EC航空運送政策이 아시아 航空産業에 미치는 影響*

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》要　約《

1957년에 서명된 로마條約을 처음 개정한 單一유럽法이 1987년 7월 1일에 發效되었을 때 유럽共同體 12개 會員國들은 共同政策에 의거 商業, 農業, 運送, 金融 및 기타 관련부문에 있어 單一域內市場을 형성하기로 약속했다. 물론 완전한 域內共同市場은 자유로운 運送市場을 전제로 한다. 따라서 EC條約은 모든 會員國들이 서어비스의 자유에 근거하여 共同運送政策을 따를 것을 강제하고 있다. 航空運送에 있어서의 목표도 역시 다른 모든 경제활동의 목표와 마찬가지로 로마條約이 적용되는 共同運送政策의 일부를 구성하고 있다.

종합적인 共同體航空政策의 작업에는 運賃, 供給量, 市場進出 및 競爭上의 일괄적인 자유화 조치 이상의 것을 내포하고 있다. 그것은 국가장벽으로 방해되지 않는 共同體의 航空運送網의 개발과 확장 뿐만 아니라 經濟, 安全, 環境 및 社會的 要因들 간에 합리적인 균형을 이루는 共同體航空運送政策의 개발을 위한 共同航空運送政策의 公式化를 요한다.

1987년의 航空에 관한 일괄입법조치, 1989년의 제 2 차 航空에 관한 일괄입법조치 및 1992년 이후로 예정된 제 3 차 일괄입법조치에 따라 EC는 超國家的인 航空運送 분야에 있어서의 개방적인 國際競爭을 본격적으로 추구하고 있다.

결국 이러한 일괄규칙은 EC와 第 3 國들간의 관계에 중대한 의미를 가지게 될 것이다. EC航空運送政策이 아시아 航空産業의 商業運航에 어떠

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* 本稿는 1991년 10월 26일 대한상공회의소 제 1 회의실에서 韓國航空法學會가 개최한 國際航空學術세미나에서 Chia Jui Cheng教授가 발표한 내용을 요약한 것임.

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한 영향을 미칠 것인가는 모든 아시아국가들이 알아야 할 중요한 문제이다.

이론적으로 말해서, 域內共同體 航空運送의 자유화는 아시아 국가들에 대한 治外法權的 효과를 일으킬 수 있는 로마條約과 유럽司法裁判所에 의해 형성된 원칙들에 필연적으로 영향을 미칠 것이다. 이와 관련하여 아시아 航空産業은 無差別原則, 設立의 自由, 서어비스의 自由 및 EEC 競爭法과 같은 第3國의 국제항공운송에 영향을 미치는 일련의 새로운 원칙과 법률의 출현에 큰 관심을 갖고 있다.

실무적인 관점에서, 1992년 이후의 종합적인 共同體航空運送政策의 작업에는 航空運賃, 市場進出, 第3 및 第4의 運輸自由權, 複數指定, 第5의 自由, 캐보타지(cabotage), 損傷(derogation), 供給量, 便數, 不定期運航 및 기타 部門(航空機騷音, 最低 安全 및 社會的 措置, 航空從事者免許, 堪航證明, 運航時間制度, 컴퓨터 豫約制度, 탐승거절보상의 共同最低基準, 空中混雜, 空港離着陸時間割當法, 空港施設, 政府支援 등). 이와 같은 모든 共同體航空運送政策의 주요문제들은 아시아 航空産業에 여러 각도로 영향을 미치게 될 것이다.

위와 같은 문제들 가운데, 第3國 航空社들의 域內共同體 航路의 접근, 供給量, 運賃, 第5의 自由 및 캐보타지가 아시아 航空産業에 관심이 큰 문제가 되고 있다. 아시아 航空社들의 EEC市場에로의 商業運航이 다소 영향을 받게 될 것이다.

첫째, 複數 目的地 문제이다.

둘째, 航空서어비스의 運賃 및 料率문제이다.

셋째, 航空運送區域에서의 사업에 대한 경쟁원칙의 적용 문제이다.

넷째, 第5 自由 運輸權 문제이다.

다섯째, 캐보타지(cabotage)문제이다.

끝으로, 유럽航空社들간의 合併의 문제이다.

결론적으로 유럽共同體航空運送의 자유화는 1993년까지 共同體 域內와 域外의 航空運送法制의 현재의 모습을 극적으로 바꾸어 놓을 정도로 加速化되고 있다. 한편 航空運送의 自由化에 대한 EC의 제의는 대담하고 급진적이다. 반면에 그것이 아시아 航空産業에 미칠 영향 또한 중대하다. 의심할 여지없이 航空社와 고객들의 이익면에서 EEC와 非EEC국가들의 航空運送産業에서 더욱 경제적으로 경쟁적이 되도록 할 필요가 있다. 전세계 航空運送産業 運營의 대부분을 정부가 소유하거나 통제하

는 것은 정말로 國際航空運送의 발전에 불필요한 장애를 일으킨다. 따라서 國內航空社와 전세계 航空社들간의 이해관계의 조화를 협상하는 것이 중요하다. 아마도 아시아 航空社들간의 지역적 협조가 美國뿐만 아니라 유럽으로 부터의 압력 증가에 대해 균형을 이루는 힘이 될 수 있을 것이다.

THE POSSIBLE IMPACT OF EUROPEAN COMMUNITY AIR TRANSPORT POLICY ON AVIATION INDUSTRY IN ASIA*

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When the Single European Acr, the first major revision of the Treaties of Rome which was signed in 1957, came into force on 1 July 1987, the 12 member states of the European Community undertook to achieve a single internal market in the field of commerce, agriculture, transport, finance and other relevant sectors based on the common policy thereof. A complete internal common market presupposes, of course, a free transport market. Therefore, the EC treaty obliges all member states to pursue a common transport policy on the basis of freedom of service. The objectives in respect to air transport are, thus, identical to those of all other economic activities and constitute a part of the common transport policy governed by the Rome Treaty.

The elaboration of a comprehensive community air transport policy comprises more than a package of liberalization measures covering fares, capacity, market access and competition. It requires not only the formulation of a common air transport policy for the development and expansion of the community's air transport network unhampered by national barriers but also the development of a community air transport regime which is a rea-

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* This paper was prepared to present at the International Seminar on October 26, 1992 in Seoul organized by Korean Association of Air Law and thereafter revised.

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sonable balance between economic, safety, environmental and social factors.

With the adoption of a package of legisiative measures on aviation in 1987, a second package of legislative measures on aviation in 1989 and the proposed third package of legislative measures after 1992, the EC is indeed in the process of seeking open international competition in the field of transnational air transportation.

Consequently, these packages of rules will have important implications for relationships between the EC and third countries. What will be the potential operations of the airline industry in Asia is an important matter which must be understood by all Asian countries.

Theoretically speaking, the liberalization of intra-community air transport will inevitably touch upon certain principles formulated by the Treaty of Rome and by the European Court of Justice which might produce the extraterritorial effect viz-a-viz Asian countries. In this connection, Asian airline industry is very much concerned by the emergence of a series of new principles and laws affecting the international air transport of third countries, such as the principle of non-discrimination, the freedom of establishment, the freedom of services, and the EEC competition law.

The creation of common air transport policy for the Community has, of course, important implications for relationships between member states and third countries. The external competence of the community in air transport has long been contested, but was subsequently strengthened by the European Courts finding that internal and extetnal competence coincided, even if the internal competence had not yet been exercised. Therefore, the Commission in its statement in 1988 emphasized once more the need for relation between the community and third countries to be based on the principle of reciprocity, which is defined as a guarantee of equivalent, or at least non-discriminatory, opportunities, and the potential loopholes which bilateral transport agreements between individudal member states and third countries could create in the context of a single market guaranteeing freedom to provide services.

Meanwhile, a common air transport policy within the framework of the

single market must necessarily lead to a situation where the community air space is regarded as a whole or in other words as a single air space of the ""United States of Europe. From the Ec point of view, it is also in many instances true that concessions, if traded collectively, could secure greater returns for the the Community than the sum of the individual benefit for the members. The instances where it is legally and commercially appropriate to negotiate as a community with third countries will be considered in detail by the Commission which will seek from the Council a directive for a negotiating mandate in appropriate individual cases.

Currently, the 12 states of EC have some 700 bilateral air agreements with about 85 countries. EC doesn't intend to annul existing agreement.

Instead, when those bilateral air transport agreements expire or come up for review, the EC state in question must consult the Commission. States can continually to conduct bilateral talks with other states until 1992, to negotiate with the community as a whole, which means that the advantageous position in bilateral air transport negotiation of Asian airline will be eroded while EEC will increase its bargaining power.

Without doubt the implications of the liberalization proces on existing relationships of EEC with third countries is one of the most complex aspects of the process. The most crucial problem to be existing between EEC member states and Asian countries will be the question of the negotiation of bilateral air services agreements. By their very nature, bilateral agreements are restrictive but they may differ both in flexibility and in comprehensiveness. In some cases, a traditional Bermuda-type agreement to restrict market competition and to ensure an equal share of the market for national carriers prevails. To EEC countries, it is the European Commission which will be responsible to decide the centralized common aviation policy of EEC. The proposal of the negotiation of bilateral air transport agreement between the European Commission on behalf of member states and third countries might create protectionist potentiality and result in the emergence of portectionist cartels in international aviation.

From the practical point of view, the elaboration of a comprehensive community air transport policy after 1993 encompasses more than a pack-

age of liberalization measures for scheduled air passenger services such as air fares and rates, market access, third-and fourth-freedom traffic right, multiple designation, fifth freedom cabotage, derogations, capacity, operation of air cargo services, freight, non-scheduled servies, and other areas (such as aircraft noise, minimum safety and social measures, aviation personnel licenses, airworthiness requirements, flight time limitation, computerized reservation systems, ground handling services, common minimum standards of denied boarding compensation system, air congestion, code of conduct for slot allocation at airport, airport infrastructure and state aid). All these main issues of Community air transport policy will create different degrees of consequences for Asian airline industry.

Among these issues, access for air carriers of third countries to intra-Community air route, capacity, fares, fifth freedom and cabotage are a matter of great concern for the Asian airline industry. The commercial operation of Asian airlines to EEC marketplaces will be more or less affected.

First, the multiple designation issue. The right of multiple designation has been stipulated in the bilateral air transport agreement signed between US and Asian countries. This clause has considerable consequences for Asian carriers. American carriers have acquired more traffic rights in Asian countries and have constituted a dominant power on the routes and markets concerned in Asia. It is contended by Asian countries that competition rules should apply to the operation of each of the routes to prevent an abuse of a dominant power and arrangements which unduly restrain competition. If the EC is to create a single aviation market under a common aviation policy in 1993, a fair and sound competition should be ensured on each of the routes to be exhanged according to the principle of multiple designation.

Secondly, the fares and rates for air services issues. EEC decided to introduce a system of double disapproval for all air fares by I January 1993. The system is based on member states not disapproving air fares and rates of Community air carriers if they are reasonably related to the application of air carrier's long-term fully-allocated relevant costs, while taking into

account the need for a satisfactory return on capital and for an adequate cost margin to ensure satisfactory safety standards.[1] Meanwhile, member states are also obliged to take into account other relevant factors, such as the needs of consumers and the competitive market situation, including the fares of other air carriers operating on the route and the need to prevent dumping[2] In this system, air carriers are not allowed to charge air fares or rates that are, in relation to the criteria defined, excessively high to the disadvantage of users of unjusifiably low in view of the competitive market situation.[3] Only Community air carriers shall be entitled to introduce fares lower than the existing ones.[4] Although the possibilities for third country air carriers to charge air fares on routes within the Community and the third country concerned, the question still depends on the competitive ability of Asian carriers.

Thirdly, the application of the rules of competition to undertakings in the air transport sector issue. While the Community air transport policy will enable carriers to compete on their merits and will thus contribute to a more dynamic industry in the interests of the air transport user, the EEC Commission may take prompt action in cases where air carriers engage in practices which are contrary to the competition rules and which may threaten the viability of services operated by a competitor or even the existence of an airline company and thus cause irreversible damage to the competitive structure.

From the legal point of view, Asian airlines are to be bound by EEC competition rules if they are not exempted by the bilateral air transport agreement to be signed between a Member State of EEC and an Asian country.

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1) See Article 3, 1(a), Proposal for a Council Regulation(EEC) on fares and rates for air services, 91/c 258/04, com(91) 275 final, submitted by the Commission on 25 July 1991, OJEC, No. C 258/15, 4. 10, 91.

2) See Article 3, 1(b), ibid.

3) See Article 3, para. 2, ibid.

4) See Article 3, para. 3, Proposal for Council Regulation(EEC) on fares and rates for air services, 91/c 258/04, com(91) 275 final, submitted by the Commission on 25 July 1991, ojec, No. C 258/15, 4. 10, 91.

Fourthly, the fifth freedom traffic right issue. The integration of the intra-Community air traffic market is to affect the fifth freedom traffic right between Member States and Asian countries. New intra-Community fifth freedom traffic rights for non-E.E.C. air carriers can no longer be freely negotiated as these rights are a "community asset". Trading the fifth freedom traffic right needs to take into consideration the geographical peculiarities of Asian countries and to formulate a new guiding principle of negotiation as to how to reach a point of "balancing interest".

Fifthly, cabotage issue. Community air carriers are to be permitted to exercise cabotage traffic rights between combined points within the same Member State under certain conditions. The EC Commission thinks that the Community should be regarded as a whole in an aviation context or, in other words, as a cabotage area. It does not seem to the Commission that existing concessions to third countries in respect of fifth freedom between member(cammunity cabotage) are balanced by similar advantages abroad for Community air carriers. The move of the Commission is intended to give the EC greater clout with countries whose airlines want access to the EC. One goal would be to win rights for EC carriers to fly from city to city within the territory of third countries.

However, Asian cabotage rights have limited value for Europe carriers. In this case, it would be advantageous for European mega-carriers to acquire other right from Asian countries in exchange for granting European cabotage rights to Asian airlines.

Finally, the most striking feature of an EC single market in aviation after 1993 will be the unification and harmonization of different geopolitical elements in air transport. One of the consequences is that there is a trend of big mergers and cooperation among EEC airlines which will encourage further the globalization and internationalization. The gradual emergence of "mega-carriers" will result from the continually ongoing liberalization, deregulation and privatization of air transport. The tide of mergers between European airlines is difficult to stop by indirect means and the direct intervention from EC Commission is required.

And other solution of the merger problem might be, even the strict legal

obstacles still existed in international air transport, the creation of multinational carriers through the simple participation in the equity capital of a foreign air carrier or though the international cooperation with foreign air carriers.

It is true that there are as yet only very few cross-border mergers in air transport, however, there are increasing numbers of cooperation and global link-up among airlines. Until recently all major European airlines have announced some sort of link-ups with EEC and with third countries. In order to survive in the next century, Asian airlines, both privately and publicly owned, have to accept the reality that the globalization and internationalization of their airline industry may be the only way to offset the challenges from mega-carriers of Europe and the US.

In conclusion, the liberalization of the European Community air transport is accelerating at such a pace that, by 1993, the present legal regime of intra-Community and extra-Community in air transport will be dramatically changed. On the one hand, the EC proposals on the liberalization and deregulation of air transport are courageous, on the other hand the possible impact on Asian aviation industry is also evident and tremendous. Undoubtedly, there is a need to render the air transportation industry in the EEC and Non-EEc countries more economically competitive in the interests of airlines and consumers. National government ownership or control of most of the operation of the air transportation industry around the world indeed creates unnecssary obstacles for the development of international air transport. Therefore, it is important to negotiate a compromise between the interests of national airlines and global airlines. Maybe regional cooperation among Asian airlines could be a balancing force towards the increasing pressure from Europea as well as from the US.