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TURKISH AVIATION ACADEMY

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LIBERALISATION, OPEN SKIES AND BEYOND

Module 26

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Air Transportation Management, M.Sc. Programme

Air Law, Regulation and Compliance Management

13 February 2015

LIBERALISATION, OPEN SKIES AND BEYOND

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

LIBERALISATION, OPEN SKIES AND BEYOND

- Market access
 - Designation and route rights
 - Notion of multiple designation
 - Double approval vs. double disapproval
 - Designation and licensing
 - Purpose of designation clause
 - Substantial ownership and effective control
 - No flags of convenience

LIBERALISATION, OPEN SKIES AND BEYOND

- Route rights
 - Third and fourth freedom rights
 - Fifth freedom rights
 - Sixth and seventh freedom rights
 - Cabotage (eighth freedom)
 - Grant of route rights in a traditional bilateral vs. Open Skies agreement
 - Are route rights completely open in an Open Skies agreement ?

LIBERALISATION, OPEN SKIES AND BEYOND

- 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

LIBERALISATION, OPEN SKIES AND BEYOND

- Notion of 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

LIBERALISATION, OPEN SKIES AND BEYOND

- Open Skies principles - what they presently do not provide:
 - Fifth, sixth and seventh freedom rights
 - cabotage
 - Exemption from designation requirements
 - Exemption from “substantive ownership and effective control” requirements
 - Exemption from antitrust/competition rules
 - Exemption from merger rules

LIBERALISATION, OPEN SKIES AND BEYOND

- **Bilateral agreements**
 - As from 1992: US Open Skies policy for bilateral agreements introduced
 - 1992 – Feb. 2014: 113 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

LIBERALISATION, OPEN SKIES AND BEYOND

- U.S. Open Skies Policy elements:
 - eliminate government interference in commercial airline decisions about routes, capacity and pricing
 - No longer protection of flag carriers
 - expand cooperative marketing arrangements
 - liberalize charter regulations
 - improve flexibility for airline operations
 - include provisions committing both governments to observe high standards of safety and security
 - carriers are enabled to provide more affordable, convenient and efficient air service to consumers

LIBERALISATION, OPEN SKIES AND BEYOND

- EU Liberalisation principles
- Creation of Single European Aviation Market
- Creation of Community carrier notion on basis of uniform licensing requirements
- Access to the Single Market for Community carriers
- Strict application of EU competition rules, merger rules and state aid rules to Community carriers
- Horizontal Agreements with third States: Recognition of Community carrier notion
- Case-by-case application of Open Skies principles in Horizontal Agreements with third States

LIBERALISATION, OPEN SKIES AND BEYOND

- US-EU Open Skies agreement Phase I (2007)
 - Application of Open Skies principles as between the US and EU
 - Exchange of route rights for 3rd, 4th, 5th, and 6th freedom routes, including beyond rights
 - Access to the Single EU Market for U.S. all-cargo carriers but not for passenger carriers
 - No cabotage rights for EU carriers
 - Carriers require authorisation, not designation
 - Strict safety and security clauses
 - Entitlement of carriers to perform their own ground handling or to choose their ground handling partner

LIBERALISATION, OPEN SKIES AND BEYOND

- US-EU Open Skies agreement Phase II (2010)
 - Extension / clarification of Open Skies principles between the US and EU
 - Prospective waiver of ownership and control restrictions regarding airlines of the other party, which may be majority-owned/controlled by nationals of the first party, allowing cross-border investment and access to capital (new Art. 21(2)) – once US law has been changed -
 - Waiver of ownership/control restrictions for third party airlines which are majority-owned/controlled by nationals of the other Party («Swiss clause », new Annex 6)
 - Exchange of 7th freedom rights (combination of 5th freedom rights) for passenger services to and from 5 third countries (new Art. 21), on both sides
 - Single Disapproval principle (Reciprocal recognition of regulatory determinations) (new Art. 6 bis)

LIBERALISATION, OPEN SKIES AND BEYOND

- US – EU Open Skies Agreement:
 - Progressive application of Montebello principles
 - Inclusion of certain third country routes
 - Inclusion of certain third country airlines
 - Inclusion of 6th and 7th freedom rights
 - No inclusion of cabotage rights
 - Prospective waiver of cross-border investment restrictions will depend on changes to the law

END OF PART I
QUESTIONS ?