

Open Skies: South Asian Experience

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Introduction

Asian aviation is in transition. According to the Centre for Aviation, Asia is being absorbed into the liberal web of air transport regulation yet slowly. Liberalization has made serious inroads in Chinese civil aviation whereas Japan, South Korea, Singapore and India have made substantial attempts towards adopting liberalization as the governing criteria in air transport regulation. Since deregulation of air transport in the USA in 1978, the air transport industry witnessed an irreversible phenomenon towards relaxation of government regulations on air transport. To this end states adopted two mechanisms to achieve liberalization. One is liberalizing the strict bilateral exchange of traffic rights and the second is grouping on regional basis to enhance the utilization of regional resources. Open skies agreements (OSA) are treated as promising tools towards liberalization as they provide room, on bilateral basis, for state parties to lift the barriers between two states. Regional arrangements allow participating states to have access to the regional points freely and provide services as one entity. To further the OSAs International Civil Aviation Organization and the US Department of Transportation (DOT) have presented templates. These templates are widely accepted around the globe.

South Asian progress in opening up the skies has been comparatively low. This paper explores the South Asian relaxation of air transport regulations on bilateral basis. This paper attempts to identify the

extent to which South Asian states have liberalized Bilateral Air Services Agreements (BASAs) *inter se*.

Research problem

Has South Asian States really opened up their skies?

Objectives

- To identify the response of South Asia in liberalization of air transport
- To investigate the adoption of Open Skies agreements as tools for liberalization in South Asia
- To identify the gaps in the liberalizing the bilateral air services agreements in South Asia
- To make suggestions and recommendations towards substantial liberalization of South Asian bilateral air transport regime.

Methodology

This research is a normative research which heavily depends on analysis of statutes, case law, international and regional agreements/regulations as primary data and scholarly work, juristic opinions, news and documents as secondary data.

The data collection for this research is done from both primary and secondary sources. The primary data collection would include an in depth study on the currently operational bilateral air services agreements, international conventions, ICAO documents and working papers. A study

on the bilateral air services agreements, agreed to between states in South Asia, Memoranda of Understanding and Ministerial decisions of the South Asian Association for Regional Cooperation. These would provide important reflections on the extent to which the South Asian region has opened her skies.

Conclusions

When states entered into new open skies agreements or modifying the existing bilateral air services agreements they did such adoptions in varying degrees. This happened basically in the developing countries including South Asia. Most of the time prominence was given to the national carrier and other carriers were given the route and tariff flexibility with a clause not to compete with the national carrier/s. Another significant feature is that the governments still retained control over certain issues such as granting operating permission, safety and security and ownership and control. Therefore there are no full open skies agreements and the existing ones could be regarded as ‘managed’ open skies agreements as each state is very much mindful of the national interest in opening up the skies. Therefore it is submitted that open skies air services agreements operate as ‘open with care’ agreements as opposed to full liberalized agreements. This scenario is same with the South Asian states. It is concluded that the region is not fully connected in the first place. Not every state in South Asia maintains BASAs with all other members of the region. Though South Asian states endorse liberalization as a pragmatic prospect, they are yet to come up with any substantial effort. For example the air services agreement between India and Sri Lanka underwent a number of modifications and is submitted as the most ‘liberal and open’ air services agreement in the region. 98 weekly frequencies are agreed with multiple designations of airlines between the two states. Limitation as to the

capacity still exists without restrictions on type of aircraft. India offer 18 points in India on fifth freedom traffic rights, no cabotage but on point to point basis. Sri Lanka has increased number of frequencies for Indian carriers on reciprocity. Similarly Pakistan-India bilateral air services agreement which, dates back to 1948, was revised few times with the latest revision recorded in 2008. The BASA is still interpreted as traditional as there are limits as per to the capacity and designation and frequencies. However, capitals of India and Pakistan are directly served now with additional points exchanged as a measure of opening up the links further. It is concluded that the inconsistent aerial relationships between the two states fuelled many studies to overlook any possibility of liberalization of air services in South Asia.

It is recommended that the South Asian states should try to connect at least with the capitals of all the members of the region. It is further recommended that the states in South Asia should revise their restrictive policies and make an effort to liberalize the BASAs entered into with the neighbors. This will provide more space for relaxation of strict clauses to accommodate the real 'open skies' within the region.

Keywords: Air Transport; Liberalization; Open skies; South Asia

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