

ICAO GLOBAL SYMPOSIUM ON AIR TRANSPORT LIBERALISATION

DUBAI, UAE

18-19 september 2006

The draft EC-US Agreement

I. Background

- The 1996 mandate from the EC Council to the Commission
- Towards the creation of a Transatlantic Common Aviation Area (TCAA) in 1999
- Economic and security implications of the 9/11 events in 2001
- Relevant provisions of bilateral Open Skies agreements, concluded since 1992

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I. Background (cont.'d)

- Progressive liberation taking into account the interests of all air transporting states as endorsed during the 4th and 5th World wide Conference of ICAO (1994/2003)
- The Open Skies decisions of the European Court of justice in 2002
- The mandate of the EU Council of Transport Ministers to the Commission of 2003

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II. Introduction

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- Mixture between a bilateral and multilateral agreement (but formally a multilateral agreement – see, e.g. the ‘cabotage’ issue)
- The agreement will suspend or supersede existing (20) bilateral agreements, or fill gaps in five cases
- There are 27 parties involved, including the EC (and not the EU) – with a myriad of interests among all stakeholders ►

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II. Introduction (cont.'d)

- Hence, no ground- or air breaking changes with respect to present Open Skies regimes
- Adoption of a *step by step* approach towards the creation of a “single market for air transport between the EU and US”
- The draft regime does not provide a “single regime” and does not yet create a “market”
- Still dominance of interests of 26 states

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III. New features

However, there are **new features**:

Market access:

- Attempt to liberalise ownership and control restrictions (see NPRM question);
- Introduction of the Community air carrier clause, which can only be exercised in combination with an 'establishment'
- Seventh freedom all-cargo services

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III. New features (cont.'d)

Revocation of authority:

- If security conditions are not met (next to nationality criteria and safety standards) see the pre-9/11 agreements

Commercial opportunities:

- Wet-lease of aircraft on international (but not domestic) routes, subject to FAA policy and law interpretation

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III. New features (cont.'d)

Environment

- Reference to ICAO Standards
- Evaluation of a cost and benefit analysis

Consumer protection

- Identification of the significance of the subject
- Possible involvement of the Joint Committee

Establishment of a joint committee

- A discussion and consultation forum;
- no powers to achieve greater convergence or enforcement of measures

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IV. Possible future points

No results so far regarding:

- Introduction of the right of establishment (being restricted to the promotion and sale, and not to the provision of air services)
- Application of *seventh freedom* rights to other services than all-cargo services
- Grant of *cabotage* rights (neither 8th nor 9th Freedom)

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IV. Possible future points (cont.'d)

- *Convergence* let alone harmonisation of regulatory regimes, in particular competition law regimes, with no reference to the EU-US agreement of 1995, introducing inter alia 'positive comity')
- Possible accession by third states or regional organisations, giving it a '*plurilateral*' rather than a multilateral dimension

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V. The case of failure

IV. In case of no (immediate) agreement:

- Continued worrying financial state of US carriers
- No benefits of enhanced market access
- No institutional achievements
- Possible or probable infringement procedures in the EU (Commission v. EC Member States)
- Back to square one – or even before that:
- Loss of ATI and Open Skies results

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VI. Effects upon third parties

Effects for third states in case of an agreement:

- Agreement binding between parties, however:
- More competition on intra-EU fifth Freedom routes (on paper rather than in practice)
- Effects of all-cargo seventh Freedom flights
- ‘Spill over’ effects to alliances and ATI cases
- Yielding ‘spin off’ in terms of ‘spirit of liberalisation’
- Reinforcement of regional cooperation elsewhere (Africa; South East Asia; South America; Pacific)