

SECTION IV

OTHER SIGNIFICANT ECONOMIC AND REGULATORY DEVELOPMENTS

IV. OTHER SIGNIFICANT ECONOMIC AND REGULATORY DEVELOPMENTS

749. During the period under review, the only major development to report concerns overflight regulations.

A. MULTILATERAL DEVELOPMENTS

750. The fortuitous reasons that had led the drafters of the GATT to exclude air transport from the disciplines of Article V of the GATT as well as the provisions of its ICAO substitute, the International Air Services Transit Agreement (IASTA) have been described in detail in the compilation, pages 184 to 191.

751. During the period under review, five new contracting parties have joined the IASTA, namely, Serbia and Montenegro (10 July 2002), Georgia (8 October 2003), Mongolia (15 April 2004), the Cook Islands (18 April 2005) and the Syrian Arab Republic (25 November 2005).

752. As at May 2006, IASTA counted 123 Members.³⁹⁵ However, as noted by ICAO in its document titled "Industry overview", produced for the seminar on liberalization held in Dubai in September 2006³⁹⁶, "about one third of ICAO Contracting States, including several with large land mass, remain outside the agreement".

753. For this reason, in its assembly resolution A35-18, Appendix A, ICAO "urged Contracting States that have not yet become parties to the IASTA to give urgent consideration to so doing". The Fifth ICAO Worldwide Air Transport Conference also reaffirmed the importance of IASTA "for liberalization and for developing multilaterally the air transport system".

B. BILATERAL DEVELOPMENTS

754. During the period under review, the tensions between the European Community and the Russian Federation over overflight fees, described in paragraph 14 on page 191 of the compilation, were finally settled.

755. As explained in the compilation, the object of the tensions were the mandatory payments taking the form of a "commercial agreement" between Aeroflot and the carrier concerned enshrined in the relevant bilateral ASA. These commercial agreements had been, since the 1970s, a pre-condition to accessing routes overflying Siberia. The system, unique in the world, was considered by the European Community to be in breach Article 15 of the Chicago Convention, which provides for cost-based air navigation fees and national treatment.³⁹⁷

756. With the intensification of traffic between Europe and the Far East in recent years, overflight payments have increased significantly and are foreseen to continue rising in view of the estimated growth of traffic (see Table 60).

³⁹⁵ The IASTA contracting parties are listed in Table A.1 on pages 185-187 of the compilation.

³⁹⁶ <http://www.icao.int/icao/en/atb/ecp/dubai2006/RegulatoryIndustryOverview.pdf>

³⁹⁷ For a detailed explanation of Article 15, see the compilation, paragraphs 93 to 98 on pages 140-141.

Table 60
Forecast annual percentage change for the traffic
from Western/Central Europe to North-East Asia³⁹⁸, 2005-2009

2005	2006	2007	2008	2009	Aggregate 2005-2009
6.0	5.7	4.4	5.1	4.9	5.2

Source: IATA

757. The European cargo industry, which faces competition from Russian air cargo carriers, especially on the heavy lift segment, has also complained that the overflight fees were giving an unfair advantage to Russian carriers on Far-Eastern destinations.

758. It is difficult to assess with certainty the exact amount paid in overflight fees by EC carriers. The figures reported in the press and those provided by official sources, such as the Association of European Airlines (AEA) or the European Commission, vary considerably and, in addition, the base year and the US dollar-Euro exchange rate used are not always indicated. Table 61 presents all the information that the Secretariat has managed to gather in this regard.

Table 61
Estimates of overflight fees paid by EC carriers

Source	Reference year	Amount in US dollars (million)	Amount in Euros (million)
Les Echos (27 November 2006)	2005/2006	331	--
WTO Reporter (28 November 2006)	2006	--	300
Aviation Week & Space Technology (8 August 2006)	--	250	--
Bloomberg 12 October 2006	--	376	300
Associate Press (12 October 2006)	--	300	239
Wall Street Journal (27 November 2006)	--	430	333
Financial Times (25 November 2006)	--	331	253
Dow Jones (24 November 2006)	2005	388	300
Dow Jones (24 November 2006)	2006	427	330
European Commission's air transport webpage	2003/2004	250	--
European Commission's air transport webpage	2005/2006	331	--
EC Communication (2005) ³⁹⁹	2003	--	250
EC Press Communiqué (24 November 2006)	2006	--	300

Source: WTO Secretariat

³⁹⁸ North-East Asia is defined as comprising: China; Hong Kong China; Macao China; Chinese Taipei; Democratic People's Republic of Korea; Republic of Korea; Japan; Mongolia and Russia (East of the Urals).

³⁹⁹ "A Framework for Developing Relations with the Russian Federation in the Field of Air Transport", COM(2005)77.

759. The turnover of AEA airlines for destinations involving Russian overflight amounted to US\$ 7.2 billion in 2005, which implies that overflight fees represent somewhere between 3 and 5 percent of turnover. By way of comparison, profit margins in the air transport sector are negative in lean years, between 2 and 5 percent in good years and up to 7 percent for successful long-haul carriers⁴⁰⁰.

760. In 2002, the European Commission decided to link the question of overflight fees to its bilateral negotiations with the Russian Federation on the latter's accession to the WTO. In May 2004, in a side letter to its bilateral agreement with the EC, the Russian Federation took a commitment, the exact terms and status of which are unknown, to abolish these fees by December 2013.⁴⁰¹

761. Unsatisfied because of the absence of transitory measures, the EC sought a mandate from the European Council of Transport Ministers to negotiate with the Russian Federation, and obtained it in March 2006⁴⁰².

762. On 24 November 2006, the Commission reached an agreement with the Russian Ministry of Transport. The main terms of the agreement, according to the European Commission, are as follows:

- "• EC carriers will not have to conclude mandatory commercial agreements with Aeroflot for the use of Trans-Siberian routes;
- New operations by EC carriers on the Trans-Siberian routes in the transition period will be free of payments;
- Not later than 31 December 2013, all royalty payments will be abolished and airlines will have to pay only air navigation charges in line with the Chicago Convention;
- All fees and charges in the new system will be cost-based and transparent;
- During the period between 2010 and 2013, existing payments will be gradually reduced;
- EC airlines will be able to keep overflight frequencies currently leased from Aeroflot in the new system;
- The Russian Federation agrees to grant new frequencies in the framework of bilateral negotiations;
- All principles agreed between the EU and the Russian Federation will have to be implemented in bilateral air services agreements between Member States and Russia before May 2007.
- The agreed principles of the agreement will lead to the amendment of the relevant provisions in the bilateral air services agreements between Member States and the Russian Federation which remain in force."⁴⁰³

763. The agreement was approved by the EU Council of Transport Ministers on 22 March 2007. The conclusions of the Council stipulate that "the Decision will be accompanied by an equalisation

⁴⁰⁰ See, for instance, IATA Annual Report (2007). The comparison with some low-cost carriers such as Gol, AirAsia or Ryanair, whose margins are higher, is irrelevant in this context.

⁴⁰¹ See http://ec.europa.eu/transport/air_portal/international/pillars/common_aviation_area/russia_en.htm

⁴⁰² The exact text of the original mandate is available at http://ec.europa.eu/transport/air_portal/international/pillars/common_aviation_area/doc/russia/2006_03_council_conclusions_en.pdf

⁴⁰³ See <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/06/1626&format=HTML&aged=0&language=EN&guiLanguage=en>

mechanism set up by Member States aimed at avoiding possible distortion of competition on Trans-Siberian routes between the Community air carriers during the transitional period, until December 2013".

764. Signature of the agreement should take place, in principle, during an EU-Russian Federation aviation summit scheduled for November 2007, but subsequent bilateral negotiations between EC Member States and the Russian Federation for the incorporation of its provisions into the various bilateral Air Services Agreements still have to take place.

765. From a political standpoint, the Russian overflight fees question is a purely bilateral EU-Russian issue. It may, however, have a commercial repercussions on third parties.

766. A more detailed examination of the traffic necessarily having to fly over the Russian Federation shows that a large part is effected by non-Russian, non-EU carriers, as illustrated by Table 62. This table is based on OAG⁴⁰⁴ figures on the capacity deployed by airlines of all nationalities during the IATA winter season 2006-2007.⁴⁰⁵ It provides a conservative assessment of the traffic relations implying an overflight of the Russian Federation, since it is based on only four major destinations in North-East Asia (i.e. China, Chinese Taipei, Korea and Japan), on the one hand, and the totality of Europe on the other. As such, Table 62 ignores other destinations implying an overflight of the Russian Federation, such as Hong Kong, China; Macao, China; Mongolia. The data is also limited to one-way traffic (from Europe to North-East Asia), but this does not constitute a serious methodological limitation since, overall, passengers flown are directionally balanced.

Table 62
Capacity deployed on routes overflying Russia

Carriers	Number of seats	Share
Total non EU carriers	1,707,045	47.6%
Japanese carriers	525,433	14.6%
Chinese carriers	492,437	13.7%
Korean carriers	322,404	9%
Chinese Taipei carriers	234,448	6.6%
Turkish carriers	101,999	2.8%
Swiss carriers	30,324	0.9%
EU carriers	1,887,014	52.4%
Total non-Russian carriers	3,583,059	100%
<i>Russian carriers</i>	128,289	--
<i>Total capacity deployed from Europe to North-East Asia</i>	3,711,348	--

Source: OAG, recomplied by the WTO Secretariat.

767. In the absence of publicly available information, it is impossible to know whether the share of overflight fees paid by non-EU carriers is close to their share of total capacity deployed between Europe and North-East Asia, i.e. 47.6 per cent. Moreover, overflight fees are said⁴⁰⁶ to vary from carrier to carrier. The European Commission Communication COM(2005)77, titled "A Framework for Developing Relations with the Russian Federation in the Field of Air Transport", indicates that

⁴⁰⁴ For more detail on the services provided by OAG to the airline industry, see document S/C/W/270, paragraph 181 on page 44 and document S/C/W/270/Add.1, paragraph 32 and footnote 21 on page I.18. The Secretariat is hoping to use, if resources allow it, OAG data for future versions of QUASAR. The overflight example clearly shows the usefulness of OAG statistics (the only existing set of data on capacity effectively deployed) for a "reality check" on the use of rights granted under Air Services Agreements.

⁴⁰⁵ The IATA winter season 2006-2007 went from 29 October 2006 to 1 April 2007.

⁴⁰⁶ See, for instance, Reuters, 17 October 2006, "Russia sees no need to reduce Siberia airlines fees".

"these payments are applied neither in a transparent manner nor to all Russia's trading partners"⁴⁰⁷. It is nevertheless unlikely that all of the non-EU carriers mentioned in Table 62 fly across Russian airspace for free.

768. The settlement reached between the EU and the Russian Federation is of a bilateral nature and clearly has no MFN implications. It may affect third-party carriers, which will continue to pay the overflight fees (if they were not *a priori* exempted) by placing them at a competitive disadvantage. At the same time, however, the EU-Russia bilateral settlement is not enforceable through a dispute settlement mechanism.

⁴⁰⁷ See paragraph 3.2.2.1 of Communication COM(2005)77, available at: http://ec.europa.eu/transport/air_portal/international/pillars/common_aviation_area/doc/russia/2006_03_council_conclusions_en.pdf