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WORLDWIDE AIR TRANSPORT CONFERENCE (ATCONF)

SIXTH MEETING

Montréal, 18 to 22 March 2013

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

DEVELOPMENTS IN THE LIBERALIZATION OF INTERNATIONAL AIR TRANSPORT SERVICES IN THE LATIN AMERICAN REGION

(Presented by 22 Member States[2], members of the Latin American Civil Aviation Commission (LACAC))

1. INTRODUCTION

1.1 Liberalization, as an air transport trend in Latin America, started with the elimination of State-owned airlines, commonly known as flag carriers, which relied on government investment and, in many cases, State subsidies. Since then, liberalization has been increasing in the region and now coexists with aeronautical policies that are conservative and flexible or are moving towards liberalization.

1.2 In most countries in the region, the State, driven by the global trend, no longer manages airlines and is increasingly reducing its regulatory function over supply and rates. Consequently, the market has taken over the activities abandoned by the State.

1.3 This process has proceeded at different paces in Latin American countries, and has faced some problems:

a) some aeronautical authorities feel that liberalizing air transport markets still entails the risk of cut-throat competition and they would like to maintain the traditional system of regulating supply and setting prices, although the latter has practically disappeared since, in most cases, rates are just recorded;

b) others are now convinced that regulations and restrictions hinder growth and that free competition encourages air carriers to improve services and create new markets; and

[1] English and Spanish versions provided by LACAC.
[2] Argentina, Aruba, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay and Venezuela.

c) in the middle, there are some authorities that have decided to progressively make their policies more flexible in order to accommodate to the new scenarios, also taking into account regulatory obstacles

1.4 Aeronautical authorities have tried not to interfere with this process, avoiding excessive or unnecessary regulations or restrictions that could hinder market activities.

1.5 In turn, air carriers have done their share by avoiding unlawful behaviours, like setting rates below the average cost or oversupply.

1.6 Likewise, the Region has seen the need to review the "substantial ownership and effective control" criterion for granting, denying or revoking an operation permit to a foreign airline designated by another country.

1.7 In a global economy, it has been advisable to reduce international capital access restrictions, that is, to eliminate or moderate the ownership status or requirement as the only or main criterion for designation and authorisation, so that airlines may manage and freely choose their structure based on their capital needs and strategies. However, the elimination of such restrictions has not compromised that capacity of designating authorities to exercise regulatory control, especially on matters concerning security and safety.

1.8 Several sub-regional initiatives and the signing of multilateral air transport and integration service agreements have also contributed to gradual liberalization in Latin America, notably, Decision 592 of the Andean Community of Nations (CAN) on open skies, the Agreement of the Association of Caribbean States (ACS) on a more flexible air transport, and the Fortaleza Agreement, which liberalizes traffic to locations considered to be of regional nature.

2. MULTILATERAL OPEN SKIES AGREEMENT / LACAC

2.1 Following a long process and hard work, a very important initiative became a reality in Latin America in 2010. In the case of the Latin American Civil Aviation Commission (LACAC), and *ad-hoc* group was established to draft a "Multilateral Open Skies Agreement" to be submitted to the Region. This group was made up by Chile (speaker), Brazil, Costa Rica, Cuba, Guatemala, Panama, and Dominican Republic.

2.2 The draft built on a text originally prepared by the Secretariat and the Focal Point for the macro-task on "Transport and Air Policy", always taking into account the liberal multilateral agreement model developed by ICAO's Fifth Worldwide Air Transport Conference, adjusted to Latin American reality, and keeping in mind the inputs of experts of LACAC member States, all of which were very valuable and largely incorporated into the draft.

2.3 Member States embraced the draft Agreement and enacted it at the XIX LACAC Ordinary Assembly (Punta Cana, Dominican Republic, November 2010), opening it for signature and designating the LACAC Permanent Secretariat as its depository. To this date, the Agreement has been signed by: Brazil, Chile, Colombia, Guatemala, Honduras, Panama, Paraguay, Dominican Republic, and Uruguay, and it is expected that at least five more States will do the same next year.

2.4 The draft has a Preamble and 40 articles, provides for multiple designation of airlines, and does not require substantial ownership and effective control thereof, so as not to hinder foreign investment but rather to have airlines incorporated and based in the territory of the designating State and

under its regulatory control, and for the State to meet safety and security provisions. The same grounds are required to deny, revoke or restrict a permit.

2.5 Concerning capacity, the Agreement allows designated airlines to freely determine the capacity they will offer in their international air transport services, based on market considerations.

2.6 In terms of competition, the Agreement establishes that, within the framework of the competition laws in each of the Parties, designated airlines must enjoy healthy and lawful competition when operating the granted routes.

2.7 Regarding rates, designated airlines may freely set their air transport rates based on market considerations.

2.8 The Agreement provides for all trade facilities and opportunities inherent to liberal agreements in terms of: sale and marketing of air transport services, currency exchange, remittance of profits, hiring of foreign personnel, access to local services, use of ground handling services, code-sharing and cooperation agreements between airlines, on-route capacity changes, aircraft operation contracts, and use of other means of transport.

2.9 The Agreement grants the right to file reservations, in the understanding that it constitutes an advantage, since it will probably expedite ratification and accession to the Agreement. On the other hand, it was noted that reservations filed when signing, ratifying or accessing the Agreement could be withdrawn at any time, thus giving flexibility to this formula. In this regard, the LACAC Ordinary Assembly (Brasilia, Brazil, November 2012) enacted Resolution A20-27 “Guidance on Addressing Reservations (formulation, acceptance, and objection) in the Multilateral Open Skies Agreement for member States of the Latin American Civil Aviation Commission”, which clearly defines Article 37 of the Agreement concerning “Reservations”, thus providing a better understanding of this matter and encouraging those States that had not done so yet to sign the Agreement as soon as possible.

2.10 Finally, with respect to traffic rights, full traffic rights are granted amongst Party States and between these and third parties, up to the sixth freedom. In different paragraphs, seventh freedom is granted for cargo-only services and for passenger-cargo services; and cabotage rights are also granted, that is, the eighth and ninth freedoms.

3. SUGGESTED ACTION

3.1 The Conference is invited to take note of the information presented herein, and of the Agreement and its supplementary documents shown in the **Attachment**.

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APPENDIX A

RESOLUTION Nº A19-03

MULTILATERAL OPEN SKIES AGREEMENT FOR MEMBER STATES OF THE LATIN AMERICAN CIVIL AVIATION COMMISSION

Preamble

The undersigned Governments, hereinafter called "the States Parties" or "the Parties";

BEING PARTIES to the Convention on International Civil Aviation, opened for signature in Chicago on 7 December 1944;

CONSIDERING that the conclusion of a multilateral agreement on international air transport will promote cooperation and the development of Latin American countries;

WISHING to facilitate the expansion of opportunities for international air services of the countries in the Region;

CONVINCED of the advisability of optimising aeronautical resources and the infrastructure of the Region;

AWARE of the need to develop the aeronautical industry and to take into account the rights and interests of users;

EXPRESSING their desire to coordinate their aeronautical policies in their mutual relations and with third countries and integration systems; and

ASSERTING their commitment to the safety of aircraft, passengers, infrastructure and third parties, as well as to facilitation and environment protection;

HAVE AGREED the following:

Article 1
Definitions

For purposes of this Agreement:

- "Aeronautical Authority" is the government entity designated in each of the States Parties to regulate international air transport or its successor organisation(s);

- "Agreement" means this Agreement and the corresponding amendments;

- "Capacity" is the number of services provided under the Agreement, usually measured by the number of frequencies or tonnes of cargo offered in a market on a weekly basis or during any other given period;

- "Convention" designates the Convention on International Civil Aviation opened for signature in Chicago on 7 December 1944, including the Annexes adopted under Article 90 of said Convention, and the amendments to the Annexes or the Convention under Articles 90 and 94, to the extent the Annexes and amendments are applicable to the States Parties;

- "Designated airline" means an airline that has been designated and authorised in accordance with Article 3 of this Agreement;

- "Fare" means the price to be paid for the transport of passengers, baggage and cargo, and the conditions under which such price applies, including the prices and commissions of agencies and other ancillary services;

- "Territory", in relation to a State, designates the land areas and adjacent territorial waters and the airspace above them, under the sovereignty of said State;

- "Air service", "international air service", "airline" and "non-traffic stop" have the meaning assigned in Article 96 of the Convention; and

- "LACAC" designates the Latin American Civil Aviation Commission.

Article 2
Granting of Rights

1. Each Party grants the other Parties the following rights for the provision of international air transport services by the airlines of the other Parties:

- The right to fly across its territory without landing;

- The right to make non-traffic stops in its territory;

- The right to provide scheduled and non-scheduled international passenger, cargo and mail air transport services, either separately or in combination, from points before the territory of the Party designating the airline, across the territory of that Party and intermediate points, to any point in the territory of the Party that has granted the right and beyond, with full third, fourth, fifth, and sixth freedom traffic rights, with the number of frequencies and the flight equipment they deem appropriate;

- The right to provide exclusive scheduled and non-scheduled cargo services between the territory of the Party that granted the right and any third country, such services not necessarily including points in the territory of the Party designating the airline, with full traffic rights up to the seventh freedom, with the number of frequencies and flight equipment they deem appropriate;

- The right to provide combined scheduled and non-scheduled services between the territory of the Party that granted the right and any third party, such services not necessarily including points in the territory of the Party designating the airline, with full traffic rights up to the seventh freedom, with the number of frequencies and flight equipment they deem appropriate;

- The right to provide scheduled and non-scheduled air transport services combining passengers and cargo, or cargo alone, between points in the territory of the Party that has granted the right of cabotage (eight and ninth freedoms); and

- All other rights specified in this Agreement.

2. Each designated airline may, in any or all of its flights and at its own discretion:

- Operate flights in either or both directions;
- Combine different flight numbers in one aircraft operation;
- Operate services to previous, intermediate and subsequent points, and points in the territory of the Parties along the routes, in any combination or in any order;
- Exclude stops at any point or points;
- Transfer traffic from any of its aircraft to any of its other aircraft at any point along the routes;
- Operate services to points located before any point in its territory, with or without change of aircraft or flight number, and offer and advertise such services to the public as direct services, in all cases taking the necessary steps to ensure that consumers are fully informed;
- Make a stop at any point inside or outside the territory of any of the Parties;
- Carry in-transit traffic through the territory of any of the other Parties; and
- Combine traffic on the same aircraft, regardless of its point of origin; without any geographical or direction restrictions and without losing any right to carry traffic granted under this Agreement.

Article 3
Designation and Authorisation

1. Each Party shall have the right to designate as many airlines as it sees fit to operate the agreed services in accordance with this Agreement and to withdraw or modify such designations. The designations will be communicated in writing to the other Parties through diplomatic channels and to the Depositary.

2. Upon receiving the corresponding designation and the request from the designated airline, in the manner and in accordance with the prescribed requirements for the operation approval, each Party will grant the appropriate operation permit as promptly as possible, provided:

- The airline is incorporated in the territory of a State Party that designates it and it is headquartered in the territory of that Party.
- The airline is under the effective regulatory control of the State Party that designates it;
- The Party designating the airline complies with the provisions set forth in Article 8 (Safety) and Article 9 (Security); and

- The designated airline is qualified to meet all other conditions established by law and in the regulations normally applied to the operation of international air transport services by the Party that reviews the request(s).

3. Upon receiving the operation approval mentioned in paragraph 2, a designated airline may begin operation of the agreed services for which it has been designated, provided it complies with the applicable provisions of this Agreement and with the standards required by the Party that has granted the authorisation.

Article 4
Refusal, Revocation and Limitation of Authorisation

1. The aeronautical authorities of each Party will have the right to refuse to grant the authorisations referred to in Article 3 (Designation and Authorisation) of this Agreement with respect to an airline designated by any of the other Parties, and to rev

oke and suspend said authorisations, or to impose temporary or permanent conditions on them:

- In case they consider that the airline has not been incorporated in the territory of the Party designating the airline and is not headquartered in the territory of that Party;

- In case they consider that the airline is not under effective regulatory control of the State Party designating it;

- In case the Party designating the airline does not comply with the provisions of Article 8 on Safety and Article 9 on Security, and

- In case such designated airline is not qualified to meet the other requirements prescribed based on the laws and regulations normally applied to the operation of international air transport services by the Party receiving the designation.

2. Unless immediate measures are required to prevent the violation of the aforementioned laws and regulations or unless safety or security requires measures according to the provisions of Article 8 on Safety or Article 9 on Security, the rights listed in paragraph 1 of this Article will be exercised only after consultation by the aeronautical authorities in accordance with Article 31 (Consultations) of this Agreement.

Article 5
Law Enforcement

The laws and regulations of any of the Parties that govern the entry to, and exit from, its territory of aircraft used in international air services, or that govern the operation and navigation of such aircraft while in their territory, will be applicable to the aircraft of the designated airlines of the other Parties.

Article 6
Direct Transit

Passengers, baggage, cargo and mail in direct transit will be subject only to a simplified inspection. Baggage and cargo in direct transit will be exempt from customs duties and other similar rights.

Article 7
Recognition of Certificates

1. The certificates of airworthiness, certificates of aptitude and licences issued or validated by any of the Parties and which are valid will be recognised as valid by the other Parties for the operation of the agreed services, provided the conditions under which such certificates and licences were issued or validated are equal to or higher than the minimum standards established pursuant to the Convention.

2. In case the privileges or conditions of licences and certificates mentioned in paragraph 1 above, issued by the aeronautical authorities of any of the Parties to an individual or designated airline, or in respect of an aircraft used in the operation of the agreed services, allow for a deviation from the minimum standards established pursuant to the Convention and this deviation has been notified to the International Civil Aviation Organization (ICAO), the other Parties may request consultations between the aeronautical authorities to clarify the practice in question.

3. However, each Party reserves the right not to recognise, with respect to flights over its territory or landing in the same, the certificates of aptitude and the licences granted to its nationals by the other Parties.

Article 8
Safety

1. Each party may at any time request consultations on the safety standards applied by other Parties on aspects related to aeronautical facilities, flight crews, aircraft and aircraft operations. Said consultations will be held within 30 days of submitting the request.

2. If, following such consultations any of the Parties concludes that another Party does not maintain and manage effectively, with respect to the aspects mentioned in paragraph 1, safety standards that are in compliance with the current standards pursuant to the Convention, said Party will be informed of such conclusions and the measures deemed necessary to comply with ICAO standards. The other Party shall then take appropriate corrective action within an agreed timeframe.

3. In accordance with Article 16 of the Convention, it is further agreed that any aircraft operated by or on behalf of an airline of any of the Parties for the provision of services to or from the territory of other Parties, may, when in the territory of any of the latter, be subject to inspection by the authorised representatives of that Party, provided this does not cause undue delay to the operation of the aircraft. Notwithstanding the obligations mentioned in Article 33 of the Chicago Agreement, the purpose of this inspection is to check the validity of the relevant aircraft documentation, the licences of its crew, and that the aircraft equipment and the condition of the aircraft comply with the current standards established in the Convention.

4. When it is absolutely necessary to take urgent action to ensure the safety of the operations of an airline, each Party reserves the right to immediately suspend or modify the operation permit of one or more airlines of any of the other Parties.

5. Any action taken by any of the Parties in accordance with paragraph 4 above will be discontinued once the reasons that gave rise to such action cease to exist.

6. If it is determined that any of the Parties is still not meeting the ICAO standards once the agreed period referred to in paragraph 2 above has expired, this fact shall be notified to the Secretary General of ICAO, who will also be notified of the satisfactory resolution of said situation.

Article 9
Security

1. In accordance with the rights and obligations under international law, the Parties ratify that their mutual obligation to protect the security of civil aviation against acts of unlawful interference is an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the Parties will act particularly in accordance with the provisions of the Convention on Offences and Certain Other acts Committed on Board Aircraft, signed in Tokyo on 14 September, 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed in The Hague on 16 December, 1970, and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed in Montreal on 23 September, 1971, its supplementary Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, signed in Montreal on 24 February, 1988, as well as any other convention or protocol on civil aviation security to which the Parties have adhered.

2. The Parties will provide each other with all necessary assistance requested to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the security of such aircraft, their passengers and crew, airports and air navigation facilities, and any other threat to the security of civil aviation.

3. The Parties will act, in their mutual relations, in accordance with the provisions on security established by ICAO and which are designated as Annexes to the Convention; they will require that operators of aircraft under their registry or operators who are headquartered or have their permanent residence in their territory, and operators of airports located in their territory, act in accordance with such provisions on security. Each Party will notify the other Parties of any difference between its national regulations and practices and the security standards contained in the Annexes. Any of the Parties may at any time request immediate consultations with other Parties on such differences.

4. Each Party agrees that aircraft operators may be required to comply with the security provisions mentioned in paragraph 3) above, for the entry to, exit from, or stay in their territory. Each Party will ensure that appropriate measures to protect aircraft and to inspect passengers, crew, personal belongings, baggage, cargo and aircraft supplies are effectively applied in its territory before and during boarding or loading. Each Party will also consider favourably any request of any other Party to take reasonable special security measures to address a particular threat.

5. When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful act against the security of such aircraft, their passengers and crew, airports or air navigation facilities occurs, the Parties will assist each other by facilitating communications and other appropriate measures intended to terminate such incident or threat quickly and safely.

6. Each Party may request that its aeronautical authorities be allowed to assess the security measures that aircraft operators apply, or intend to apply, in the territory of another Party in respect of flights arriving from, or departing to, the territory of the first Party. Administrative arrangements for conducting

such assessments will be agreed between the aeronautical authorities and implemented without delay to ensure that assessments are conducted promptly.

7. When any of the Parties has reasonable grounds to believe that another Party has deviated from the provisions of this Article, that Party may request consultations. Such consultations will begin within fifteen (15) days of receipt of the request of any of the Parties. If a satisfactory agreement is not reached within fifteen (15) days from the start of consultations, this will be grounds to refuse, revoke or suspend the approval of the airline or airlines designated by another Party or to impose conditions on them. When warranted by an emergency or for the purpose of preventing further infringements of the provisions of this Article, the first Party may adopt provisional measures at any time.

Article 10
Security of Travel Documents

1. Each Party agrees to take measures to ensure the security of its passports and other travel documents.

2. In this respect, each Party agrees to establish controls over the legitimate creation, issuance, verification and use of passports and other travel documents and identity documents issued by it or on its behalf.

3. Each Party also agrees to establish or improve the procedures to ensure that travel documents issued by it are of such quality that they will not be easily misused and, furthermore, will not be easily tampered with, cloned or unduly issued.

4. In order to meet the aforementioned objectives, each Party will issue its passports and other travel documents in accordance with the standards and recommendations of the ICAO document in force on this matter.

5. Each Party further agrees to exchange operational information on tampered or cloned travel documents and to cooperate with the other Parties to strengthen the protection against travel document fraud, including tampering or cloning, the use of tampered or cloned travel documents, the use of valid travel documents by impostors, the misuse of genuine travel documents by their right holders with the purpose of committing a crime, the use of expired or revoked travel documents and the use of travel documents obtained in a fraudulent manner.

Article 11
Inadmissible and Improperly Documented Passengers and Deportees

1. The Parties agree to establish effective border controls.

2. In this regard, each Party agrees to apply the standards and recommended practices of Annex 9 to the Chicago Agreement, Facilitation, on inadmissible and improperly documented passengers and deportees, in order to strengthen cooperation to fight illegal migration.

Article 12
User Charges

1. None of the Parties will impose or permit the imposition on the designated airlines of the other Parties, of charges or rights that are greater than those it imposes on its own airlines operating similar international services.

2. User charges imposed by the appropriate bodies of each Party to the airlines of the other Parties will be fair, reasonable and non-discriminatory.

3. Each Party will encourage consultations between the appropriate bodies in its territory and the airlines that use its facilities, and will encourage both of them to exchange the information required to permit a thorough analysis to determine whether charges are reasonable.

Article 13
Customs Duties

1. Each Party, based on reciprocity, will exempt one or more designated airlines of another Party, to the greatest extent possible under its national laws, from import restrictions, customs duties, indirect taxes, inspection fees and other domestic fees and charges that are not based on the cost of services provided on arrival, levied on, or affecting aircraft, fuel, lubricating oils, non-durable technical supplies and parts, including engines, standard aircraft equipment, on-board supplies and other products such as ticket booking and printed air waybills, and any printed material with the company logo and regular advertising material distributed without charge by said designated airline for the operation or servicing of aircraft of the airline designated by another Party, and which operates the agreed services.

2. The exemptions granted in this Article will apply to the products listed in paragraph 1:

- Which are introduced into the territory of a Party by or on behalf of the designated airlines of another Party;

- Which are on board the designated airlines of one Party on arrival in the territory of another Party or when leaving it;

- Carried on board aircraft of the designated airlines of one Party into the territory of another Party and that are intended for use in the operation of the agreed services; or

- Which are used or consumed, in whole or in part, within the territory of the Party granting the exemption, provided their ownership is not transferred within the territory of that Party.

3. The standard aircraft equipment, as well as materials and supplies normally carried on board the aircraft of a designated airline of any of the Parties, can only be unloaded in the territory of another Party with the approval of the customs authorities of said territory. In that case, they may be kept under the surveillance of said authorities until they are re-exported or other action is taken in accordance with customs regulations.

Article 14
Taxes

1. Profit resulting from the operation of aircraft of a designated airline in international air services, as well as the goods and services supplied thereto, will be taxed in accordance with the laws of each Party.

2. When there is a special agreement between the Parties to avoid double taxation on income and capital, the provisions contained therein will prevail.

Article 15
Fair competition

Each designated airline will receive non-discriminatory treatment in an environment of healthy and fair competition for the operation of routes under this Agreement, within the framework of the competition laws of the Parties.

Article 16
Capacity

1. Each Party will allow each designated airline of another Party to determine the frequency and capacity of international air transport services it offers, based on commercial market considerations.

2. None of the Parties will unilaterally limit the volume of traffic, the frequency or regularity of the service, or the types of aircraft used by the designated airlines of any of the other Parties, except when necessary for customs, technical, operational or environmental reasons under uniform conditions consistent with Article 15 of the Convention.

3. None of the Parties will impose on the designated airlines of another Party a preference fee, a balance ratio, non-objection fees, or any other requirement concerning capacity, frequency or traffic that is inconsistent with the purpose of this Agreement.

4. In order to enforce the uniform conditions foreseen in paragraph 2) of this Article, none of the Parties will require the airlines of another Party to submit schedules, non-scheduled service programmes, or operation plans for approval, unless so required by the internal rules and on a non-discriminatory basis. If a Party requires the submission of such data, it will reduce, inasmuch as possible, the submission requirements and procedures applicable to the airlines designated by the other Party.

Article 17
Rates

Each designated airline will set its air transport rates based on commercial market considerations. The intervention of the States Parties will be limited to:

- Preventing discriminatory practices or rates;

- Protecting consumers from excessively high or restrictive rates resulting from abuse of a dominant position;

- Protecting airlines from artificially low rates resulting from a direct or indirect government subsidy; and

- Requiring, if deemed useful, that the rates to be charged by airlines of the other Parties to or from their territory, be registered with their aeronautical authorities.

Article 18
Competition Laws

1. The Parties will exchange information about their competition laws, policies and practices and their amendments, and about any specific objectives that they pursue, and which may affect the operation of air transport services under this Agreement. They will also identify the authorities responsible for their enforcement.

2. To the extent permitted by their own laws and regulations, the Parties will provide assistance to the airlines of the other Parties, indicating whether a given practice that an airline intends to apply is compatible with its competition laws, policies and practices.

3. The Parties will notify each other if they believe there may be incompatibility between the application of their competition laws, policies and practices and the implementation of this Agreement. The consultation procedure foreseen in this Agreement will be used, if so requested by any of the Parties, to determine whether such conflict exists and to seek ways to resolve it or minimise it.

4. The Parties will notify each other if they intend to sue the airline(s) of another Party, or about the initiation of any legal action between individuals under their competition laws.

5. The Parties will try to reach an agreement during the consultations, taking due account of the relevant interests of each Party.

6. If no agreement is reached, each Party, when applying its competition laws, policies and practices, will take into account the views expressed by the other Party and international courtesy and restraint.

7. The Party under whose competition laws a legal action between individuals has been initiated will provide the other Parties access to the relevant judicial body and, if appropriate, will provide information to said body. Such information may include its own interests in terms of foreign affairs, the interests of the other Party that has been notified and, if possible, the results of any consultation with the other Parties in connection with such action.

8. The Parties, to the extent permitted by their laws, national policies and international obligations, will authorise their airlines and nationals to disclose information about actions concerning competition laws to the appropriate authorities of any of the Parties, provided such cooperation or disclosure is not contrary to their most important national interests.

Article 19
Currency Conversion and Transfer of Profits

Each Party, in accordance with its laws, will allow the designated airlines of another Party, upon request, to convert and transfer abroad all local revenues from the sale of air transport services and other directly related activities, in excess of the amounts spent locally, allowing for their prompt conversion and transfer without restrictions or discrimination, at the exchange rate applicable on the date of the conversion and transfer request.

Article 20
Sale and Marketing of Air Transport Services

Each Party shall grant to the designated airlines of another Party the right to sell and market, in its territory, international air transport services, either directly or through agents or other intermediaries, at the discretion of the airline, including the right to establish offices in the network or outside of it.

Article 21
Non-National Personnel and Access to Local Services

Each Party will allow the designated airlines of another Party:

- To bring to its territory and maintain non-national employees to perform managerial, commercial, technical, operational and other specialised functions required for the provision of air transport services in compliance with the applicable entry, residence and employment laws and regulations of the State Party that receives them; and

- To use the services and staff of any organisation, company or airline working in its territory and that is authorised to provide such services.

Article 22
Changes in Capacity

A designated airline that conducts international air transport operations may at any point of any segment of the agreed routes, change, without limitation, the type or number of aircraft used, provided transport beyond such point is a continuation of transport from the territory of the Party that designated the airline and, in the return direction, transport to the territory of the designating Party is a continuation of transport from beyond that point.

Article 23
Ground Handling

1. Subject to the applicable safety provisions, including ICAO standards and recommended practices (SARPs) contained in Annex 6, each Party will allow the designated airlines of the other Parties, at the discretion of each airline, to:

    - Carry out their own ground handling;

    - Provide services to one or more airlines;

    - Partner with others to create a service-providing entity; and

    - Choose from competing service providers.

2. When the internal regulations of one Party limit or prevent the exercise of the aforementioned rights, each designated airline shall be treated in a non-discriminatory manner with respect to the ground assistance services offered by a duly authorised supplier(s).

Article 24
Code Sharing and Cooperation Arrangements

1. In order to operate or maintain the authorised services on the agreed routes, any designated airline of any of the Parties may enter into marketing arrangements such as joint operations, capacity reservation, or code-sharing agreements with:

    - One or several airlines of any of the Parties;

- One or several airlines of a third country; and
- A provider of surface transport of any country;
- Provided all airlines in such arrangements 1) have the necessary authorisation and 2) meet the requirements normally applied to such arrangements.

2. The Parties agree to adopt the necessary measures to ensure that consumers are fully informed and protected with regard to code-sharing flights to or from their territory, and, at least, passengers are provided with the necessary information in the following ways:

- Orally and, if possible, in writing at the time of booking;
- In written form in the itinerary that accompanies the electronic ticket, or on any other document that replaces the latter, as written confirmation, including information about the individuals to be contacted if problems arise, and clearly indicating which airline is liable for damages or accidents; and
- Orally by the airline ground personnel during all the stages of the trip.

Article 25
Leasing

The designated airlines of each of the Parties may use leased aircraft from another company, with or without crew, subject to the laws and regulations of the Parties involved, provided all the airlines participating in such arrangements have the appropriate authorisation and comply with the provisions of Article 8 (Safety) and Article 9 (Security).

Article 26
Multimodal Services

Each designated airline may use surface transport modes without restrictions, together with the international air transport of passengers and cargo.

Article 27
Computer Reservation Systems (CRS)

Each Party will apply in its territory the criteria and principles of the ICAO Code of Conduct, for the regulation and operation of computer reservation systems.

Article 28
Smoking Ban

1. Each Party will prohibit or cause their airlines to prohibit smoking on all passenger flights operated by its airlines between the territories of the Parties. This prohibition will be applied in all areas within the aircraft and will apply from the moment the aircraft starts boarding passengers until it completes their disembarkation.

2. Each Party will take all measures it deems reasonable to ensure compliance by its airlines, passengers and crew members, of the provisions of this Article, including the application of appropriate penalties for noncompliance.

Article 29
Environmental Protection

The Parties endorse the need to protect the environment by promoting the sustainable development of aviation. With respect to operations between their respective territories, the Parties agree to comply with the standards and recommended practices (SARPs) of the Annexes to the Convention and ICAO policies and guidelines on environmental protection.

Article 30
Statistics

At the request of the aeronautical authorities, the Parties will share periodic statistics or similar information on traffic carried on the agreed services.

Article 31
Consultations

1. Any of the Parties may at any time request consultations on the interpretation, application, implementation, amendment or enforcement of this Agreement.

2. Such consultations will begin within thirty [30] days from the date in which the other Party receives a written request, unless the Parties agree otherwise.

Article 32
Dispute resolution

1. If a dispute arises between the Parties concerning the interpretation or application of this Agreement, except those that may arise in relation to Article 8 (Safety) and Article 9 (Security), the aeronautical authorities will attempt to solve it first through consultations and negotiations between them.

2. If the Parties fail to reach an agreement through consultations and negotiations between the aeronautical authorities, they will try to resolve the dispute through diplomatic channels.

3. If the dispute or controversy persists, the States Parties may resort to all of the dispute settlement means foreseen in the Charter of the United Nations.

Article 33
Amendments

Any Party may propose to the Depositary one or more amendments to the provisions of this Agreement. If negotiations are needed, the Party proposing the amendment will host such meetings and the Depositary will advise the Parties about the time and place of the meeting, at least sixty days in advance. All parties may participate in the negotiations. The amendment(s) will enter into force only after being accepted by all the Parties.

Article 34
Registration with ICAO

The Depositary will register this Agreement and any amendment thereto before the International Civil Aviation Organization.

Article 35
Denouncement

1. Any of the Parties may denounce this Agreement by giving written notice of the denouncement to the Depositary who, within ten (10) days after receiving the notification of denouncement, will advise the other Parties.

2. The denouncement will take effect twelve (12) months after the Depositary receives the notice, unless the denouncing Party withdraws its denouncement through a written communication sent to the Depositary within the 12-month period.

Article 36
Depositary

1. The original of this Agreement will be deposited with the Latin American Civil Aviation Commission (LACAC), which shall be the Depositary of this Agreement.

2. The Depositary will send certified copies of the Agreement to all the Parties of the Agreement and to all the States that might subsequently adhere to it, that is, to all LACAC States.

After the entry into force of this Agreement, the Depositary will send to the Secretary General of the United Nations a certified copy of this Agreement for purposes of registration and publication pursuant to Article 102 of the Charter of the United Nations; and to the Secretary General of the International Civil Aviation Organization, in accordance with Article 83 of the Convention. The Depositary shall also send to the cited international officials a certified copy of every amendment that enters into force.

The Depositary will make available to the Parties a copy of any decision or arbitral award issued in accordance with Article 32 (Dispute Resolution) of this Agreement.

Article 37
Reservations

This agreement accepts reservations.

Article 38
Signature and Ratification

1. This Agreement will be open for signature by the Governments of the States of the Latin American Civil Aviation Commission.

2. This Agreement will be subject to ratification. The instruments of ratification will be deposited with the Depositary.

Article 39
Accession

Once this Agreement enters into force, any member State of the Latin American Civil Aviation Commission may accede to this Agreement by depositing an instrument of accession with the Depositary.

Article 40
Entry into effect

1. This Agreement will enter into effect thirty (30) days from the date of deposit of the third instrument of ratification and then, for each Party, thirty (30) days after the deposit of its instrument of ratification or accession.

2. The Depositary will inform each Party of the date of entry into effect of this Agreement.

DRAFTED in Punta Cana, Dominican Republic, on 4 November 2010, in Spanish, Portuguese and English.

RESOLUTION Nº A19-15

WHEREAS the Vienna Convention on the Law of Treaties admits in its Article 25 the possibility of provisional application of a Treaty pending its entry into force,

The signatory States resolve to provisionally apply the provisions of the Multilateral Open Skies Agreement for LACAC Member States.

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APPENDIX B

RESOLUTION A20-27
GUIDELINES FOR ADDRESSING RESERVATIONS (formulation, acceptance and objection) IN THE MULTILATERAL OPEN SKIES AGREEMENT FOR MEMBER STATES OF THE LATIN AMERICAN CIVIL AVIATION COMMISSION

WHEREAS an *Ad-Hoc* Group composed of Brazil, Costa Rica, Cuba, Guatemala, Panama, Dominican Republic and Chile was established in 2010 with a view to proposing the text for a "Multilateral Open Skies Agreement for Member States of the Latin American Civil Aviation Commission", hereinafter called "the Agreement", which was approved through Resolution A 19-03 at the XIX LACAC Ordinary Assembly held on 4 November 2010, in Punta Cana, Dominican Republic.

WHEREAS integration is one of the strategic objectives of LACAC and a genuine yearning of Latin American countries; and liberalization of international air transport is a global trend that is present in all successful integration processes and is also furthered by the International Civil Aviation Organization (ICAO).

WHEREAS the Agreement, from its inception, has aimed at the gradual liberalization of international air transport in Latin America, with a view to promoting integration amongst LACAC member States, stating in its Preamble "that the conclusion of a multilateral agreement on international air transport will foster cooperation and development in Latin American countries"; the countries of the region are willing to coordinate aeronautical policies *inter se* and with third countries, and there is a desire to "foster the creation of more opportunities for international air services of the countries of the region".

WHEREAS, according to Article 2, each Party to the Agreement grants all traffic rights to the other Parties, making the multilateral agreement an Open Skies Agreement; and freedoms of the air are grouped in such a way as to facilitate their acceptance as well as possible reservations. Those traffic rights that might cause problems to other countries are granted in separate subparagraphs, listed in order of increasing difficulty, that is, the seventh freedom for cargo; the seventh freedom for combined flights and for cabotage.

WHEREAS the Agreement sets forth the general rule of multilateral agreements and provides for the formulation of reservations. Article 37 states that "This Agreement admits reservations".

WHEREAS, to date, eight countries have signed the Agreement: (in alphabetical order) Chile, Colombia, Guatemala, Honduras, Panama, Paraguay, Dominican Republic, and Uruguay, and more adoptions are expected.

WHEREAS, to date, two countries have signed the Agreement with no reservations and seven countries have signed it with reservations.

WHEREAS the possibility of formulating reservations has been a clear advantage for signing the Agreement and, for it to succeed, any doubts that might exist must be dispelled, trying to ensure that all countries have a clear understanding of this topic and a common interpretation of any reservations that are formulated.

THE XX ASSEMBLY RESOLVES

To issue the following guidelines for addressing reservations, including their formulation, acceptance, and objection, in the Multilateral Open Skies Agreement for Member States of the Latin American Civil Aviation Commission:

1.- Since the text of the Agreement does not cite any rule on reservations other than the fact that reservations are admissible, the applicable legal framework is the "Vienna Convention on the Law of Treaties", hereinafter called "the Convention". Other useful references are the international practice adopted by the Organization of American States and the "Guide to Practice on Reservations to Treaties" (hereinafter called "the Guide"), approved in 2011 by the United Nations International Law Commission.

2.- The Convention states that (2.d) "'reservation' means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State". Simple statements that do not limit the effects of the treaty and that refer to the way in which the State concerned plans to comply with the treaty do not constitute reservations".

3.- Likewise, paragraph 1.2 of the Guide states that "'interpretative declaration' means a unilateral statement, however phrased or named, made by a State or an international organization, whereby that State or that organization purports to specify or clarify the meaning or scope of a treaty or of certain of its provisions."

4.- The reservations must be formulated always in writing, and must be worded as clearly and precisely as possible. The Guide recommends that the State formulating the reservation indicate the reasons why it is being formulated (2.1.2). This allows the other States to understand and interpret the reservation. As to its timing, Article 19 of the Convention stipulates that "a State may formulate a reservation when signing, ratifying, accepting, approving or acceding to a treaty". There is no doubt that this gives flexibility to the system since, for instance, a State that signs the Agreement with no reservations may later formulate them when ratifying the treaty.

5.- A reservation may be modified to extend its scope.

6.- According to the Guide, a reservation shall be worded in such a way as to allow its meaning to be understood, in order to assess in particular its compatibility with the object and purpose of the treaty (3.1.5.2); and is to be interpreted in good faith, taking into account the intention of its author as reflected primarily in the text of the reservation, as well as the object and purpose of the treaty and the circumstances in which the reservation was formulated (4.2.6).

7.- A reservation by which a State purports to exclude or to modify the legal effect of certain provisions of a treaty or of the treaty as a whole in order to preserve the integrity of specific rules of the internal law of that State may be formulated only insofar as it does not affect an essential element of the treaty nor its general tenour (3.1.5.5. of the Guide).

8.- In terms of withdrawal of reservations, according to Article 22 of the Convention, a reservation may be withdrawn at any time, always in writing. Once again, this gives flexibility to the system, since reservations, whether formulated when signing, ratifying or acceding to the treaty, may be withdrawn at any time. This contributes to a gradual unification of international law and, in the case of our Agreement, also to the liberalization of international air transport, which results in regional integration.

9.- The depository of the treaty, in our case LACAC in accordance with Article 36 of the Agreement, shall always communicate reservations formulated to the Agreement, as well as their withdrawal, to all contracting States and other States entitled to become parties to the treaty (Article 23 of the Convention), that is, all LACAC member States.

10.- A reservation must be explicitly or implicitly accepted by the other States.

11.- Upon acceptance of a reservation by the other contracting States, the author of the reservation becomes party to the treaty and will be bound to the States accepting its reservation, as per the terms of the treaty as modified by the reservation.

12.- A reservation is considered to have been accepted by a State if it shall have raised no objection to the reservation by the end of a period of twelve months after it was notified of the reservation (Article 20.5 of the Convention).

13.- In case of accepting a reservation, the States are bound to the treaty to the extent defined by the reservation, taking into account that reservations always have a bilateral effect in the sense that they affect not only of the reserving State but also each of the other States that accept such reservation in their relations with the formulating State. Based on an elementary application of the principle of reciprocity, a reservation by a State precludes it from claiming to its benefit the matter it reserved.

14.- Finally, according to Article 21.3 of the Convention, the reservation formulated by a State does not modify the provisions of the treaty for the other parties to the treaty inter se.

15.- In summary, once a LACAC State has made a reservation, the other parties are bound inter se with respect to all the provisions of the Multilateral Agreement and are also bound to the reserving State with respect to the other provisions of the Agreement except those for which the reservation was formulated.

16.- The only limitation established by the Agreement with respect to reservations is contained in Article 19.c of the Convention. This article stipulates that States may formulate reservations on the occasions previously cited, unless “the reservation is incompatible with the object and purpose of the treaty”.

17.- The Vienna Convention does not define a criterion or method to determine when would a reservation is incompatible with the object and purpose of the treaty, as might be in the case of a collective decision by all the parties, or the intervention of an independent third party expressing an opinion about the compatibility of the reservation. Accordingly, the compatibility criterion is left to the discretion of each State, which shall decide unilaterally whether or not a given reservation is compatible with the Agreement. Consequently, a LACAC State might consider that a reservation formulated by another State of the region is incompatible with the object and purpose of the treaty and object to it, and another LACAC State might take a different view and accept that reservation.

18.- According to the Guide, a reservation is incompatible with the object and purpose of the treaty if it affects an essential element of the treaty that is necessary to its general tenour, in such a way that the reservation impairs the *raison d’être* of the treaty (3.1.5).

19.- The object and purpose of the treaty is to be determined in good faith, taking account of the terms of the treaty in their context, in particular the title and the preamble of the treaty. Recourse may also be had to the preparatory work of the treaty and the circumstances of its conclusion and, where appropriate, the subsequent practice of the parties (3.1.5.1)

20.- A State may object the reservation formulated by another State, always in writing.

21.- The Guide defines "objection" as a unilateral statement, however phrased or named (2.6.1), made by a State in response to a reservation formulated by another State, whereby the former State purports to preclude the reservation from having its intended effects or otherwise oppose the reservation (2.6.1), indicating the reasons why the objection is being formulated (2.6.9).

22.- Unless the treaty otherwise provides, a State may formulate an objection to a reservation within a period of twelve months after it was notified of the reservation or by the date on which such State expresses its consent to be bound by the treaty, whichever is later (2.6.12).

23.- According to Article 20 of the Convention, an objection by another contracting State to a reservation does not preclude the entry into force of the treaty as between the objecting and reserving States unless a contrary intention is unequivocally expressed by the objecting State, that is, the intention that the Agreement does not enter into force between the objecting and the reserving State; thus the importance of wording objections in a clear and precise manner.

24.- When a State objecting to a reservation has not opposed the entry into force of the treaty between itself and the reserving State, the provisions to which the reservation relates do not apply as between the two States to the extent of the reservation (Article 21.3 of the Convention).

25.- Unless the treaty otherwise provides, an objection to a reservation may be withdrawn at any time, always in writing (Article 22.2 of the Convention).

26.- The withdrawal of an objection to a reservation becomes operative only when notice of it has been received by the State which formulated the reservation (Article 22.3.b of the Convention). A State that withdraws an objection formulated to a reservation is presumed to have accepted that reservation (2.7.4 of the Guide).

27.- The depository of the treaty, in our case LACAC according to Article 36 of the Agreement, shall always communicate any objections to reservations, as well as the withdrawal of objections, to all contracting States and other States entitled to become parties to the treaty (Article 23 of the Convention), that is, all LACAC member States.

28.- Lastly, the Guide prepared by the United Nations International Law Commission urges States—in paragraph 2.5.3—to undertake a periodic review of the usefulness of reservations:

a. States that have formulated one or more reservations to a treaty should undertake a periodic review of such reservations and consider withdrawing those that no longer serve their purpose.

b. In such a review, States should devote special attention to the aim of preserving the integrity of multilateral treaties and, where relevant, consider the usefulness of retaining the reservations, in particular in relation to developments in their internal law since the reservations were formulated.

c. States intending to formulate a reservation should do so in a manner as precise and restricted as possible, consider the possibility of limiting its scope, and make sure it is not incompatible with the object and purpose of the treaty it refers to;

d. The reason for a reservation (or a unilateral statement), as provided by the author, is important for assessing the validity of the reservation, and the States should justify any modification of a reservation".

— END —