

ASSOCIATION OF CARIBBEAN STATES (ACS)

21ST MEETING OF THE SPECIAL COMMITTEE ON TRANSPORT
Port of Spain, Trinidad and Tobago, 20th and 21st September 2012

DRAFT POLICY TO BE ADOPTED BY THE MEMBER COUNTRIES OF THE ASSOCIATION OF CARIBBEAN STATES REGARDING PARTNERSHIPS AMONG AIR CARRIERS

(Draft document prepared by Colombia)

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1. Introduction

During the 20th Meeting of the Special Committee on Transport of the Association of Caribbean States (ACS) convened in Port of Spain, on June 30 and July 1, 2011, it was agreed that Colombia, with support from Costa Rica and the Secretariat, would present a set of ideas, initiatives and guidelines to be taken into account by countries in order to foster partnerships among the airlines headquartered in the region.

This, bearing in mind that consensus has been reached in the ACS regarding the need to promote policies to facilitate commercial co-operation agreements and partnerships among the airlines of Member Countries, since they have proven beneficial for the public by increasing the networks of routes and connections, for which these partnerships must be facilitated, which generally include code sharing agreements and operating agreements.

This document contains an initial proposal, to be submitted for the consideration of Member States, on the guidelines for a regional policy in this area.

2. Legal basis for a policy on partnerships

Included among the different instruments that have been formulated and signed in the ACS, in developing its objectives to strengthen regional integration, is the Air Transport Agreement among the Member States and Associate Members, completed in Panama City on February 14, 2004, which entered into force on September 19, 2008, having achieved the one third of the States required for same, in accordance with its article 26. That Agreement was prepared in the

framework of the programme "Uniting the Caribbean by Air and Sea" and provides in its preamble:

"Recognising the need for a general Aviation Policy for the Association of Caribbean States by which Member States and Associate Member States may be guided in their aviation arrangements"

The provision quoted clearly demonstrates the interest of Member Countries in having a general policy in the area of aviation, an objective that is fulfilled to a considerable extent through the text approved, which establishes a basic scheme for awarding air traffic rights and which defines a standardised regulatory framework to govern the provision of air transport services among ACS States.

As regards the specific issue of partnerships, the aforementioned Agreement stipulates the following in its article 9:

**"Article 9
Code Sharing**

In operating international air services authorised under this Agreement, any designated airline of a Party may, with prior approval by the Aeronautical Authorities concerned, enter into cooperative marketing arrangements such as blocked-space, code-sharing or leasing agreements, with an airline of another Party. "

Although the clause cited is entitled "Code Sharing", its scope is much broader since it refers to co-operation agreements in the area of marketing (in other words, commercial co-operation agreements) and makes clear reference to agreements on blocked space and leasing, in addition to those on code sharing.

Therefore, in light of the preceding quotations taken from the Agreement in force, it can be deduced that an initial guideline already exists on multilateral policy for partnerships within ACS Member States and Associate Members, which allows any designated airline of a Party to enter into commercial agreements with airlines of another Party, clearly subject to prior approval from the aeronautical authorities involved, which represents an express legal basis to permit partnerships among airlines. In view of the foregoing, a draft common policy on partnerships has been formulated based on the principles outlined in clause 9 and developing the modalities and scope of commercial agreements, in order to incorporate the new practices and recent trends on the international air transport market.

3. Draft policy on partnerships

Taking into account the previous considerations, the following initial proposal containing the bases for a regional policy on partnerships is presented for consideration.

DOCUMENT

BASES FOR A REGIONAL POLICY ON PARTNERSHIPS AMONG AIR CARRIERS IN THE ASSOCIATION OF CARIBBEAN STATES

1. Under article 9 of the Air Transport Agreement among the Member States and Associate Members, it shall be understood that commercial co-operation agreements include among others, the following:
 - a. Code sharing agreements. Establish a clause, including the option for agreements to be entered into among ACS Member States and with third countries (outside the ACS).
 - b. Joint operating agreements. Generally referring to commercial issues in the framework of a partnership, such as the use of trademarks, commercial organisation, use of airport facilities, etc.
 - c. Agreements on aircraft use. Include the main types, such as wet lease (referred to in some countries as charter), blocked space (partial charter), lease without crew (Dry lease), Exchange of aircraft (Interchange), among others. Present a flexible scheme that would allow these agreements to be entered into with airlines of third countries (outside the ACS).
2. Incorporate new concepts and key elements for the implementation and functioning of partnerships, such as:
 - a. Acceptance of the common designator code (allows two or more airlines in a partnership to use in global distribution systems, the same code identifying their flights, so as to capitalise on synergies when using systems for reservations, inventory control, passenger record, etc).
 - b. Acceptance of frequent flyer programmes, interline agreements and proration agreements, as industry practices that favour consumers and therefore, prior approval is not required for their implementation.
3. Procedures for approving commercial agreements, under standardised regulations with respect to timeframes, requirements and criteria for approval.

In any event, it can prove highly useful for the analysis and final drafting process of the document on a common policy for partnerships, to be familiar with the current situation existing in each of the Member Countries. It is therefore proposed, the use of the questionnaire presented in Annex 1 of this document.

It is worthwhile to clarify that since the questionnaire is applicable to this same issue, it is a faithful duplicate of that circulated through the Latin American Civil Aviation Commission (CLAC), which was prepared by the Colombian delegation in carrying out a similar task included on the agenda of the Group of Experts on Economic, Political and Legal Affairs in Air Transport (GEPEJTA) of the CLAC.

QUESTIONNAIRE ON RECENT TRENDS IN COMMERCIAL CO-OPERATION AGREEMENTS IN ACS MEMBER STATES AND ASSOCIATE MEMBERS

The purpose of this questionnaire is to obtain up to date information on the situation existing in each Member State regarding commercial co-operation agreements among airlines, taking into account not only the existence of global partnerships (such as Star alliance, One world, Sky team, etc), which have incorporated some of the principal air carriers of our region, but also the establishment of airline groups with ownership ties that are producing changes in the competitive and commercial-air environment.

The questionnaire will be divided into three sections: Aspects of commercial air policy, aspects of regulations and authorisation procedures and lastly, inventory of authorised agreements.

1. Aspects of commercial air policy

1.1 In your country, does the air policy (regulations, criteria or procedures) include aspects related to commercial collaboration or co-operation agreements among airlines?

Kindly provide details in your response.

1.2 Does your country's policy favour the authorisation of the aforementioned agreements among airlines?

Kindly illustrate your response (criteria or parameters taken into account).

1.3 In commercial air negotiations on air traffic rights, does your country include clauses on commercial collaboration and co-operation agreements among airlines?

If so, indicate which of the following types of agreements are included:

1.3.1 Code sharing agreements: Indicate if a model clause is used and if so, include it. Indicate whether or not they accept that agreements should only be between operators of the two party countries of the bilateral agreement or if they accept agreements with airlines belonging to third countries.

1.3.2 Aircraft interchange agreements: Indicate if a model clause is used and if so, include it. Indicate whether or not delegation agreements need to be signed in accordance with article 83 bis of the Chicago Convention, or any other such as Agreements for the Double Monitoring of Operating Safety, in order to make it possible to execute aircraft interchange contracts or similar contracts.

1.3.3 Other Agreements on operational flexibility: Indicate if in addition to the foregoing, negotiations include clauses on other commercial collaboration and co-operation agreements (such as wet lease, calliper change, single designator code, trademark licensing, etc).

2. Aspects of regulations and authorisation procedures

2.1 Indicate if in your aeronautical code or in another law of your country, there are specific provisions on commercial collaboration or co-operation agreements among airlines, and if so, provide a copy of the regulatory text.

2.2 Indicate if in addition to the previous regulation, there are procedures, criteria or similar that are applied in your country in order to process the authorisation of these Agreements among airlines. Also, describe the procedure applied for the authorisation of these Agreements and the duration of the entire process.

2.3 Indicate whether or not in your country, the aeronautical authority has the power to authorise these Agreements among airlines, and if so, if this power is exclusive. Otherwise, indicate whether or not in your country, another authority different from the aeronautical authority has the task of studying and authorising these Agreements, and if so, what is that authority.

3. Inventory of authorised Agreements

For the period 2000-2011, list the commercial collaboration or co-operation Agreements among airlines that your country has authorised, identifying the airlines involved, the type of agreement (code sharing, aircraft interchange, charter or wet lease, designator code, blocked space, etc), duration, route or routes covered (where applicable), type of aircraft involved (where applicable).