



OPENING UP THE SKIES

After all 28 European Union Transport Ministers authorised the European Commission to start negotiations for EU-level aviation agreements with the Association of Southeast Asian Nations (ASEAN), Turkey, Qatar and the UAE, there are still many unknowns ahead. However, a future deal between the EU and the Gulf carriers may finally put an end to a long-lasting dispute over open skies and the level of liberalisation of the European market.

By Sasa Zuzmahowsky



While the EU-A S E A N negotiations are believed to go quite smoothly, the EU-Gulf talks will be anything but easy. The discussions between the EU and – among others – Qatar are intended to provide a stable aero-political framework for the future of civil aviation between the two parties. Jaap de Wit, Professor Emeritus of transport economics at the University of Amsterdam and former director of the Netherlands Institute for Transport Policy Analysis (KiM), told us that the agreements may differ in their outcome as there is no “one size fits all” solution. The first round of discussions between Europe and Qatar has shown a serious interest on both sides to create such a new framework. At the same time, both sides want to be perfectly clear about what they will agree on.

John Balfour, an EU aviation law expert and consultant at Clyde & Co, said it is difficult to predict whether the talks will be successful because this depends on a number of unknowns. He told *Qatar Today* that “given that the Commission’s basic position is in favour of a liberal arrangement and that this also appears to be the basic position of Qatar and UAE, there must be reasonable prospects of a successful outcome.” But in order to strike a deal, both sides need to understand each other’s views, and compromises have to be made. De Wit believes that an important part of this mutual understanding is the way different business models of the various carriers and ambitions relate to the degree of market opening.

For the EU-level air transport agreement with Qatar and the UAE, the EC is mandated to negotiate a full liberalisation of third- and fourth-freedom rights for passenger and all-cargo services (the right to fly from one’s own country to another and the right to fly from another country to one’s own), according to *Aviation Daily*. If the Commission succeeds, this will already be a big achievement, de Wit stated. This is also very close to Qatar’s expectations, which besides third and fourth traffic freedoms, also called for eventual fifth-freedom liberalisation (the right to fly between two foreign countries on a flight originating or ending in one’s own country).

De Wit points out that fifth-freedom liberalisation is a different and difficult

matter, as it touches the heart of the business model of the European network carriers in particular. Nevertheless, Balfour believes it is realistic to expect the parties to close the deal, although under certain conditions. “Obviously, if the fifth freedom were given by the EU, the EU would be likely to expect reciprocal rights from the Gulf side.”

However, calling for unlimited third and fourth-freedom rights is controversial for most European airlines – but not necessarily airports, especially those in secondary markets that do not see strong non-stop connectivity from their national airlines. As a matter of fact, we have seen major disagreements among European stakeholders regarding the liberalisation. The rapid growth of Gulf aviation has been seen as a major threat to some European and US carriers, which are finding it increasingly difficult to compete with their Arab counterparts. John Strickland, Director at JLS Consulting, noted that two major airline groups, Air France-KLM and Lufthansa, have frequently expressed their belief that there is not “a level playing field” in competition with the Gulf carriers, and consequently they should be restricted in

their access to the EU markets. This is very different to the views of IAG, the parent company of British Airways, and of the UK Government as well, which both support liberal market access and competition with Gulf carriers. However, “Brexit is likely to complicate these negotiations and lead to a potentially less liberal approach by the remaining EU States”, Strickland told our magazine.

But despite losing a valuable ally, Gulf carriers still have some strong cards in their hand. Saj Ahmad, Aviation Analyst, Consultant & Media Commentator at StrategicAero Research, thinks that although mutual compromise will prevail “the EU is acutely aware that any pushback onto Qatar or the UAE could result in billions of dollars’ worth of Airbus orders being put in jeopardy. And Airbus is already suffering a complete financial disaster on the A380, a production disaster on the A350 and an engine production calamity through Pratt & Whitney on its A320neo’s.”

Fears and doubts

There are also doubts whether the talks are genuinely motivated, or just initiated to draw out the discussion and buy some



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Consultant, EU Aviation Law
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THE VIEW FROM THE TOP

VIOLETA BULC, EUROPEAN COMMISSIONER FOR MOBILITY AND TRANSPORT, SPEAKS EXCLUSIVELY TO *QATAR TODAY*.



AFTER THE EUROPEAN COMMISSION HAS GIVEN A MANDATE TO TRY TO NEGOTIATE AN OPEN SKIES AGREEMENT WITH QATAR AND UAE AS WELL AS OTHER COUNTRIES/BLOCS INCLUDING TURKEY AND ASEAN, DO YOU THINK IT WILL BE SUCCESSFUL AND WHAT IS REALISTIC TO EXPECT FROM THESE NEGOTIATIONS?

The Gulf countries are among the most dynamic and fastest-growing aviation markets in the world, which is why the European Union would like to further enhance its aviation ties with them. With the new agreements we proposed, our ambition is to upgrade our existing relationship to a true aviation partnership. This will include enhanced market access to all 28 EU Member States, based on a modern regulatory framework as well as close cooperation in all aviation areas: safety, air traffic management, security, etc. According to our estimates, the economic benefits of agreements with the GCC countries would amount to up to €8.4 billion over the first eight years of implementation, and the creation of up to 8,300 new jobs.

THE GULF AIRLINES CALLED FOR THIRD AND FOURTH FREEDOM AND EVENTUAL FIFTH FREEDOM LIBERALIZATION. DO YOU THINK THIS IS REALISTIC?

Negotiations with Qatar have just started, and we know they will take time. It is too early for me to say what the details of a future agreement may look like. This should be left for the negotiators to agree and I am confident that they will. More generally, the EU-Qatar air transport agreement should put in place a framework that will deliver concrete benefits for both sides. Of course increased market access is a key part of such an agreement, but we also want to deepen our ties in many other areas, such as safety, security, air traffic management, etc. The EU has been very successful in liberalising its own internal market. Today the EU's aviation market is fully liberalised.

THE GULF AIRLINES (NON-EU) AIRLINES ARE SCEPTICAL ABOUT HOW THE EU WILL DEFINE "FAIR COMPETITION". THEY ARE ESPECIALLY AFRAID OF WHETHER ITS DEFINITION BE LEFT ABSTRACT ENOUGH THAT "FAIR COMPETITION" COULD POTENTIALLY BE USED AGAINST AIRLINES IN A WAY THEY HAVE NOT ENVISAGED. COULD YOU OFFER US SOME HINT ABOUT HOW YOU WOULD APPROACH THIS MATTER?

As you know, there is no common understanding at international level – ICAO or WTO – of what "fair competition" is. I am nevertheless convinced that to be beneficial for all sides, the liberalisation and the elimination of barriers to market access can only go hand in hand with common rules based

on reciprocity. That would be my definition of "fair competition". What the concept entails precisely depends on the specificities of each agreement. It will be for our negotiators to refine the concept.

THERE ARE ALSO DOUBTS ABOUT WHETHER THE TALKS ARE GENUINELY MOTIVATED, OR MERELY DESIGNED TO DRAW OUT THE DISCUSSION. IN THE CASE OF THE LATTER SCENARIO, SOME SAY THAT THIS WILL ONLY BRING BENEFITS TO THOSE AIRLINES SEEKING TO PROTECT "THEIR" MARKETS, BECAUSE WHILE THE EU TALKS ARE UNDER WAY EU MEMBER STATES CANNOT NEGOTIATE INDIVIDUAL AIR SERVICE AGREEMENTS.

Let me be very clear. EU-level aviation agreements are not aimed at reducing or freezing expansion. Quite the contrary in fact: the experience shows that concluding EU-level agreements leads to a significant rise in traffic. For example, since the signature of the EU Air Transport agreement with the Western Balkan States, the number of passengers has almost tripled. In the case of Morocco, it has doubled. At the end of the day, more traffic means more growth and more jobs. Let's look at the facts. The Commission got the unanimous support of the 28 EU Member States to start negotiations with Qatar, the Qatari authorities confirmed their interest, we already had a positive first round of talks and a second is already scheduled for early 2017. This is very encouraging and my objective is to keep this momentum going.

CALLING FOR UNLIMITED THIRD AND FOURTH FREEDOM RIGHTS IS CONTROVERSIAL FOR MOST EUROPEAN AIRLINES – BUT NOT NECESSARILY AIRPORTS, ESPECIALLY THOSE IN SECONDARY MARKETS THAT DO NOT SEE STRONG NON-STOP CONNECTIVITY FROM THEIR NATIONAL AIRLINE. AS A MATTER OF FACT, WE HAVE SEEN MAJOR DISAGREEMENTS AMONG EUROPEAN STAKEHOLDERS IN THE RECENT PAST REGARDING THE LIBERALIZATION VIEWS. HAVE YOU BEEN ABLE TO REACH A COMPROMISE AMONG THEM ON THIS MATTER OR, AS SOME FEAR, WILL THE VOICE OF FRANCE AND GERMANY WILL BE HEARD MOST, ESPECIALLY AFTER BREXIT?

The EU Member States unanimously gave us a mandate to start negotiations with Qatar, the UAE but also with ASEAN and Turkey. We are therefore negotiating on behalf of all 28 of them, not of the largest member states only. As I already mentioned, the Commission's objective is to reach a win-win agreement, one that would increase market access, leading to substantial economic benefits across the entire aviation value-network: airlines, airports, manufacturers and obviously passengers.

more time. In the case of the latter scenario, some say this will only bring benefits to those airlines seeking to protect "their" markets, because while the EU talks are under way, EU member states cannot negotiate individual air service agreements. This effectively puts a freeze on air service agreement expansion until the talks conclude. Ahmad notes that there is a lot of credence to this stalling tactic as a means of preventing further GCC airline expansion. "The reality is that the EU is simply too blinkered and not an honest broker because it focusses too much on protecting EU airlines, many of which are utterly incompetent, rather than do what's right for passengers and give them more airline choices," he says.

As for de Wit, the European Commission's mandate given by the member states should not be taken lightly. "The European Commission and the member states are genuinely looking to conclude an agreement with Qatar. The fact that both parties have a process ahead of them before they can conclude an agreement does not change the intention of either party. Furthermore, the mandate has been given for a limited number of years precisely to prevent a tedious process stretching for year after year and progress will be evaluated as well. It is therefore in the interest of both Qatar and the EU to make progress and not to drag on consultations," he explained.

At the very least the EU is contemplating the liberalization of air services, although Strickland suggests "there is no doubt that with the UK now outside the negotiation, the voices wishing to maintain the status quo will be stronger."

Defining "fair competition"

A major apple of discord will likely remain the issue of "fair competition" and its definition within the future agreement, or more precisely, how this term will be defined by the EU. Gulf carriers fear that the term might be left abstract and that it could potentially be used against airlines in a way they have not envisaged. This was evident in the US-Gulf spat, when Gulf airlines not only refuted the subsidy allegations but also pointed out advantages and effective subsidies those US airlines receive. Similarly, Gulf carriers fear that for Air France and Lufthansa groups any fair competition definition would be shaped in a way to restrict the growth of Gulf airlines or make them inefficient.

As for Ahmad, like the US' big three



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StrategicAero

airlines that have said slanderous and baseless things about GCC airlines, so too do EU airlines. Questioning their motive is on the spot because, like in the case of US airlines, it all boils down to EU carriers not wanting deregulation. So according to Strickland “the Gulf carriers have reason to be concerned, having already had to respond to the US carrier complaints. That said, the detailed rebuttals which they prepared in that case will equally provide much evidence to defend the legitimacy of their business models and to highlight the wider economic benefits which their services bring, in the upcoming negotiations.”

Ahmad goes a step further, accusing the EU of being “not an honest assessor. It will not have a mandate influenced by sound bites from CEOs that have done little to nothing to alter their business models to become more competitive, nor do they want to.” But according to him, GCC carriers have more than enough weaponry in their armoury to expose EU airlines’ interpretation of “fairness” when put into practice. This could be in the form of punitive GCC airport services, as well as renege on any existing codeshare pacts.

If this is true, it would probably lead to a complete crash in the negotiations. This

is why Balfour expects that any provisions agreed are likely to be fairly abstract, not least because it is difficult to think of more specific provisions that could be formulated, and that this could work both to the disadvantage but also to the advantage of Gulf airlines, as it might be equally difficult for the EU side to make a convincing case based on vague language.

However, de Wit points out that the proposed text gives very specific definitions of the various aspects of fair competition and it is wise and understandable that the Qatar side is asking for further explanation of these definitions and accompanying texts. So, introducing provisions on fair competition will certainly remain the greatest hurdle and, depending on the details of what the Commission hopes to achieve, the Gulf side could find it difficult to agree on these.

“If I had to, I would predict that an agreement would be arrived at with liberal provisions on access and some fairly general protective wording about fair competition,” said Balfour. Finally, if an agreement is reached and the Gulf airlines decide that it is not working well from their point of view, they would always be able to terminate it in accordance with its termination provisions ■



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JOHN STRICKLAND
Director
JLS Consulting