

The Future of MALIAT



International Conference on Air Transport, Air Law & Regulation
McGill IASL, NUS CIL, Singapore Aviation Academy, May 26, 2010
Presentation by P. Paul Fitzgerald

QUOTES

APEC in 2000 served as midwife for the birth of the Multilateral Agreement for the Liberalization of International Air Transportation, the MALIAT, an accord that serves as a pioneering model for the multilateral aviation agreements of the future.

Jeff Shane, US undersecretary DOT, 2005

The MALIAT remains ahead of its time and is considered a revolutionary initiative even by today's standards.

Raymond Lim, Singapore, 2007

WHAT IS MALIAT?

MALIAT is the only multi-continental Open Skies Agreement.

- In North America – United States
- In South America – Chile
- In Oceania – Cook Islands, Samoa, Tonga and New Zealand
- In Asia – Brunei Darussalam + Singapore

3

Multi-Continental

- Multi-continental on December 21 2001, just 8.5 years after the European Common Aviation Area Agreement came into force (July 23, 1992).
- The EU agreement (Regulation (EC) 2408/92) was the first agreement to allow cabotage.
- MALIAT took the EU “continental” Open Skies approach and applied it to 4 distinct regions of the world.
- More impressively, it did this fully 6 years before the first fully multinational trans-Atlantic agreements were signed between the EU and the U.S. and Canada.

4

MALIAT = Open Skies

MALIAT embraces the liberal provisions that are found in the “Current Model Open Skies Agreement Text” on the State Department web-site:

<http://www.state.gov/e/eeb/rls/othr/19514.htm>

5

MALIAT FEATURES

- an open route schedule;
- open traffic rights including seventh freedom cargo services;
- open capacity and frequency;
- operational flexibility, including change of gauge, aircraft type, coterminalization,
- and intermodal rights;
- unlimited airline designation;
- unlimited code sharing, including third-country code sharing;
- open pricing and a minimal tariff filing regime.

6

MALIAT Ownership

Eliminates the traditional ownership provisions found in most bilateral agreements.

Offers airlines increased access to outside investment, while requiring that the airline be “linked” to the country that designated it.

Thus an airline must be effectively controlled by the designating economy, or its nationals, and be incorporated and have its principal place of business in the territory of the designating economy.

7

MALIAT = Revolutionary

MALIAT's protocol is the first trans-oceanic agreement to grant cabotage and 7th freedom rights.

It could serve as a template in other regions of the world such as Central America where two strong carriers (Panama's Copa and El Salvador's TACA) dominate a six-country region (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama).

8

MALIAT's Potential

Air Asia's route system spans from Australia and China to India and the U.K. with hubs in Bangkok, Bali, Jakarta, Kota Kinabalu and Kuala Lumpur.

On closer inspection, one realizes that Air Asia's flights are flown by Air Asia (AK), Thai AirAsia (FD) and Indonesia AirAsia (QZ) and that all flights are point-to-point (3rd and 4th freedom).

9

Central American Model



TACA's route system serves 39 destinations in 22 countries in North, Central and South America with hubs in Lima, San Jose and San Salvador.

10

Real Flexibility

Photo © 2005 Mariordo, used with permission.



All of TACA's airbus are registered in either the U.S. or in Ireland.

If a multi-national group of airlines has common colours, common flight numbers, and hubs in different countries, how do you tell 7th freedom flights from 3rd and 4th freedom services?

11

Real Flexibility 2



The LAN group includes airlines from Argentina, Chile, Ecuador and Peru.



12

The 4 Pillars of MALIAT

Country	Chile	NZ	Singapore	US
Chile	•	6	0	MULTI
New Zealand	6	•	12	MULTI
Singapore	0	12	•	MULTI
US	Multi	MULTI	MULTI	•

No non-stop service between Chile and Singapore, no daily non-stop service between Chile and New Zealand. Only one carrier provides service between Auckland and Singapore.

13

MALIAT challenges

- 5 States (Brunei Darussalam, Chile, Cook Islands, New Zealand and Singapore) signed the protocol permitting cabotage.
- 2 (Chile and New Zealand) offer cabotage potential.
- 1 (Santiago-Easter Island) sees wide-body service.
- Peru withdrew in 2005 and has not rejoined. This is significant because Peru is part of the Andean Pact with Bolivia, Columbia and Ecuador, and has allowed both the Chile-based LAN group and El Salvador's TACA International, to operate domestic flights.

14

MALIAT Challenges 2

- The only G-20 country which has ratified MALIAT is the U.S. Other G-20 APEC countries with significant Open Sky agreements include Australia, Canada and South Korea but none of these appear likely to join MALIAT in the short term.
- CMLV agreement (Cambodia, Laos, Myanmar & Vietnam)
- Brunei, Indonesia, Malaysia & Philippines East ASEAN Growth Area agreement (BIMP-EAGA)
- CMLV and BIMP-EAGA offer (3rd, 4th and 5th freedoms).
- Expansion of MALIAT into either China or Japan seems extremely unlikely in either the short or medium term.

15

MALIAT Challenges 2a

China continues to rebuff U.S. overtures for an Open Skies agreement and its airline industry is still fairly heavily regulated.

The U.S. and China have met in 1999, 2004, twice in 2007 and plan to meet again “sometime in 2010.”

The 2007 agreement allows 249 China – US flights/week.
Summer 2008 - 320 Paris – US flights/week.

New U.S. routes (2005) AA: ORD-PVG, CO: EWR-PED,
(2006) UA IAD-PEK, (2008) DL: ATL-PVG.

16

MALIAT Challenges 2b

- Japan is no more eager to further liberalisation; their previous agreement with the United States grants American carriers 5th Freedom access to virtually every major Asian city.
- For example in an average week, Northwest offers 18,000 seats on 63 flights from Tokyo to 9 Asian (non-US) destinations.
- United Airlines offers 777 daily service to each of Taipei and Singapore from Tokyo.
- Japan-U.S. Open Skies Agreement in December 2009. Given JAL's problems, short-term liberalization unlikely.

17

MALIAT Challenges 3

- Unless new countries join MALIAT, and unless competitive daily air services are established between Chile and both Singapore and New Zealand, and also between New Zealand and Singapore, MALIAT will become little more than a club of countries who have Open Skies agreements with the U.S.
- Soon many of its innovations will be surpassed by the Open Skies agreements that the European Union has negotiated with both the United States and Canada. These agreements touch on foreign ownership and control, cabotage, the environment and infrastructure issues.

18

MALIAT's Potential

- Imagine if MALIAT could be expanded to include every G-20 country that is a member of APEC and that each country signed the MALIAT protocol. For the first time every airlines on both sides of the Pacific would enjoy virtually unlimited operational freedoms.
- The question of traffic rights would now be purely a market concern. For airlines, the need to be designated by their government in order to fly an international route would be fading memory.

19

MALIAT as a Framework

- Nonetheless, MALIAT may serve to highlight the need to collect various like-minded nations in a multilateral agreement that opens up global skies in ways that exceed the mere exchange of very liberal traffic rights.
- Increasing need for an agreement to deal with the various nation-specific policies that affect the conditions under which a flight operates, the rights of passengers aboard, the ability of an airline to code-share, obtain a landing slot or to connect passengers and their luggage through an airline's hub

20

South East Asia Open Skies

Needed partners:

Indonesia, Korea, Malaysia, Singapore, Thailand,
Viet Nam

3+ Air Asia Hubs

2 Developed nations

This group would attract others, notably China and Japan.

21

MALIAT's FUTURE

MALIAT could be

- A. The framework for an agreement that would see Air Asia and Singapore Airlines compete directly.
- B. An intercontinental agreement that embraced issues going far beyond the mere exchange of traffic rights;
- C. Both of these; or
- D. The status quo.

The choice has yet to be made.

22

Thank You



Paul Fitzgerald.