

## Efforts to liberalise Global Airline Business



### November 2009: Multilateral Statement of Policy Principles regarding the Implementation of Bilateral Air Services Agreements.

The Convention on International Civil Aviation (Chicago Convention 1944) enshrined basic principles promoting aviation which have been applied on a global basis. In 1944, the participating governments could not agree multi-lateral economic regulation of airlines which resulted in the bilateral system of air services agreements. The rules set up to protect the industry in 1944 do not work in a 21st century economic and social environment.

Restrictions on ownership and market access have prevented airlines from growing into strong global businesses and the restrictions that exist in the bilateral system of air services are of a form and type that other industry global business do not encounter. In the press release issued by IATA on 16th November, Giovanni Bisignani (IATA's Director General and CEO) commented that, "National ownership requirements do not allow airlines to merge across borders, precluding the development of global players that has been seen in other previously regulated industries such as telecommunications. Airlines also restricted on market access, until government negotiators conclude agreements to allow cross-border services".

As a step towards redressing the restrictions encountered by airlines in air services agreements, on the 16th November IATA announced the signing of a Multilateral Statement of Policy Principles regarding the implementation of bilateral air services agreements by seven states and the European Commission.

The seven states are Chile, Malaysia, Panama, Singapore, Switzerland, United Arab Emirates, United States of America and the statement was endorsed by the European Commission on behalf of the EU states. These states collectively represent almost 60% of the global aviation community. Bisignani in congratulating the signatory stated that "This is an historic achievement that will help set the foundation for a financially sustainable global aviation industry".

The statement issued at Montebello, Quebec, Canada highlights that international air transport is of fundamental importance to the global economy and arose out of concern that restrictions in bilateral air service agreements, market access, investment and pricing could reduce the contributions of international air transport to trade, tourism, job creation and economic growth. In his remarks Bisignani referred to the airline sector as a hyper-fragmented industry struggling for survival and struggling to cover its cost of capital.

The Statements of Policy Principle are not binding and do not carry the impact of international treaties or convention. Nonetheless they do form an important statement and recognition of common intention among those signatories states who are active in the aviation industry and drive global aviation policy. The statement recognises the importance of promoting compatible regulatory approaches and reducing the potential for conflict. The policy principles will assist and guide the implementation of existing air services agreements with other countries as well as the approach to negotiation of new or amended air services agreements in the future.

There are 3 Policy principles:

- Freedom to access capital markets. This is to serve as a recognition and general respect to the policies of other countries that seek to encourage foreign investment in their airlines. The statement encourages flexibility among the signatories not to apply undue restrictions to airlines, on grounds that it is not owned or controlled by nationals or government of another jurisdiction. This concept is to apply on the basis of reciprocity between states. There is also a desire to eliminate, replace or otherwise remove the

negative affects of traditional nationality clauses in air service agreements and to give sympathetic consideration of a multi-national agreement to accomplish this goal.

- Freedom to do business. Restrictions on market access in international civil aviation should be the exception, not the rule. The statement of policy is that, on the basis of reciprocity between states and irrespective of any infrastructure constraints, there should be a general waiver where legal systems permit, provisions in existing air services agreements that limit the number of airlines that may be designated or otherwise authorised to operate as well as provisions that limit the right of airlines to provide services.
- Freedom to price services. Airlines should generally have the freedom to set prices for international air transportation in accordance with their assessment of the market. This may result in the waiver or non-application where air services agreement require filing of tariffs. And the abstention from exercising rights under double approval, country of origin, or similar provisions, where such rights that interfere with market based pricing decisions of airlines.

The statement does not create legal obligations but it does give a clear indication of the intention and potential for change and relaxation or removal of existing restrictions as and when the current bilateral agreements are reviewed or renewed, and for new bilateral agreements. The statement of policy principles remains open for endorsement by any authority responsible for international civil aviation policies of any other country.

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