- **Horizontal Agreements**
- **The 11 March 2005 Commission Communication on developing the agenda for the Community’s external aviation policy.**





# The ECJ Judgements of 5 November 2002



The European Court of Justice found that the bilateral air services agreements between eight EU Member States and the USA were **not in conformity with EC law.**

The nationality clauses in all agreements infringe the **right of establishment** (Art. 43 EC Treaty) as they are discriminating on grounds of nationality.

The agreements infringe the **exclusive external competence of the EU.** In areas where EC legislation affects third countries, only the EU can enter into international commitments.



# The Wider Impact of the ECJ Judgements

- The ECJ judgments referred only to bilateral agreements with the USA;
- However, all bilateral air services agreements between EU Member States and third countries face the same legal issues;
- Urgent need to address these legal issues and ensure Community designation in order to avoid legal uncertainty for airlines operating routes under existing bilateral air services agreements.





# Community Designation Clause

**Freedom of right of establishment:**

**Member States are obliged to give equal treatment to Community Carriers with an establishment in their territory.**

**What is a Community carrier?**

- **Principal place of business and registered office in the EU**
- **Main occupation air transport**
- **Majority owned by EU Member States or nationals**

**⇒ Conditions for operating licence in EU**





# What is Being Done to Remedy the Situation?

- Commission and Member States work closely together (being intensified)
- Negotiating mandates given to the Commission (US mandate, “horizontal mandate”, ECAA, Morocco)
- Considerable progress being made in resolving the legal issues
- Requests for more comprehensive mandates, March 2005 (China and Russia)
- Commission expected request further comprehensive negotiating mandates





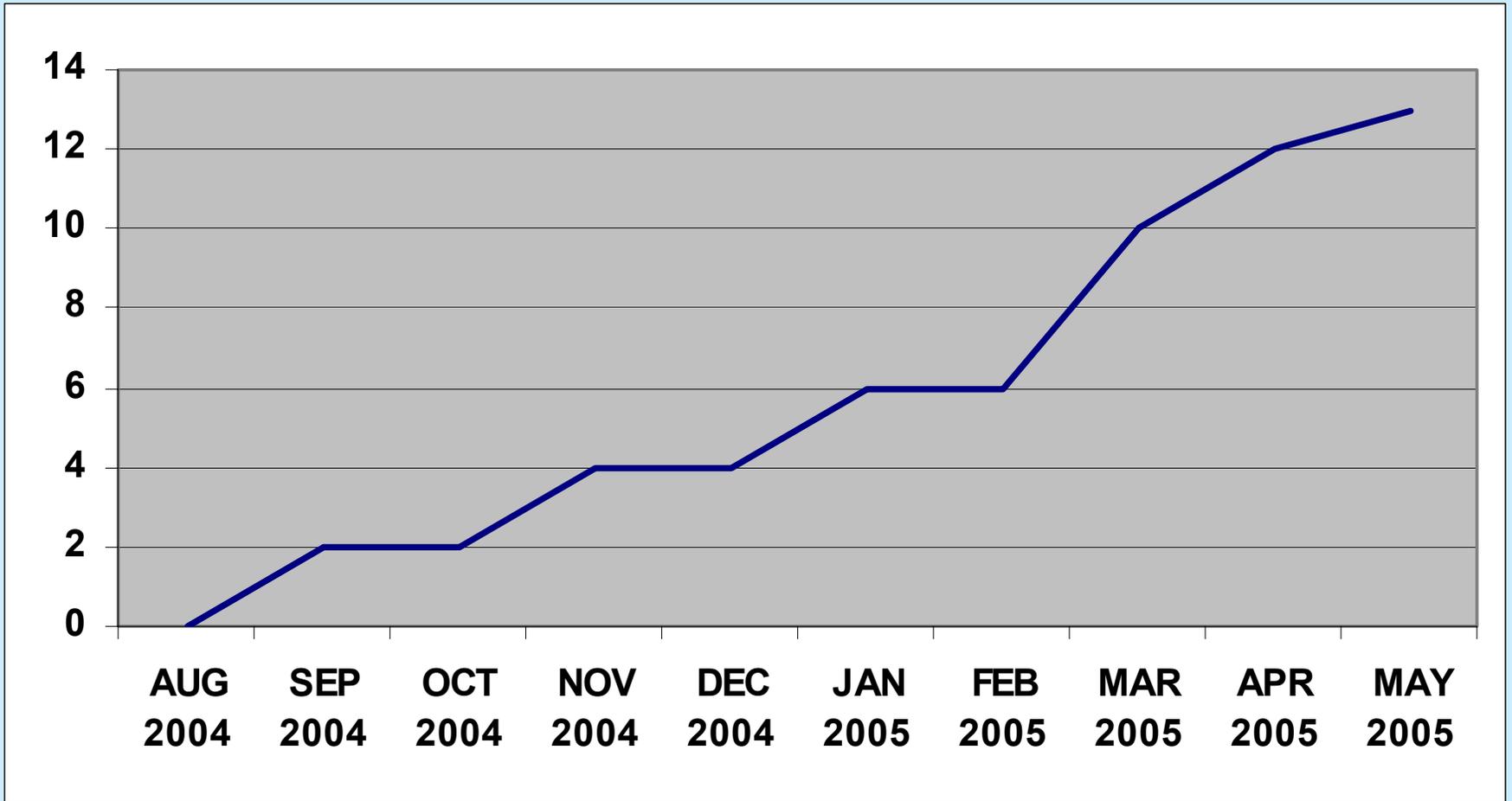
# Progress on the Legal Issue

- **50 non-EU states have accepted Community designation**
- **255 bilateral ASAs have been brought into conformity with Community law**
- **13 Horizontal Agreements covering 200 bilateral ASAs i.e. each more than 15 on average**



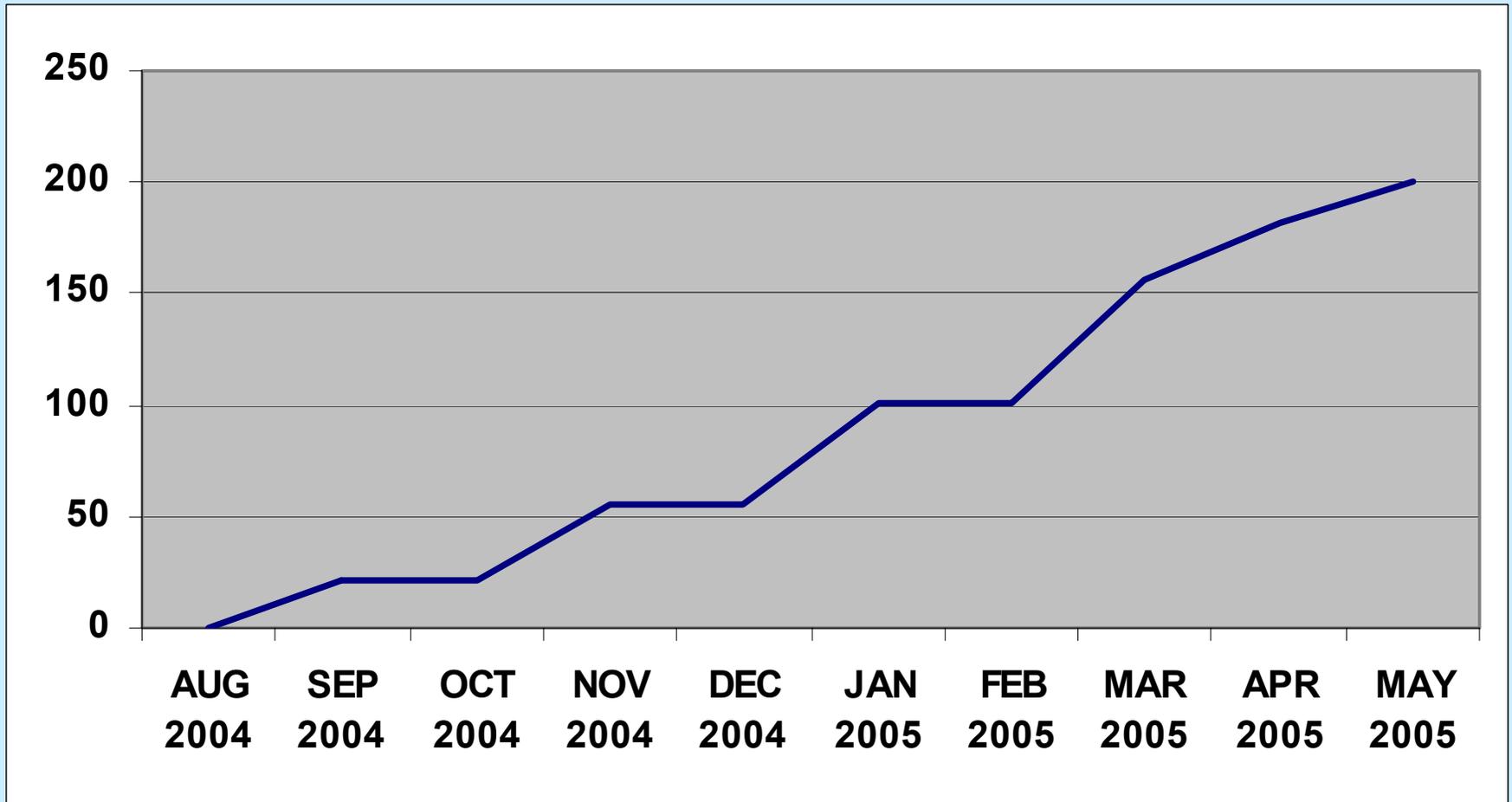


# Number of Horizontal Agreements





# Bilateral ASAs Brought into Conformity with EU Law by HA





# The “Horizontal” Mandate and Bilateral Air Services Agreements

**An agreement between the EU and a third country under the “horizontal” mandate will:**

- take into account the single aviation market in the EU,
- permit all EU airlines to operate on routes between the EU and third countries on a non-discriminatory basis,
- give all airlines operating traffic rights legal certainty,
- allow further development of bilateral air services relations.

**An agreement between the EU and a third country under the “horizontal” mandate will not:**

- affect balance between EU airlines and third country airlines,
- change the provisions concerning traffic rights,
- replace the existing bilateral air services agreements.





# ICAO and Liberalisation

- **35th ICAO Assembly: Broad support for the results of the 5th Worldwide Air Transport Conference (ATConf/5)**
- **ATConf/5 conclusions:**
  - **Need for flexibility in regulatory arrangements chosen by States while accommodating the approaches chosen by others**
  - **States may choose to liberalise air carrier ownership on a unilateral, bilateral, regional, plurilateral or multilateral basis**
  - **States may take co-ordinated action and may issue joint statements of common policy**
  - ✓ **This is what the EU is doing.**





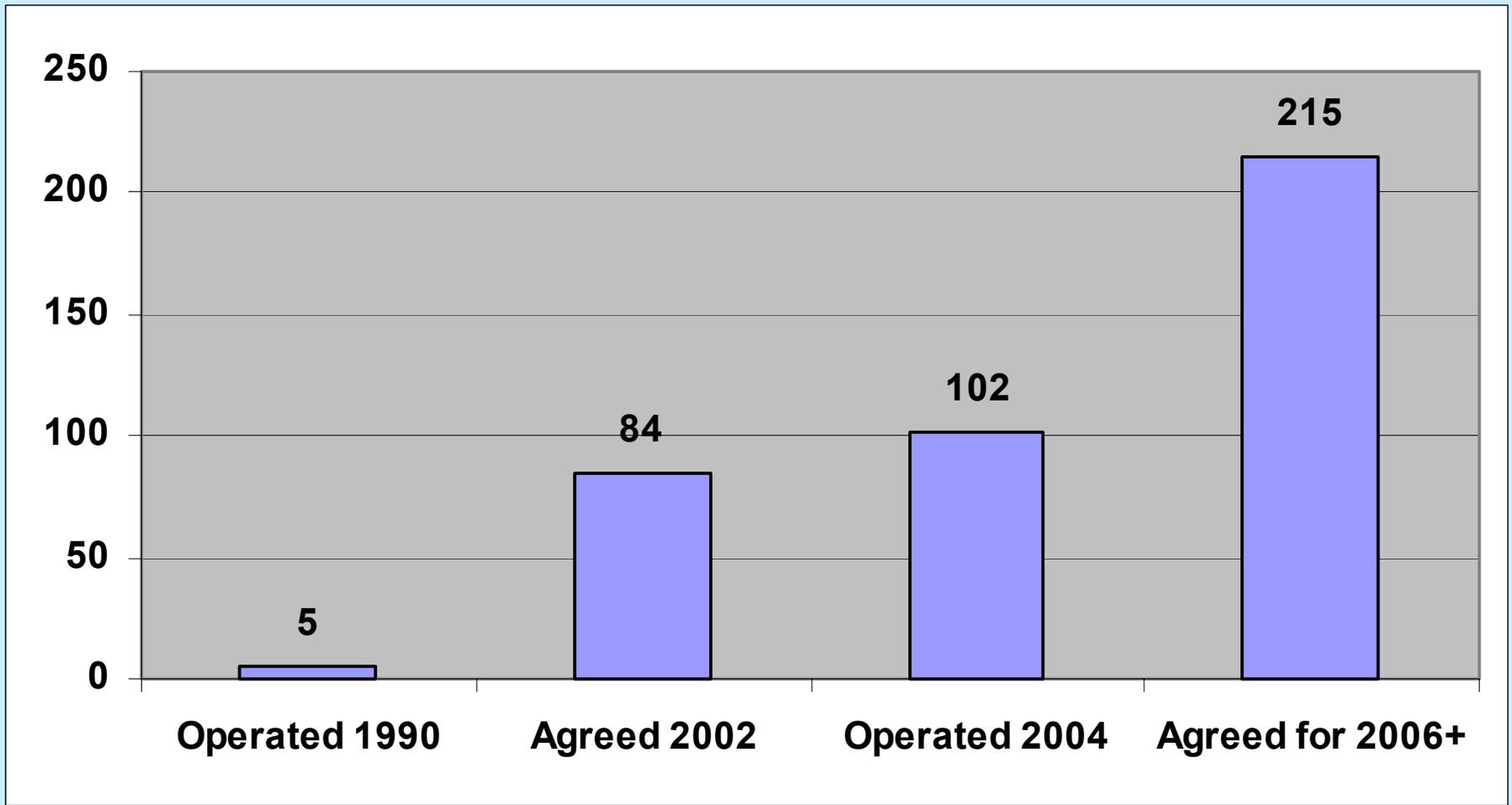
# Arguments Used Against Community Designation (CD)

- **This is internal EU business – not our problem!**
  - **Reply**: A legally vulnerable agreement is an issue for both parties to the agreement.
- **No legal risk involved in ignoring the issue**
  - **Reply**: Not correct. “Risk of doing nothing”.
- **CD would alter the economic balance on which the original agreement was based**
  - **Reply**: CD has no impact on volume or balance of traffic rights. Un-used traffic rights relatively limited and apparently not commercially attractive.



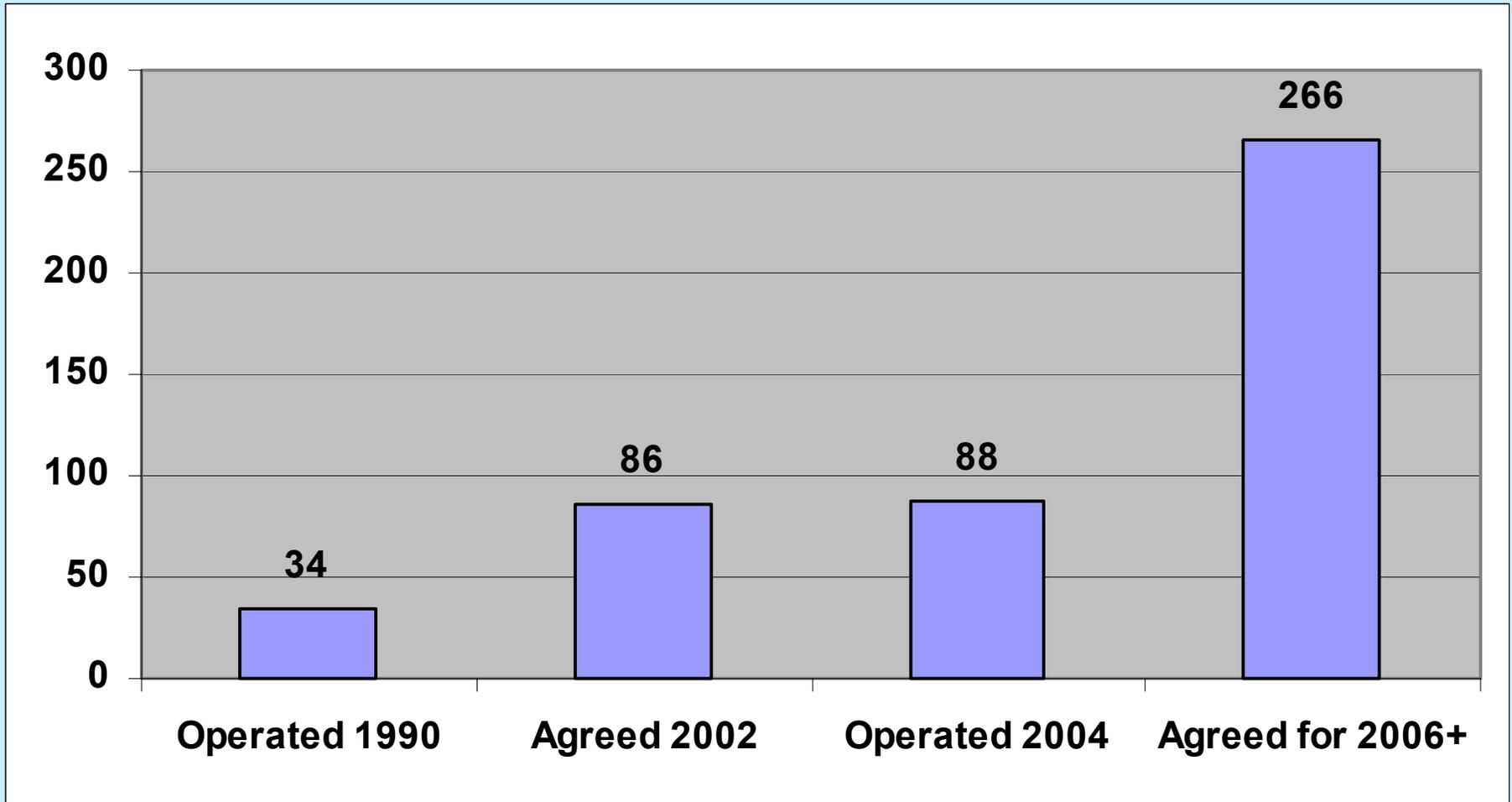


# Development in EU-China Weekly Frequencies (for EU)





# Development in EU-India Weekly Frequencies (for EU)





# EU External Aviation Policy – The Way Forward

**Communication from the European Commission  
on**

***“Developing the agenda for the  
Community’s external aviation  
policy”***

**(adopted on 11 March 2005)**





# Guiding Principles in EU External Aviation Relations

- **Relations must be based on agreements that respect Community law. If not:**
  - Agreements vulnerable to legal challenge
  - Uncertainty for commercial operators
- **Consumer benefits is a key objective**
- **Level playing field allowing all airlines to compete on a fair and equal basis**
  - Prevent predatory behaviour and unfair practices
- **Regulatory convergence**
  - Safety
  - Security
  - Environmental protection
  - Competition law





# March 2005 Communication

## The Commissions aims:

- To continue bringing existing bilateral agreements into line with Community law (preferably through horizontal agreements).
- To develop ambitious agreements between Community and third countries
  - The creation of a common aviation area with neighbouring countries
  - Conclusion of global agreements with key regions of the world (US, China, Russia...)
- Conclusions expected by 27-28 June 2005 meeting of Council of EU Transport Ministers





# EU-Asia/Pacific Relations

- **The EU wishes to reinforce aviation relations with Asia/Pacific**
  - Sound legal basis an important first step, but not the end
- **The EU would support further regional integration in Asia/Pacific**
- **A number of key Asian/Pacific countries have already accepted the Community designation clause (Australia, New Zealand, Singapore) - and wish to go further.**
- **China**
- **India**
- **ASEAN**





# EU-China Aviation Summit

2005年6月30日-7月1日

30 June - 1 July 2005

欧盟-中国航空峰会  
**EU-CHINA Aviation Summit**  
Beijing Hotel, Beijing, China 中国北京, 北京饭店



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*Thank You!*

