



WORLDWIDE AIR TRANSPORT CONFERENCE (ATCONF)

SIXTH MEETING

Montréal, 18 to 22 March 2013

AGENDA ITEM 2.1

The attached constitutes the report on Agenda Item 2.1 and should be inserted at the appropriate place in the yellow report folder.

Agenda Item 2: Examination of key issues and related regulatory framework
2.1 : Market access

Note: The Conference considered this Agenda Item in three parts: a) market access liberalization; b) air cargo services; and c) other market access matters.

a) Market Access Liberalization

2.1.1 DOCUMENTATION

2.1.1.1 The Conference considered traffic rights under Agenda Item 2.1 based on the following working papers: WP/13 (Secretariat), WP/28 (Chile), WP/97 (China), WP/40 (Egypt), WP/82 (Indonesia), WP/34 (New Zealand), WP/78 (Singapore), WP/44 Revised (Turkey), WP/93 (United Arab Emirates), WP/60 (United States), WP/103 (Venezuela), WP/54 (presented by Ireland on behalf of the European Union (EU) and its Member States and by the other Member States of the European Civil Aviation Conference (ECAC)), WP/63 (World Tourism Organization (UNWTO)), WP/67 (International Air Transport Association (IATA)) and WP/81 (International Federation of Air Line Pilots' Associations (IFALPA)) and WP/99 (International Transport Workers' Federation (ITF)).

2.1.1.2 The following information papers were also noted by the Conference: IP/3 (Australia), IP/17 (Brazil), IP/5 (Poland), IP/14 (Republic of Korea), IP/19 (54 Member States of African Civil Aviation Commission (AFCAC)), IP/6 (22 Member States of Latin American Civil Aviation Commission (LACAC)) and IP/8 (World Trade Organization (WTO-OMC)).

2.1.2 DISCUSSION

2.1.2.1 There was general recognition of the broad benefits that liberalization of air transport provides to States, the industry and consumers, as well as its contribution to the global economy, trade, tourism, community development and job creation and support was expressed for the need for further market access liberalization. The discussion focused on the approaches and pace of liberalization by States, as well as on the need to consider the interests of all stakeholders, including labour.

2.1.2.2 Many endorsed the view that due to the disparity in States' developmental stages and air transport requirements, States should pursue liberalization at their own pace and apply approaches suitable to their needs and national situation. At the same time, there was general agreement on the need to modernize the global regulatory framework on market access so as to adapt to the changes of a globalized business environment; also recognized was the need for ICAO to play a leadership role in facilitating regulatory evolution. In this regard support was voiced for the proposal that ICAO develop a long-term vision for global liberalization of air transport, including multilateral solutions, bearing in mind the interests of all States and aviation stakeholders.

2.1.2.3 Some States emphasized the close link between market access and fair competition, while other States were of the view that market access and fair competition are not necessarily linked.

2.1.2.4 A large number of States expressed support for the proposal that ICAO develop an international agreement, building on past achievements and existing liberalized regulatory arrangements, for States to use in further liberalizing market access. The Conference noted, however, that substantial

work might be required in this regard, and that the provisions of the Multilateral Agreement on the Liberalization of International Air Transportation (MALIAT), and the reasons for which more States have not joined, should be considered. It was also suggested that this exercise be undertaken through consultation with experts (e.g., Air Transport Regulation Panel (ATRP)), States, the industry, and other aviation stakeholders, and that prior to committing to the project, ICAO should conduct a survey to analyse the needs of States, and assess the value, and resources required, for developing such an agreement. In addition, the Conference noted the proposed draft text of a multilateral agreement on market access liberalization provided by a State.

2.1 .2.5 In light of the lengthy process required for developing multilateral agreements, there was wide-spread support for the proposal that States should continue to liberalize market access through existing avenues, including bilateral, regional and plurilateral arrangements.

2.1 .3 CONCLUSIONS

2.1 .3.1 As a result of the documentation considered and ensuing discussion on the subject of market access liberalization under Agenda Item 2.1, the Conference concluded that:

- a) liberalization has provided broad benefits for States, consumers, airlines, airports, communities and national economies. Increased access to the international market for air service providers allows the air transport sector to maximize its contribution to the global economy;
- b) liberalization is a means and process, not an end. The objective of regulatory evolution is to create a favourable environment in which international air transport may develop and flourish in an orderly, efficient, economical and sustainable manner, without compromising safety and security, while respecting social and labour standards;
- c) States have pursued liberalization of market access in various ways and at different paces according to needs, conditions and policy goals, and have achieved considerable progress and success. However, there is an increasing need to modernize the decades-old regulatory regime to adapt to a changed global economic and business environment and to meet the requirements of States, the industry and consumers in the 21st Century;
- d) there is strong endorsement from the aviation community for further liberalization of air transport, and for ICAO's engagement in facilitating such efforts. There is broad support for ICAO, working closely with all parties concerned, to take the lead in exploring ways by which to expand market access, including long-term multilateral solutions, recognizing that States will pursue liberalization at their own pace according to their needs; and
- e) in the short term, States should continue to pursue market access liberalization according to situations and requirements, using existing avenues such as the Multilateral Agreement on the Liberalization of International Air Transportation (MALIAT), while ICAO should continue to provide guidance and assistance to States in facilitating the process.

2.1.4 RECOMMENDATIONS

Recommendation 2.1/1 — Market access liberalization

The Conference recommends that:

- a) States should continue to pursue liberalization of market access at a pace and in a manner appropriate to needs and circumstances, giving due regard to the interests of all stakeholders, the changing business environment and infrastructure requirements;
- b) ICAO should develop and adopt a long-term vision for international air transport liberalization, including examination of an international agreement by which States could liberalize market access, taking into account the past experience and achievements of States, including existing market access liberalization agreements concluded at bilateral, regional and multilateral levels, as well as the various proposals presented during the Conference;
- c) ICAO should work with all parties concerned, undertaking consultation with experts, States, the industry, interested organizations and other stakeholders to build a common understanding and obtain consensus for the development of the long-term vision and related regulatory arrangements;
- d) ICAO should continue to provide guidance and assistance to States in facilitating market access liberalization, using facilities such as the ICAO Air Services Negotiation Conference (ICAN); and
- e) ICAO should keep its policy guidance on air transport regulation and liberalization current and responsive to changes and to the needs of States, and consider additional means by which to facilitate liberalization.

b) *Air Cargo Services*

2.1.5 DOCUMENTATION

2.1.5.1 The Conference considered air cargo services issues under Agenda Item 2.1 based on the following working papers: WP/14 (Secretariat), WP/34 (New Zealand), WP/36 Latin American and Caribbean Air Transport Association (ALTA), International Air Transport Association (IATA) and WP/96 (The International Air Cargo Association (TIACA)).

2.1.6 DISCUSSION

2.1.6.1 The Conference discussed the subject of air cargo liberalization together with the deliberation on market access liberalization.

2.1.6.2 Recognizing the distinct features of air cargo operations some support was voiced for the proposal that ICAO develop an international agreement for the liberalization of air cargo. Pending such an agreement, States were encouraged to continue liberalization of air cargo services using existing vehicles, including bilateral, regional or multilateral approaches. Attention was drawn to the fact that States may

join the Multilateral Agreement on the Liberalization of International Air Transportation (MALIAT) on a cargo-only basis; The Conference noted that the provisions of the MALIAT, and the reasons for which more States have not joined, should be considered.

2.1 .6.3 A view was expressed that the development of an international agreement for the liberalization of air cargo transport has a potential risk of leading to competitive distortions between all cargo carriers and passenger air carriers transporting freight, and that such risk should be thoroughly studied and prevented.

2.1 .7 CONCLUSIONS

2.1 .7.1 As a result of the documentation considered and ensuing discussion on the subject of air cargo services under Agenda Item 2.1, the Conference concluded that:

- a) air cargo plays an important role in the global economy. The growth and expansion of air cargo services is beneficial for the sustainable development of air transport, and contributes significantly to global trade and economic development;
- b) the distinct features of air cargo services need to be given due consideration by States when making air service arrangements;
- c) States have used various vehicles in liberalizing air cargo services, including bilateral, regional and plurilateral arrangements, some of which are open for other States to join, such as the Multilateral Agreement on the Liberalization of International Air Transportation (MALIAT); and
- d) ICAO guidance on liberalization of air cargo services remains relevant, and its use by States should be encouraged. In this regard, there is broad support for ICAO to play a leadership role in facilitating further liberalization, and some support for ICAO to develop a multilateral agreement specifically focussed on air cargo, taking into account the need to ensure that such agreement does not lead to competitive distortions between all cargo carriers and passenger air carriers transporting freight, and that it is aligned with ICAO's liberalization efforts on overall market access for international air transport.

2.1.8 RECOMMENDATIONS

Recommendation 2.1/2 — Air cargo services

The Conference recommends that:

- a) States should give due regard to the distinct features of air cargo services when exchanging market access rights in the framework of air service agreements and grant appropriate rights and operational flexibility so as to promote the development of these services;
- b) States should continue to liberalize air cargo services through all available avenues, and to share experiences with other States;
- c) ICAO should take the lead in the development of a specific international agreement to facilitate further liberalization of air cargo services, taking into account past experiences and achievements, views of States on existing arrangements, and suggestions made during the Conference; and
- d) in the development of new regulatory arrangements on air cargo, ICAO should engage all parties concerned, and should undertake consultation with experts, States, the industry and interested stakeholders.

c) *Other Market Access Matters*

2.1.9 DOCUMENTATION

2.1.9.1 The Conference considered other market access matters under Agenda Item 2.1. based on the following working papers: WP/11 (Secretariat), WPs/8 Revised (Secretariat), WP/87 (Republic of Korea), WP/25 (presented by Bahrain on behalf of Arab Civil Aviation Commission (ACAC)), WP/89 Airports Council International (ACI)), WP/64 (United States) and WP/99 (International Transport Workers' Federation (ITF)).

2.1.9.2 The following information papers were also considered by the Conference: IP/9 (South Africa) and IP/11 (presented by Ireland on behalf of the European Union (EU) and its Member States and by the other Member States of the European Civil Aviation Conference (ECAC)).

2.1.10 DISCUSSION

2.1.10.1 On the subject of slot allocation, the Conference noted that insufficient airport slot capacity has a negative impact on the ability of air carriers to exercise market access rights. This problem cannot be resolved with short-term solutions and must be addressed with a broader, long-term perspective through the planning of infrastructure development.

2.1.10.2 Different views were expressed regarding the policies and practices applicable to the allocation of slots at constrained airports. Some States favored slot rules that give preference to airlines from developing countries. Other States disagreed, emphasizing that slots should be allocated in accordance with the principles of non-discrimination and equal opportunity, as expressed in the IATA's Worldwide Slot Guidelines (WSG).

2.1 .10.3 Notwithstanding these differences, there was support for greater transparency through the publication of additional information regarding slot allocation at constrained airports.

2.1 .10.4 It was suggested that ICAO continue to monitor the issues relating to slot allocation, including States' practices in handling the issues of slot allocation, and share information on significant developments, including information on airport and air traffic management (ATM) capacity demands and/or constraints.

2.1 .10.5 On the subject of night curfews, the Conference noted that night curfews or night flight restrictions remain an issue of concern to States. It was acknowledged that such restrictions are closely linked to specific local situations and that the restrictions can significantly affect market access and the operation of international air services; the need to consider the two perspectives was noted. There was broad support for the application by States of the ICAO "Balanced Approach" when dealing with airport noise management issues.

2.1 .10.6 Support was expressed for the proposal that certain types of business aviation operations should be treated as non-commercial aviation, and that ICAO should consider providing appropriate guidance in this regard in order to harmonize the development of business aviation which is an important component of a comprehensive international air transport system.

2.1 .11 CONCLUSIONS

2.1 .11.1 As a result of the documentation considered and ensuing discussion on the issues of slot allocation, night flight restrictions and business aviation under Agenda Item 2.1, the Conference concluded that:

- a) slot allocation is linked to specific local situations but also affects market access and the operation of international air services. As air traffic continues to grow, slot shortages will increase and will likely spread to other airports. While a global solution is difficult to prescribe as situations vary between States and between airports, there is a need for greater transparency regarding slot allocation rules and procedures, as well as a need for exploring how States and concerned stakeholders might work together towards their improvements;
- b) ICAO has addressed the issue of slot allocation and has developed related guidance for use by States, which remains relevant. Where a State encounters difficulties over slot allocation with other countries, the most practical approach for resolution is through consultation with parties concerned in accordance with relevant rules, such as IATA's Worldwide Slot Guidelines (WSG), and available dispute settlement mechanisms;
- c) night flight restrictions are also linked to specific local situations but also affect market access and the operation of international air services. With the continued growth of air traffic, this issue will intensify;
- d) ICAO has developed a "Balanced Approach" policy to aircraft noise management, which should be used by States to address aircraft noise issues and develop relevant policy. States may resolve difficulties or disputes over night flight restriction issues through available consultation and dispute settlement mechanisms;

- e) there is general agreement that States should give due consideration to long-term capacity requirements when planning aviation infrastructure development; and
- f) as market liberalization evolves, there are other emerging issues of general interest to States and aviation stakeholders such as the treatment of business aviation. ICAO should play a role in monitoring the developments and develop relevant guidance.

2.1 .12 RECOMMENDATIONS

Recommendation 2.1/3 — Other market access matters

The Conference recommends that:

- a) in dealing with the issues related to slot allocation and night flight restrictions, States should give due consideration to the needs and concerns of other States and make every effort to resolve any concerns through consultation in a spirit of sympathy, transparency, mutual understanding, and cooperation;
- b) with respect to night flight restrictions, States should respect and follow the ICAO Balanced Approach principle in regulatory action on aircraft noise management at airports;
- c) States should give due consideration to long-term capacity demands of air transport in planning the development of aviation infrastructure;
- d) ICAO should continue to monitor both the situation and States' practices in handling the issues of slot allocation and night flight restrictions, raise awareness of the relevant ICAO policy guidance, and encourage its use by States and concerned parties; and
- e) ICAO should continue to develop policy guidance for States on economic regulation of air transport and develop guidance on emerging issues of global importance, including business aviation.
