



Has liberalisation stalled?

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ABSTRACT

This paper addresses the concern expressed in some quarters that the process of liberalisation of international air transport has lost its momentum. The paper argues that any assessment about whether liberalisation has stalled needs to be based on an understanding of the outcomes expected to be achieved. One view is that liberalisation is beneficial because it can deliver specific outcomes. Another view is that liberalisation is a process leading to the evolution of a system of regulation by market forces. Accordingly, the status of liberalisation can be measured in terms of specific deliverables or it can be measured according to whether shared values and beliefs take precedence over the interests of individual members. The paper examines these views and discusses factors that will drive or inhibit further liberalisation. Particular attention is paid to the role of ICAO since this organization considers that it is the forum in which global solutions on this matter are to be pursued.

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1. Posing the question

The question that motivated this paper – “has liberalisation stalled?” – has arisen in various forums in recent years. Notably, the International Air Transport Industry (IATA) drew attention to the matter when it invited liberal-minded governments to an *Agenda for Freedom Summit* in 2008. Through this action the airline industry expressed its frustration with the progress of liberalisation and stated forcefully that the survival of airlines in today's trying economic conditions depended on finding ways to eliminate restrictive regulations.

The result of IATA's initiative was a *Declaration of Policy Principles* signed by seven countries as well as the European Commission (EC). However, IATA considered that much more needed to be done and it made this position known at the 37th Session of the Assembly of the International Civil Aviation Organization (ICAO) in 2010 (A37). The United States also tabled an influential paper about relaxing restrictions on ownership and control of airlines, and the general agreement during this high-level policy meeting was that there was a need to reinvigorate the processes of liberalisation. The outcome was a decision by ICAO to convene its *Sixth Worldwide Air Transport Conference (ATConf/6)* in March 2013. This Conference reaffirmed the strong, global commitment to the cause of liberalisation and various recommendations emerged about how to achieve further progress, including the possibility of new multilateral

treaties. Another of the Conference's recommendations was that “ICAO should be the only forum for initiating global solutions for the development of a sustainable air transport system for all interested parties”. Accordingly, answers to questions about the progress of global liberalisation are to be found in how well ICAO is addressing the concerns expressed by IATA and others.

This paper, in Section 3, considers quantitative evidence about the extent of liberalisation as reflected in bilateral and plurilateral/regional air services agreements (ASAs). However, the status of liberalisation should also be gauged in terms of the benefits it has been able to generate. If liberalisation is considered to be a means of promoting the interests of the nation or of particular parties then it is appropriate to judge the progress of liberalisation in terms of factors such as market shares, profits, or consumer benefits. But liberalisation can also be perceived to be a means of installing a regime to regulate international civil aviation. These different perspectives are explored in Section 2 before analysing facts as well as the forces driving or inhibiting further liberalisation. As noted, particular attention is paid to the role of ICAO before drawing conclusions about whether liberalisation has, in fact, stalled.

2. Perspectives on liberalisation

The idiosyncratic system of economic regulation of international air transport owes much to the fact that each country has a valuable property right – sovereignty over its own airspace. The ensuing consultations and negotiations involved in trading access to these rights can be understood as a form of mercantilism in which each

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party pursues its national interests through appropriate use of regulatory instruments and conditions laid out in several thousands of air services agreements (ASAs). ICAO describes this air transport regulatory system as a “regime” that “may range from one of detailed governmental regulation of tariffs, capacity and routes, to one where the bilateral partners allow their airlines wide latitude to serve the market as they wish” (ICAO, 2004).

Starting at the “restrictive” end of the spectrum, the parties make assessments about desirable outcomes and exercise whatever leverage is at their disposal to set the conditions for trade in air services. However, if a party has airlines that are strong and competitive, and/or it desires access to much larger markets, then liberalism can be an attractive option. Like-minded parties might also be prepared to enter into liberalised plurilateral or regional arrangements. Liberalism under these conditions would nevertheless reflect mercantilist motivations, and knowing how the regulatory system works principally requires an understanding of power relationships and how states behave strategically to leverage their positions.

However, there is another possibility, and that is whether a proliferation of liberalised, bilateral or plurilateral regimes would naturally lead to the emergence of a genuine “international regime”, a form of governance applying to a group of States, but which functions independently of the interests of individual members. One theory about how such systems emerge holds that liberalisation is a natural state for a regime once the members of the group recognise that cooperation is the only effective way to deal with ever-increasing complexity. Under the heading of “institutionalism” this theory posits that shared values and beliefs inevitably emerge out of such cooperation and that these gradually transcend national interests (Nayar, 1995). An international regime thus becomes entrenched and represents something fundamentally different from mere regional or plurilateral cooperation.

If liberalism is to be considered as a manifestation of mercantilism then the status of liberalisation would need to be assessed according to the objectives of its proponents - which have generally been expressed in terms of benefits to consumers, industry and nations. But if liberalisation is viewed as an emerging international regime it would be necessary to examine the collective commitment to market-determined outcomes and the binding rules that enforce a systems approach independent of any particular national interests.

3. The status of liberalisation

3.1. Bilateral regulation

ICAO's first three air transport conferences in 1977, 1980 and 1985 provided forums for states to discuss coordination and harmonisation of controls on capacity, tariffs and non-scheduled international air transport. “Liberalisation”, however, emerged as a preferred approach only in 1994 at ICAO's *Fourth Worldwide Air Transport Conference* (ATConf/4). Significantly, the Conference rejected the idea of a global multilateral agreement for the exchange of traffic rights. Instead it left each state to decide its own path and pace of reform in a “gradual, progressive, orderly and safeguarded change towards market access in international aviation regulation” (ICAO, 2008). Furthermore, ICAO reminded States to abide by the principles set out in the *Convention on International Civil Aviation*; namely, sovereignty, fair and equal opportunity, non-discrimination, interdependence, harmonization and cooperation.

This remained the position when ICAO convened ATConf/5 in 2003 with the objective of advancing the cause of liberalisation. On the conclusion of that event, the President of the Council of ICAO, Dr Assad Kotaite, stated that “This was a truly remarkable conference.

ICAO Contracting States now have a clear direction and practical guidance for liberalizing their air transport industry, at their own pace and in accordance with globally endorsed principles and practices, for the mutual benefit of the travelling public and the air transport industry” (ICAO, 2003). Nevertheless, the *Declaration of Global Principles for the Liberalization of International Air Transport* adopted at ATConf/5 remained a heavily qualified statement intended to promote “ongoing regulatory evolution” (Abeyratne, 2003).

Since 1994, therefore, it has been ICAO policy to support liberalisation, to offer appropriate guidance to its Contracting States and to monitor developments. For example, ICAO developed *Template Air Services Agreements* (TASAs) containing standardised language for “traditional”, “transitional” and “liberalising” provisions in for use in ASAs – both bilateral and multilateral. ICAO also promoted greater transparency by publishing details of ASAs in its *World Air Services Agreements (WASA) Web Database*. Another initiative that has met with a high degree of success was the introduction of regular ICAO Air Services Negotiation Conferences (ICAN) at which negotiations potentially can be conducted more efficiently, and at which exchanges of information may occur.

ICAO's monitoring of the progress of liberalisation largely has focused on the adoption of “open skies” agreements, by which it means “a regulatory regime that relies chiefly on sustained market competition for the achievement of its air services goals and is largely or entirely devoid of *a priori* governmental management of access rights, capacity and pricing, while having safeguards appropriate to maintaining the minimum regulation necessary to achieve the goals of the agreement” (ICAO, 2004). For example, ICAO reported that there were 170 open skies agreements in existence in 2009 and the number had reached 256 at the end of 2011. In the period between 1992 and October 2012, 145 of ICAO's 191 Contracting States had entered into a total of more than 400 open skies agreements, representing about 11 per cent of all bilateral ASAs.¹

This evidence suggests that liberalisation has gained a certain degree of momentum, but a more detailed picture emerges from analyses carried out by the World Trade Organization (WTO) which calculated an “Air Services Liberalization” (ALI) index based on the 2200 agreements contained in the WASA database in 2005 (WTO, 2006; Piermartini and Rousová, 2008). The WTO codified the provisions in the ASAs according to the language used in ICAO's TASAs and then, on the basis of expert opinions, assigned weights to the contents of ASAs according to their importance. Thus it was possible to calculate an ALI score for each ASA and for each country. It is generally believed that the population of bilateral ASAs numbers around 3,500, so this analysis covered approximately 60 per cent of all ASAs. However, the WTO noted that traffic is highly concentrated on certain routes and that its analysis was able to account for 70 per cent of all international scheduled passenger traffic.

Notably, the WTO found that approximately 17 per cent of passengers travelled on routes covered by liberal conditions and the share of the total doubled if semi-liberal ASAs were considered. The analysis also showed that 40 per cent of ASAs remained highly restrictive, and these types of arrangements were the most common types in most regions of the world. Intra-European traffic flows were not covered in the analysis and the WTO considered

¹ Based on ICAO internal working papers prepared for the 11th Meeting of the Air Transport Regulation Panel held at ICAO Headquarters in Montréal in June 2012 and on working papers published by ICAO for presentation at ATConf/6 available at www.icao.int/Meetings/atconf6/Pages/WorkingPapers.aspx (retrieved 19 January 2013).

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