

AIR LAW, REGULATION AND COMPLIANCE MANAGEMENT



TURKISH AVIATION ACADEMY



COURSE DESIGNED FOR
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LIBERALISATION, “OPEN SKIES” AND BEYOND

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PLAN

1. Notion of liberalisation in international air transport
2. Liberalisation and Exchange of Market Access Rights
3. Open Skies principles
4. Multilateral Open Skies agreements
5. EU Horizontal Agreements

SPECIFIC LEARNING OBJECTIVES

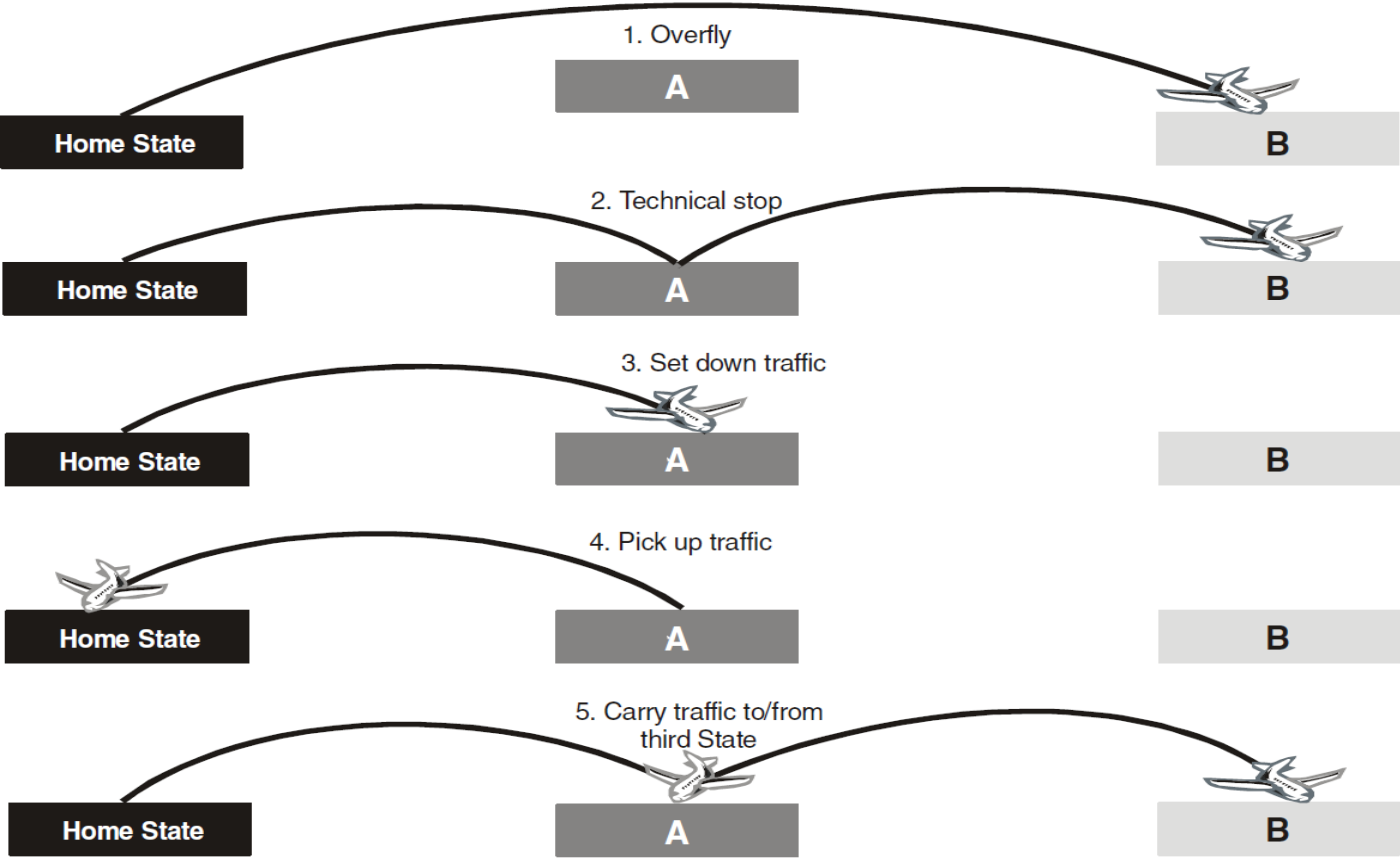
1. To recognize features of the liberal (“Open Skies”) air transport agreements.
2. To evaluate what countries are liberalising; to evaluate what countries are Not, and why (Not).

- Notion of liberalisation in international air transport regulation
 - Market access
 - Tariffs
 - Capacity
 - Access to capital markets
 - Traditional Regulation of Bilateral system
 - Bermuda
- Roles of US and EU in air transport deregulation / liberalisation

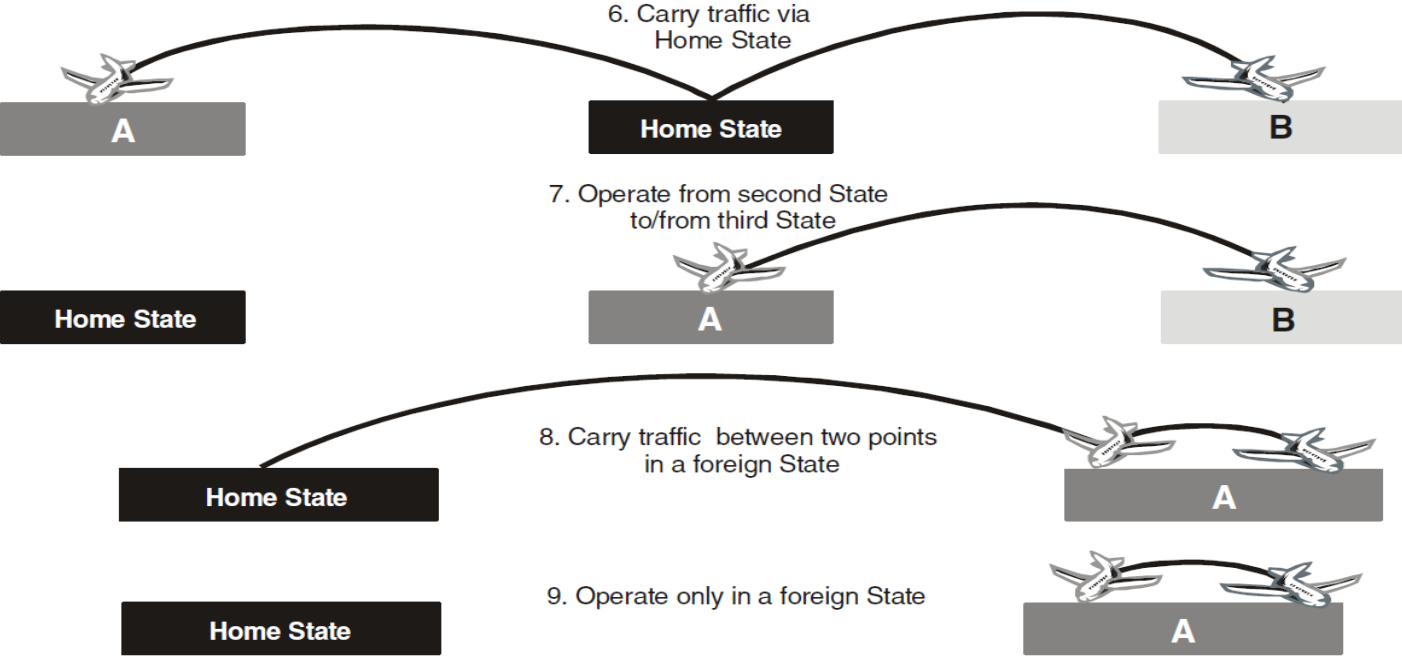
Liberalisation and Exchange of Market Access Rights

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Market access rights (traffic rights) 1-5



Market access rights (traffic rights) 6-9

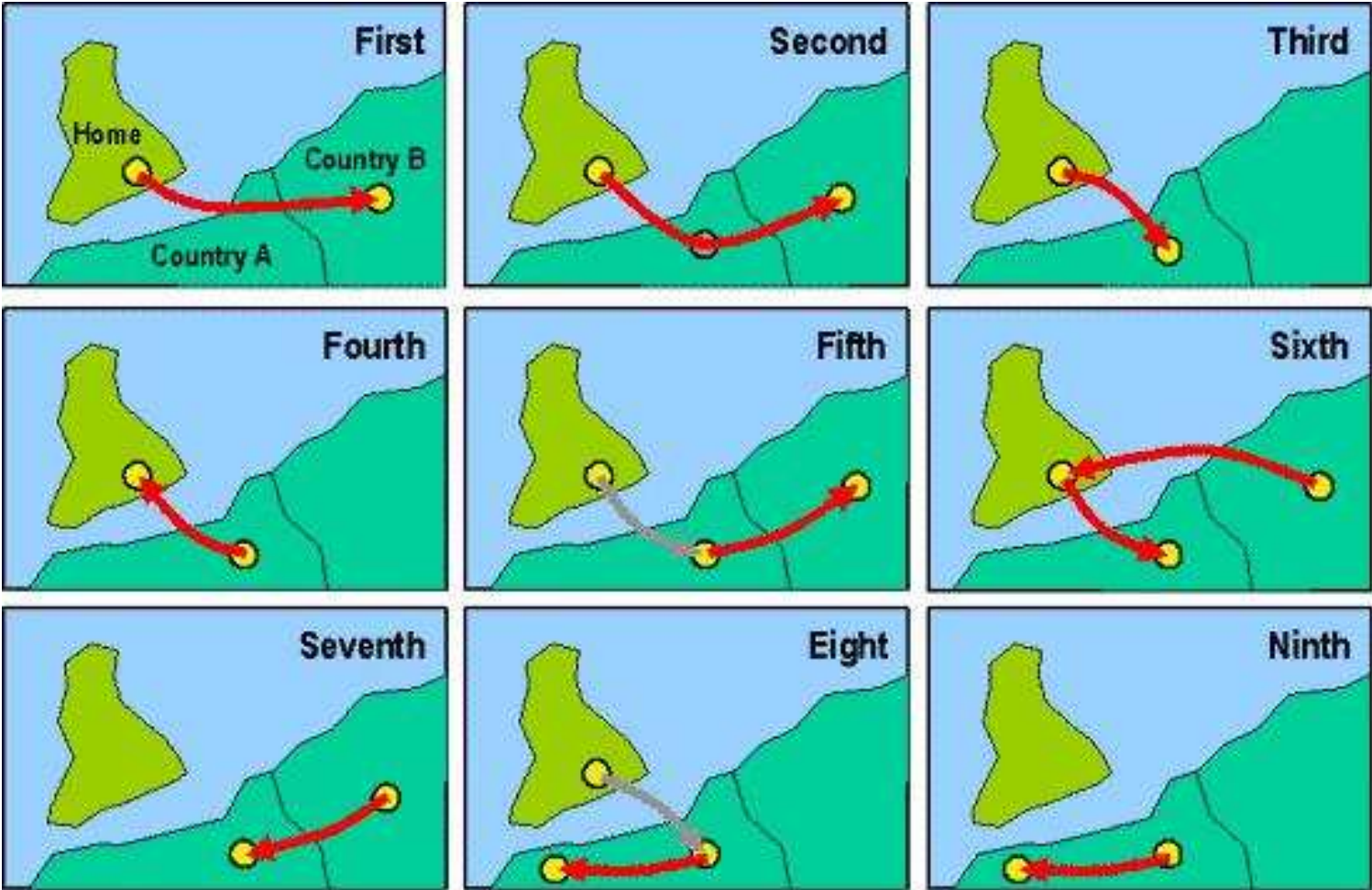


Source: ICAO Doc 9626, Manual on the Regulation of International Air Transport

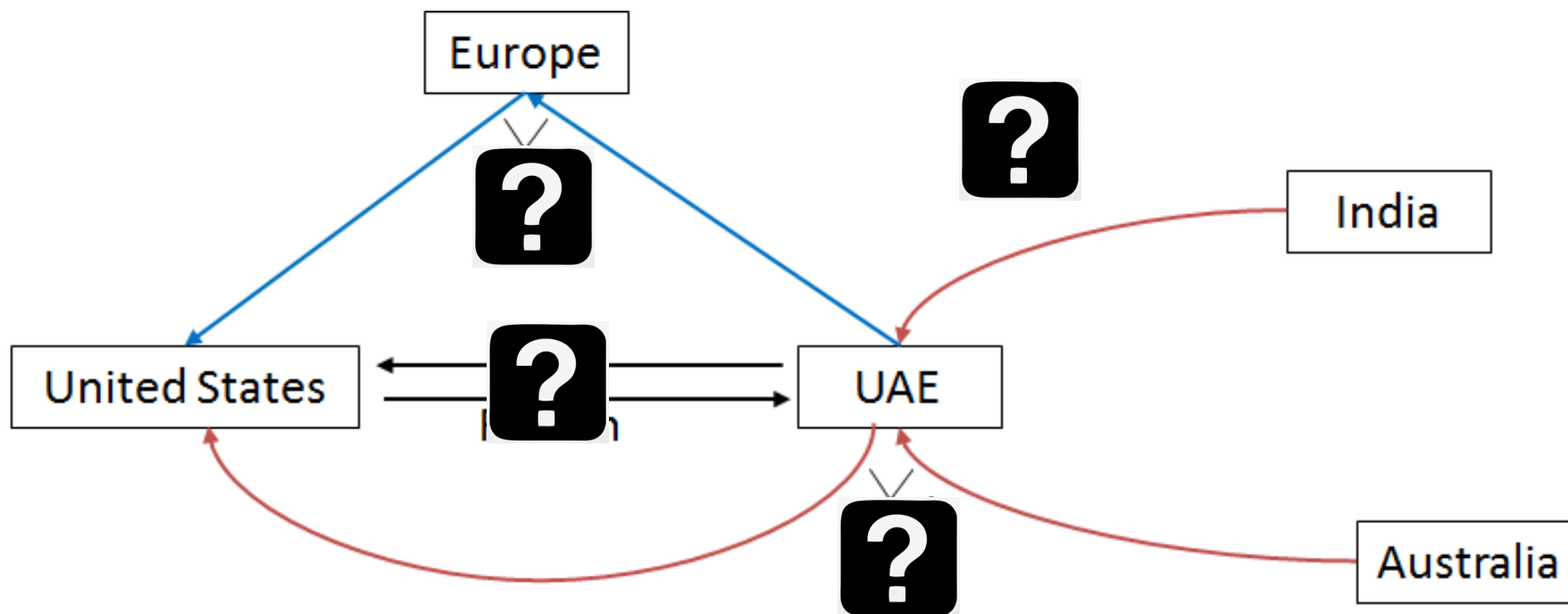
Sources - market access rights (traffic rights):

1. Chicago Convention
2. International Air Services Transit Agreement (IASTA), or
“Two Freedoms Agreement” - ratified by 126 States
3. International Air Transport Agreement, or
“Five Freedoms Agreement” - ratified by 11 States
4. Bilateral Air Transport Agreements
5. ICAO Doc 9626, *Manual on the Regulation of International Air Transport*

Market access rights (traffic rights) 1-9



Activity-1: What Traffic Rights are hidden?



Source: Partnership for Open & Fair Skies, "Restoring Open Skies: The Need to Address Subsidized Competition from State-owned Airlines in Qatar and the UAE"

- **Notion of Open Skies principles**

- multiple designation
- no capacity restrictions
- no route right restrictions for 3rd and 4th freedom services
- no pricing restrictions
- airline ownership rules: flexibility
- improved access of airlines to capital markets

- **Open Skies principles: ancillary elements**

- open code-share opportunities
- liberal cargo arrangements
- freedom to convert / repatriate carrier earnings
- freedom to provide its own ground handling
- freedom to enter into commercial transactions regarding flight operations
- commitment for non-discriminatory access to CRS

US Open Skies Agreements

- As from 1992: US Open Skies policy for bilateral agreements introduced
- 1992 – Oct. 2016: 120 Open Skies agreements concluded by the US
- Vast majority of US bilateral aviation relations with other States governed by Open Skies
- 2007: US-EU Open Skies agreement Phase I
- 2010: US-EU Open Skies agreement Phase II

Activity-2: Exchange of Traffic Rights by the Turkey-US Air Transport Agreement

- Context
- Source: <http://www.state.gov/e/eb/rls/othr/ata/t/tu/114145.htm>
- Goal of Activity-2: Analyze of the Turkey-US Air Transport Agreement

Activity-2 Questions

What traffic rights for Scheduled Air Transport are exchanged by the Turkey-US ATA? By what stipulations of the ATA?

- *Choose articles of the ATA and justify*
- *Argue the “liberal” type of ATA*

Open Skies principles

- **Notion of Open Skies principles – discussion**

- multiple designation:
formalities of designation still required?
- no route right restrictions for 3rd and 4th freedom services:
what about 5th freedom rights?
- no pricing restrictions:
what about rebates, discounts, LCC pricing, and dumping?

- **Notion of Open Skies principles – discussion (cont)**

- airline ownership rules: flexibility

what does it mean for substantial ownership/
effective control?

- improved access of airlines to capital markets:

to what extent is cross-border financing allowed and
feasible (equity financing/debt financing)?

Effect of Liberalisation

McKinsey Global Institute Report (2014):

- Economies benefit up to 40% from high connectivity

Brookings Institution, N.Y. Study (2013):

- Open Skies agreements resulted in appr. 15 % fare reduction
- Open Skies agreements generate higher connectivity and greater productivity

Liberalisation at bilateral and regional level therefore creates a momentum for individual States

As regards open skies principles, a strong momentum is created to apply them

Multilateral Open Skies agreements

20

Multilateral Open Skies agreements

- **Multilateral Agreement on the Liberalization of International Air Transportation (MALIAT)**, 1 May 2001: Open Skies Agreement signed between 5 APEC States; 4 joined later
- PARTIES: Brunei, Chile, Cook Islands, Mongolia, New Zealand, Samoa, Singapore, Tonga and the United States (Peru withdrew in 2005)
- OBJECT: Exchange of traffic rights on a multilateral basis and on open sky principles

Multilateral Open Skies agreements



- **ASEAN Multilateral:** signed on 20 May 2009
- PARTIES: Brunei, Cambodia, Indonesia, Lao, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam
- OBJECT: Exchange of traffic rights on multilateral basis and on liberal terms; promotion of single and unified aviation market in ASEAN as from 2015

Multilateral Open Skies agreements



- **ASEAN Multilateral (cont)**
 - Application of Open Sky principles
 - Multiple designation, no capacity restrictions
 - Airline ownership rules: flexibility
 - Gradual removal of restrictions on pricing and route rights
- **ASEAN-China bilateral agreement (Nov. 2010)**

Multilateral Open Skies agreements



- **CARICOM Multilateral** (1996, in force since 1998)
- PARTIES: 14 CARICOM States
- OBJECT: Exchange of 3rd and 4th freedom rights on a multilateral basis; 5th freedom rights subject to reciprocal and liberal exchange; 6th freedom excluded
- Notion of CARICOM air carrier: distinctions as to nationality removed; Designation and licensing still required

Multilateral Open Skies agreements



- **LACAC Multilateral:** signed 4 Nov. 2010
- PARTIES: 9 LACAC States – provisionally applicable (Brazil, Chile, Colombia, Dominican Republic, Guatemala, Honduras, Panama, Paraguay and Uruguay)
- OBJECT: Multilateral exchange of 3rd, 4th, 5th and 6th freedom rights, with some restrictions on 6th freedom
- Freedom to combine services, passenger & cargo, scheduled and non-scheduled services. However: most Signatories made reservations regarding cabotage and services other than all-cargo flights

Multilateral Open Skies agreements

- **Montebello Statement on policy principles:**
signed on 16 November 2009 (“**Agenda for Freedom**”)
- PARTIES: Chile, EU, Malaysia, Panama, Singapore, Switzerland, UAE, the United States; promoted by IATA
- OBJECT: Common policy principles regarding airline ownership and access to capital markets, freedom of airlines to do business, freedom of airline pricing, fair competition

Multilateral Open Skies agreements

“Agenda for Freedom”



Multilateral Open Skies agreements

- Common principles of **Agenda for Freedom**:
 - Waiver of bilateral right to deny market access to carriers with mixed ownership structure
 - Waiver of nationality clause on basis of reciprocity
 - Eliminate restrictions to market access when renegotiating existing bilaterals
 - Waiver of tariff filing requirements and of disapproval rights under double approval clauses
 - Subject to maintaining fair and equal opportunity

Bilateral and Multilateral Open Skies agreements

IMPLICATIONS:

- Cross-border liberalisation spreads further and gains in intensity
- Largely industry-driven, in part by low-cost airline segment
- States are in the driver's seat
- Momentum is created to align policies further

Bilateral and Multilateral Open Skies agreements

IMPLICATIONS (cont):

- Despite bilateralism in air transport, this applies also to steps to modernize the system at regional level
- The regional Open Skies agreements and potentially the Montebello principles may create a strong incentive to further align bilateral policies
- Carriers are likely to benefit from such alignment, provided they are sufficiently competitive in the markets and segments they serve

EU Horizontal Agreements

EU Horizontal Agreements - Open Skies policy of the EU:

- no nationality clauses in bilateral agreements
- any EU carrier may operate between EU Member State and a third country
- about 1500 pre-existing bilateral agreements of the Member States were updated
- more than 900 agreements with 107 countries already amended
- in the case of 45 third countries, horizontal agreements were signed

Turkey – EU Horizontal Agreement

- Agreement initialed 25 March 2010, but not yet signed
- Main elements:
 1. EU designation clause (community carrier notion)
 2. Route restrictions to be partly removed
 3. **26 bilaterals** to be partly replaced

Negotiations with the EU Commission ongoing

LIBERALISATION AND OPEN SKIES – SUMMARY

- Open Skies policy mainly promoted by US and EU
- US now has 120 Open Skies Agreements
- EU has 45 Horizontal Agreements and Agreements for Common Aviation Area
- Multilateral Open Skies play important role in several regions
- Open Skies Agreements will further spread

LEARNING REFLECTION

What are your key takeaways?

What questions do you have?

Thank you!

