National Aviation Policy Submission

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The following paper has been provided by Aviation Economics Pty Ltd in response to the Federal Government's Aviation Green Paper for the development of a National Aviation Policy.

Aviation Economics Pty Ltd is a boutique private company registered to provide aviation related economic advice to aviation unions and not for profit community organisations seeking to formulate an informed opinion regarding aviation issues pertinent to their particular area of interest.

Background

Australia has already concluded an Open Skies Agreement with the USA and the National Aviation Policy Green Paper released in December 2008 acknowledges that:

1. 'Australia has stepped up efforts to liberalise its aviation relationship with its largest aviation market the EU', and

2. Any EU/Australia liberalisation agreement could; *'Remove many if not all existing regulatory limitations on Australian and European airlines operating between the two contents'.*

Further to the above, the Aviation Green Paper also acknowledges that the Qantas Sale Act currently contains the following legislative provisions:

- *Qantas's main base and headquarters is to remain in Australia,*
- *the name of Qantas is preserved for the company's scheduled international passenger services,*
- *the company be incorporated in Australia,*
- *at least 2/3rds of the board of Qantas be Australian citizens,*
- *the chairman of the board of Qantas be an Australian citizen, and*
- *total foreign ownership is not to exceed 49 percent.*

Notwithstanding potential for conflict between increased liberalisation and the Qantas Sale Act, the Aviation Green Paper asks – *'is there a need for change'* and then states; *'consistent with international reform efforts, Australia has increasingly sought to move towards a bilateral ownership founded upon Principle Place of Business ...... based on who has regulatory oversight of the airline, rather than who owns the equity of the company.'*

The Dilemma

Prima facie any desire to replace existing bilateral obligations with Principal Place of Business requirements is seemingly problematic and possibly incompatible with obligations imposed on the Qantas Group by the Qantas Sale Act.

Ultimately the prudent acceptability of Principle Place of Business requirements depends upon Australia's ability to apply technical regulation and competition policy to all Australian international carriers effectively. A Government's ability to enforce internationally, technical regulation and competition policy is critical to a nation's aviation policy and ICAO has examined the associated problems and drafted model clauses to address competing issues. *(See Annex A - ICAO Recommendations)*

If it is accepted that the Federal Government does not intend to move to amend the legislative provisions of the Qantas Sale Act noted above, Aviation Economics contends that in the face of emerging competition from global alliances such as One World, Sky and Star that an "Aligned Qantas," constrained by the Qantas Sale Act must ultimately:

- seek to unlock the aircraft utilisation efficiencies of international liberalisation by sharing its transcontinental aircraft with like minded consortium airlines via participation in a jointly owned aircraft leasing company, and/or
- evoke the use of innovative financial instruments necessary to simultaneously comply with Green Paper envisaged 49% foreign airline equity in Qantas, foreign 51% bilateral obligations and Sale Act control of Qantas.

Unintended Consequences

While it is acknowledged that Australia's airlines should have the opportunity to participate in global rationalisation where it provides strategic and commercial advantage, Aviation Economics supports the Aviation Green Paper claim by the Australian and International Pilots Association (AIPA) that market forces alone will not produce satisfactory safety outcomes and contends that overall acceptability of liberalisation will require close Government scrutiny and regulatory harmonisation.

Unintended consequences of "flagging-out" in the maritime industry are well known and should be evidence enough that international aircraft leasing arrangements will need to satisfy Australia's existing Civil Aviation Safety Authority (CASA) flight operations and maintenance regulations if the acceptability of a jointly owned global leasing company is not to inadvertently, adversely impact on Australia's first class aviation safety record.

While the use of innovative financial instruments capable of delineating economic ownership from beneficial ownership may be acceptable for compliance with Bilateral Treaties and Competition Law, Australian Economics believes it is reasonably argued that the Government should take care that any such acceptability does not unintendedly dilute Australia's ability to continue to enforce CASA technical regulations otherwise applicable to international airlines operating in accordance with an Australian Air Operators Certificate. (AOC)

Any future merger of Qantas Airways Limited using the principle of 'Dual International Listings' as articulated by Qantas Chairman Leigh Clifford when publicly commenting on the Qantas - British Airways merger in December 2008 and/or Qantas's potential participation in a global jointly owned aircraft leasing company designed to facilitate cross border utilisation of leased aircraft; which would otherwise be under the strict control of Australian legislation and subject to CASA regulations, has potential to be a *'fig leaf proposal'* arguably capable of circumventing the intent and spirit of a 'Privatised Qantas' remaining Australia's flag carrying airline, as was seemingly contemplated when the Qantas Sale Act was being legislated.

Keeping Qantas Australian

The public furore around the 2007 APA Takeover Bid for Qantas makes clear that any change to the Qantas Sale Act should not only ensure that Australia's first class safety record is not potentially diminished, but should also be seen by the Australian travelling public as keeping Qantas Australian.

Aviation Economics understands that the issues raised by Federal Senator Steve Fielding and his 2007 Qantas Sale Amendment Bill are still contentious in some circles and in view of Qantas's December 2008 public conformation that it will continue to seek out a merger partner, Aviation Economics re-endorses the legislative initiatives proposed in Senator Fielding's bill. (See Annex B - Qantas Sale Amendment Bill)

Further to the initiatives in the 2007 Qantas Sale Amendment Bill, Aviation Economics further contends that should the Government legislate to remove the intermediate caps of 25% on individual foreign airlines and 35% on aggregate foreign airline interests; then it likely that many Australian citizens will be unsupportive, if the change is perceived by them as reducing Qantas's Australian iconic standing.

Inter alia, broadening and deepening of Qantas's Employee Share Ownership Plan (ESOP) may be effective in offsetting any adverse reduction in Qantas's perceived Australian icon status?

Aviation Economics is aware that a number of aviation unions leader are aware that the Employee Ownership Group, (an corporate employer organisation) openly states that *'ordinary Australian workers must have the chance to become significant co-owners of the business in which they work* (See Annex C – EOG Policy Principles) and can be expected to be open minded about ESOP initiatives that keep Qantas Australian.

While ESOP is not a matter that can be mandated by the Federal Government in National Aviation Policy; its inclusion in any legislated changes to the Qantas Sale Act, and the increased use of it by Qantas, can help offset public resistance to removing the intermediate caps of 25% on individual foreign airlines and 35% on aggregate foreign airline interests.

Conclusion.

The public acceptability of a Qantas Merger, Qantas's participation in a global aircraft leasing arrangement and/or the acceptable use of innovative financial instruments by Australian international airlines to bridge competing requirements, reasonably requires the Government's careful consideration and for the sake of completeness should be addressed in the Aviation White Paper.

Assuming that the EU and the USA continue to support global consolidation of the aviation industry, liberalisation through multilateral and regional arrangements is likely to be competitively foisted upon Australian airlines irrespective of community concern.

However, willing acceptance of the necessary consolidation of the Australian international aviation by the travelling public, airline shareholders, airline management and staff will depend upon the Government's ability to persuade all stakeholders that consolidation is not only inevitable, but can also be to their benefit.

Recommendations:

1. Ensure that open skies liberalisation agreements do not get ahead of CASA's ability to harmonise and enforce operational and maintenance regulations governing aircraft flown by Australia's international airlines,
2. Ensure that potential change to the ownership requirements of Australia's international airlines does not open the door to these airlines being 'flagged-out' by the off-shoring of safety related, Australian aviation employment,
3. Incorporate the 2007 Qantas Sale Amendment Bill provisions into the Qantas Sale Act,
4. Incorporate Employee Share Ownership provisions commensurate with changes to foreign airline ownership into the Qantas Sale Act.

Aviation Economics Pty Ltd wishes to thank the Federal Government for the opportunity to make known its views about the continued liberalisation of Australian international aviation and trusts that the Government will find the information contained in this submission helpful when formulating its Aviation White Paper.

Complied by

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Annex A to Aviation Economics National Aviation Policy Submission

CONSOLIDATED CONCLUSIONS, MODEL CLAUSES, RECOMMENDATIONS AND DECLARATION

(Presented by the Secretariat)

The attached consolidated Conclusions, Model Clauses, Recommendations and Declaration have been approved by the Conference.

(24 pages)

Agenda Item 1.2: Safety and security aspects of liberalization

CONCLUSIONS

From the documentation and ensuing discussion on safety and security aspects of liberalization under Agenda Item 1.2, the Conference concluded that:

a) economic liberalization has implications for safety and security regulation, which need to be properly addressed at the national, bilateral, regional and global levels, as appropriate, in order to ensure continued safe, secure and orderly development of civil aviation;

b) the Chicago Convention imposes responsibility on Contracting States for compliance with standards and practices related to safety and security. Irrespective of any change in economic regulation, safety and security must remain of paramount importance in the operation and development of air transport. In a liberalized economic environment, safety and security regulation must not only be maintained but should also be strengthened. Measures to ensure compliance with applicable safety and security standards and enhance regulatory oversight should form an integral part of the safeguards for liberalization;

c) when introducing economic liberalization, States should ensure that safety and security not be compromised by commercial considerations, and that clear lines of responsibility and accountability for safety and security be established for the parties involved in any liberalized arrangements. Regardless of the form of economic regulatory arrangements, there should be a clear point of contact for the safety and security oversight responsibility in a clearly identified ICAO Contracting State or other regulatory authority designated by that State for any given aircraft operation;

d) ICAO should continue to play a leading role in developing global strategies for the regulation and oversight of aviation safety and security, both definitively and in the context of facilitating economic regulatory reform. The changing regulatory and operating environment in international air transport calls for the development of new regulatory devices capable of adapting to the changes and addressing related concerns. Pending such new regulatory arrangements, measures must be taken in the interim to ensure that the existing safety and security regulatory system continues to function effectively. Meeting this challenge requires seamless international cooperation and concerted efforts from all Contracting States, regional aviation bodies, the industry and all other stakeholders in civil aviation;

e) bearing in mind the limited human and financial resources available in many developing countries required to ensure safety and security when liberalizing, all avenues, including contributions to the ICAO aviation security mechanism, the ICAO technical cooperation programme, the International Financial Facility for Aviation Safety (IFFAS) and the support of other regional arrangements (including COSCAP projects), should be utilized to assist these States to improve safety and security oversight and rectify deficiencies identified by the ICAO safety and security audits; and

f) ICAO should conduct a study with a view to clarifying the definition of the State or States responsible for safety and security oversight, and possibly to recommend amendments to the existing ICAO regulatory provisions in this area.

Agenda Item 2.1: Air Carrier ownership and control

CONCLUSIONS

From the documentation and ensuing discussion on air carrier ownership and control under Agenda item 2.1, the Conference concluded that:

a) growing and widespread liberalization, privatization and globalization call for regulatory modernization in respect of conditions for air carrier designation and authorization in order to enable carriers to adapt to the dynamic environment. While there are concerns to be addressed, there could also be benefits in liberalizing air carrier ownership and control provisions. Past experience of liberalization in ownership and control has demonstrated that it can take place without conflicting with the obligations of the parties under the Chicago Convention and without undermining the nature of international air transport;

b) there is widespread support by States for liberalization, in some form, of provisions governing air carrier designation and authorization. Particular approaches vary widely from substantial broadening of provisions beyond national ownership and control in the near term, through gradual reduction of specified proportions of national ownership, to limited change for the time being regarding certain types of operations (for example non-scheduled or cargo), application within certain geographic regions, or simply case-by-case consideration;

c) there is a consequential need for flexibility in associated regulatory arrangements to enable all States to follow the approach of their own choice at their own pace while accommodating the approaches chosen by others;

d) whatever the form and pace of liberalization, conditions for air carrier designation and authorization should ensure that safety and security remain paramount, and that clear lines of responsibility and accountability for safety and security are established for the parties involved in liberalized arrangements;

e) in liberalizing the conditions for air carrier designation and authorization, States should ensure that the economic and social impact, including the concerns of labour, are properly addressed, and that other potential risks associated with foreign investments (such as flight of capital, uncertainty for assurance of service) are fully taken into account;

f) the proposed regulatory arrangement presented by the Secretariat and appearing as amended provides a practical option for States wishing to liberalize provisions regarding air carrier designation and authorization in their air services agreements. Complementing other options already developed by ICAO (including that of "community of interest"), it would facilitate and contribute to the pursuit by States of the general goal of

progressive regulatory liberalization. While it is up to each State to choose its liberalization approach and direction based on national interest, the use of the proposed arrangement could be a catalyst for broader liberalization. However, use of the proposed arrangement by a State would not necessitate that State changing its existing laws or regulations pertaining to national ownership and control for its own carriers;

g) given the flexibility already existing in the framework of air services agreements, States may, in the short term and at their discretion, take more positive approaches (including coordinated action) to facilitating liberalization by accepting designated foreign air carriers that might not meet the traditional national ownership and control criteria or the criteria of principle place of business and effective regulatory control;

h) States may choose to liberalize air carrier ownership and control on a unilateral, bilateral, regional, plurilateral or multilateral basis; and

i) ICAO has played, and should continue to play, a leading role in facilitating liberalization in this area, should promote the Organization's guidance, keep developments under review and study further, as necessary, the underlying issues in the broader context of progressive liberalization.

Without prejudice to the specificities of regional agreements, the Conference agreed that States should give consideration to the following model clause as an option for use at their discretion in air services agreements.

"Article X: Designation and Authorization

1. Each Party shall have the right to designate in writing to the other Party [an airline] [one or more airlines] [as many airlines as it wishes] to operate the agreed services [in accordance with this Agreement] and to withdraw or alter such designation.

2. On receipt of such a designation, and of application from the designated airline, in the form and manner prescribed for operating authorization [and technical permission,] each Party shall grant the appropriate operating authorization with minimum procedural delay, provided that:

a) the designated airline has its principal place of business [and permanent residence] in the territory of the designating Party;*

*b) the Party designating the airline has and maintains effective regulatory control** of the airline;*

c) the Party designating the airline is in compliance with the provisions set forth in Article X (Safety) and Article Y (Aviation Security); and

d) the designated airline is qualified to meet other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Party receiving the designation.

3. On receipt of the operating authorization of paragraph 2, a designated airline may at any time begin to operate the agreed services for which it is so designated, provided that the airline complies with the applicable provisions of this Agreement.

Integral Notes:

(i) **evidence of principal place of business is predicated upon: the airline is established and incorporated in the territory of the designating Party in accordance with relevant national laws and regulations, has a substantial amount of its operations and capital investment in physical facilities in the territory of the designating Party, pays income tax, registers and bases its aircraft there, and employs a significant number of nationals in managerial, technical and operational positions.*

***evidence of effective regulatory control is predicated upon but is not limited to: the airline holds a valid operating licence or permit issued by the licensing authority such as an Air Operator Certificate (AOC), meets the criteria of the designating Party for the operation of international air services, such as proof of financial health, ability to meet public interest requirement, obligations for assurance of service; and the designating Party has and maintains safety and security oversight programmes in compliance with ICAO standards."*

(ii) *The conditions set forth in paragraph 2 of this Article should also be used in the article on revocation of authorization."*

RECOMMENDATION

RECOMMENDATION 2.1/1

THE CONFERENCE RECOMMENDS THAT:

a) air carrier designation and authorization for market access should be liberalized at each State's pace and discretion progressively, flexibly and with effective regulatory control in particular regarding safety and security;

b) States, when dealing with air carrier designation and authorization in their international air transport relationships, use as an option at their discretion and in a flexible manner, the new proposed alternative criterion;

c) States may at their discretion take positive approaches (including coordinated action) to facilitate liberalization by accepting designated foreign air carriers that might not meet the traditional national ownership and control criteria or the criteria of principle place of business and effective regulatory control. States that wish to liberalize the conditions under which they accept designation of a foreign air carrier in cases where that air carrier does not meet the ownership and control provisions of the relevant air services agreements, may do so by:

1) issuing individual statements of their policies for accepting designations of foreign air carriers;

2) issuing joint statements of common policy; and/or

3) developing a binding legal instrument;

while assuring whenever possible that these policies are developed in accordance with the principles of non-discrimination and non-exclusive participation.

d) the State designating the air carrier provides or ensures the provision of adequate oversight of safety and security for the designated air carrier, in accordance with standards established by ICAO;

e) States notify ICAO of their policies, positions and practices including retention of the traditional criteria, and individual or joint statements of common policy, on the conditions under which they accept the designation of an air carrier pursuant to an air services agreement;

f) ICAO maintain and make public information on States' policies, positions or practices on air carrier ownership and control;

g) ICAO assist States or groups of States requesting development and further refinement of the option in paragraph c); and

h) ICAO continue to monitor developments in the liberalization of air carrier ownership and control, and address related issues as required.

Agenda Item 2.2: Market access

PART 1 - LIBERALIZATION OF MARKET ACCESS

CONCLUSIONS

From the documentation and ensuing discussion on the liberalization of market access under Agenda Item 2.2, the Conference concluded that:

a) since the 1994 Worldwide Air Transport Conference (ATConf/4), considerable progress has been made in liberalization of market access, particularly at the bilateral, regional and subregional levels. More importantly, States have generally become more open and receptive towards liberalization, with many adjusting their policies and practices to meet the challenges of liberalization;

b) experience in the past decade has confirmed that the existing bilateral, regional and multilateral regulatory regimes based on the Chicago Convention can and do coexist, and can each accommodate different approaches to air transport regulation. These regimes continue to provide a viable and flexible platform for States in pursuing liberalization according to their specific needs, objectives and circumstances. The number of open-skies and other liberal agreements are evidence that these regimes have been very effective in increasing liberalization, and the momentum should be maintained;

c) the International Air Services Transit Agreement (IASTA) is important for liberalization and the operation of international air services. States should therefore be urged to pursue, and ICAO continue to promote, universal adherence to and implementation of the IASTA;

d) applying the basic GATS principle of most favoured nation (MFN) treatment to traffic rights remains a complex and difficult issue. While there is some support to extend the GATS Annex on Air Transport Services to include some so-called "soft rights" as well as some aspects of "hard rights", there is no global consensus on whether or how this would be pursued. It is also inconclusive at this stage as to whether the GATS is an effective option for air transport liberalization;

e) while multilateralism in commercial rights to the greatest extent possible continues to be an objective of the Organization, conditions are not ripe at this stage for a global multilateral agreement for the exchange of traffic rights. States should continue to pursue liberalization in this regard at their own choice and own pace, using bilateral, regional and/or multilateral avenues as appropriate. The proposed ICAO Template Air Services Agreements (TASAs) provide detailed guidance on liberalization options and approaches;

f) airport congestion has not thus far been a significant constraint on the conclusion by States of liberalized air services agreements. However, in liberalizing market access, due consideration should be given to airport capacity constraints and long-term infrastructure needs. Problems involving air carriers which are unable to exercise their entitled traffic rights at a capacity-constrained airport may, if necessary, be addressed in the context of discussions on the relevant air services agreements. In this regard, sympathetic consideration should be given to the request for preferential treatment from those States whose airports are not slot-constrained but whose air carriers are unsuccessful in obtaining slots at slot-constrained airports, consistent with relevant national legislation and international obligations;

g) any slot allocation system should be fair, non-discriminatory and transparent, and should take into account the interests of all stakeholders. It should also be globally compatible, aimed at maximizing effective use of airport capacity, simple, practicable and economically sustainable; and

h) ICAO should continue to monitor closely regulatory and industry developments, develop an inventory of States' practical experience with liberalization and disseminate relevant information to Contracting States. ICAO should also continue to keep current the existing guidance material on the economic regulation of international air transport and develop new guidance, as necessary, to facilitate liberalization and improve harmonization, for example, through the TASAs.

PART 2 - AIRCRAFT LEASING

CONCLUSIONS

From the documentation and ensuing discussion on aircraft leasing under Agenda Item 2.2, the Conference concluded that:

a) leasing (both wet and dry) offers considerable benefits to air carriers, enables expanded and more flexible air services and provides opportunities for the establishment of new

carriers. However, it also raises economic and safety regulatory issues which need to be addressed;

b) States should, where necessary, review their regulatory responses to the use of leased aircraft in international services to and from their territory, and should ensure clear responsibility for safety oversight and compliance with minimum safety standards, whether through the inclusion of appropriate provisions in their air services arrangements or by the establishment of agreements pursuant to Article 83 *bis* of the Chicago Convention. In this regard, ICAO *Guidance on the Implementation of Article 83 bis of the Convention on International Civil Aviation* in Circular 295 may be used; and

c) ICAO should make available to Contracting States, for optional use at their discretion, the model clause on leasing proposed by the Secretariat after amendment and the addition of explanatory notes to:

   i) clarify the meaning of "appropriate authority";

   ii) make a clear distinction with respect to "wet" leased and "dry" leased aircraft; and

   iii) take into account short-term, *ad hoc* wet leases.

PART 3 - AIR CARGO

CONCLUSIONS

From the documentation and ensuing discussion on air cargo under Agenda Item 2.2, the Conference concluded that:

a) air cargo, and in particular all cargo operations, should be considered for accelerated liberalization and regulatory reform in view of its distinct features, the nature of the air cargo industry and the potential trade and economic development benefits possible from such reform;

b) States should consider the possibility of liberalizing all cargo services using one or more of the following:

   i) unilateral liberalization of market access for all cargo services without bilateral reciprocity or negotiation;

   ii) liberalizing all cargo services through bilateral agreements and negotiations to ensure reciprocity; and

   iii) using a multilateral/plurilateral approach for the liberalization of all cargo services.

The Conference agreed that States should give consideration to the following model clause as an option for use at their discretion in air services agreements.

ANNEX ON AIR CARGO SERVICES

The Parties agree that:

1. Every designated airline when engaged in the international transport of air cargo:

- *a) shall be accorded non-discriminatory treatment with respect to access to facilities for cargo clearance, handling, storage, and facilitation;*
- *b) subject to local laws and regulations may use and/or operate directly other modes of transport;*
- *c) may use leased aircraft, provided that such operation complies with the equivalent safety and security standards applied to other aircraft of designated airlines;*
- *d) may enter into cooperative arrangements with other air carriers including, but not limited to, codesharing, blocked spaced, and interlining; and*
- *e) may determine its own cargo tariffs which may be required to be filed with the aeronautical authorities of either (any) Party.*

2. In addition to the rights in paragraph 1 above, every designated airline when engaged in all cargo transportation as scheduled or non-scheduled services may provide such services to and from the territory of each (any) Party, without restriction as to frequency, capacity, routing, type of aircraft, and origin or destination of cargo.

Agenda Item 2.3: Fair competition and safeguards

PART 1 - SAFEGUARDS TO ENSURE FAIR COMPETITION

CONCLUSIONS

From the documentation and the ensuing discussion on safeguards to ensure fair competition under Agenda Item 2.3, the Conference concluded that:

a) liberalization must be accompanied by appropriate safeguard measures to ensure fair competition, and effective and sustained participation of all States. Such measures should be an integral part of the liberalization process and a living tool corresponding to the needs and stages of liberalization. Such measures may include progressive introduction of liberalization, general competition laws, and/or aviation-specific safeguards;

b) while general competition laws may be an effective tool in many cases, given the differences in competition regimes, the differing stages of liberalization among States and the distinct regulatory framework for international air transport, there may be a need for aviation-specific safeguards to prevent and eliminate unfair competition in international air transport. This may be done by means of an agreed set of anti-competitive practices which can be used, and if necessary modified or added to, by States as indications to trigger necessary regulatory action;

c) in cases where national competition laws are applied to international air transport, care should be taken to avoid unilateral action. In dealing with competition issues involving

foreign air carriers, States should give due consideration to the concerns of other States involved. In this context, cooperation between or among States, especially between or among competition authorities, and between such authorities and aviation authorities has proved useful in facilitating liberalization and avoiding conflicts;

d) harmonization of different competition regimes continues to be a major challenge. In cases where disputes arise from the use of aviation-specific safeguards or the application of competition laws, States should seek to resolve their disputes through the consultation and dispute settlement mechanisms available under relevant air services agreements, and in the case of the latter, by making use of the existing ICAO guidance on competition laws contained in ICAO Doc 9587;

e) the extraterritorial application of national competition laws can affect cooperative arrangements regarded by many as essential for the efficiency, regularity and viability of international air transport, certain forms of which benefit both users and air carriers alike. Consequently, where antitrust or competition laws apply to such arrangements, decisions should take into account the need for inter-carrier cooperation, including interlining, to continue where they benefit users and air carriers; and

f) ICAO should continue to monitor developments in this area, and update its guidance material on competition and safeguards, where necessary and in light of the evolution of liberalization.

The Conference agreed that States should give consideration to the following model clause as an option for use at their discretion in air services agreements.

*"**Safeguards against anti-competitive practices***

1. The Parties agree that the following airline practices may be regarded as possible unfair competitive practices which may merit closer examination:

a) charging fares and rates on routes at levels which are, in the aggregate, insufficient to cover the costs of providing the services to which they relate;

b) the addition of excessive capacity or frequency of service;

c) the practices in question are sustained rather than temporary;

d) the practices in question have a serious negative economic effect on, or cause significant damage to, another airline;

e) the practices in question reflect an apparent intent or have the probable effect, of crippling, excluding or driving another airline from the market; and

f) behaviour indicating an abuse of dominant position on the route.

2. If the aeronautical authorities of one Party consider that an operation or operations intended or conducted by the designated airline of the other Party may constitute unfair competitive behaviour in accordance with the indicators listed in paragraph 1, they may request consultation in accordance

with Article [_ on Consultation] with a view to resolving the problem. Any such request shall be accompanied by notice of the reasons for the request, and the consultation shall begin within 15 days of the request.

3. *If the Parties fail to reach a resolution of the problem through consultations, either Party may invoke the dispute resolution mechanism under Article [_] to resolve the dispute."*

PART 2 - SUSTAINABILITY AND PARTICIPATION

CONCLUSIONS

From the documentation and ensuing discussion on sustainability and participation under Agenda Item 2.3, the Conference concluded that:

a) in a situation of transition to liberalization or even in an already-liberalized market, States may wish to continue providing some form of assistance to their airlines in order to ensure sustainability of the air transport industry and to address their legitimate concerns relating to assurance of services. However, States should bear in mind that provision of aids/subsidies which confer benefits on national air carriers but are not available to competitors in the same market may distort trade in international air services and may constitute unfair competitive practices;

b) because of the lack of an acceptable quantification method and the existence of various non-monetary measures, it is very difficult to estimate accurately the full scale of State assistance and the impact of specific State assistance on competition. Given this difficulty, States should recognize that any actions against foreign airlines which receive aids/subsidies might lead to retaliatory action by the affected State and hamper the ongoing liberalization of international air transport;

c) there may be some instances where State assistance can produce economic and/or social benefits in terms of restructuring of air carriers and assurance of services. Even in such special cases, however, States should take transparent and effective measures accompanied by clear criteria and methodology to ensure that aids/subsidies do not adversely impact on competition in the marketplace;

d) States should consider the possibility of identifying and permitting assistance for essential service on specified routes of a public service nature in their air transport relationships; and

e) to ensure the effective and sustained participation of developing countries and to facilitate the liberalization process, States should take into consideration in their air transport relationships the interests and needs of States with less-competitive air carriers and, wherever appropriate, grant preferential and participation measures. Such measures may be incorporated in the "Transition Annex" in their air services agreements.

The Conference agreed that States should give consideration to the following regulatory arrangement, in the form of a framework for a Transition Annex together with explanatory notes as an option for use at their discretion in air services agreements.

*TRANSITION ANNEX**

The following transitional measures shall expire on (date), or such earlier date, as is agreed upon by the Parties:

1. *Notwithstanding the provisions of Article ____ (or Annex ____), the designated airline (or airlines) of Party A (or each Party) may (shall) ....*

2. *Notwithstanding the provisions of Article ____ (or Annex ____), the designated airline (or airlines) of Party A (or each Party) may (shall) ... as follows:*

   a) From (date) through (date), ...; and
   b) From (date) through (date), ...

3. *Notwithstanding the provisions of Article ____ (or Annex ____), the following provisions shall govern ....*

***Explanatory Notes**

a) The first clause would be used when a particular Article (or Annex) would not take effect immediately but be implemented in a limited way during the transition period. The second clause would be similar to the first clause but with phase in periods. The third clause would be used when an Article (or Annex) would not take effect immediately and a different scheme would be applied during the transitional period; and

b) The following is an indicative list in the form of a framework for a Transition Annex, for States to use at their discretion in bilateral, regional or plurilateral air services agreements: the number of designated airlines, ownership and control criteria, capacity and frequency, routes and traffic rights, codesharing, charter operations, intermodal services, tariffs, slot allocation and "doing business" matters such as ground handling. The language in the Annex proposed by the Secretariat is a framework, into which the Parties would need to agree on the terms and wording. ICAO Doc 9587 contains material on possible participation and preferential measures.

Agenda Item 2.4: Consumer interests

CONCLUSIONS

From the documentation and ensuing discussion on consumer interests under Agenda Item 2.4, the Conference concluded that:

a) as a premise in addressing consumer interests issues, States need to carefully examine what elements of consumer interests in service quality have adequately been dealt with by the current commercial practices of airlines (and service providers if applicable) and what elements need to be handled by the regulatory and/or voluntary commitment approaches;

b) States need to strike the right balance between voluntary commitments and regulatory measures, whenever the government intervention is considered necessary to improve service quality. States should rely generally and initially on voluntary commitments undertaken by airlines (and service providers), and when voluntary commitments are not sufficient, consider regulatory measures;

c) in implementing new regulatory measures, States should minimize the unnecessary differences in the content and application of regulations. Efforts to minimize differences would avoid any potential legal uncertainty that could arise from the extra-territorial application of national laws, without diminishing the scope for competition and hampering the operating standards and procedures for interlining; and

d) ICAO should continue to monitor developments regarding voluntary commitments to and government regulation of consumer interests with a view to providing useful information to States to assist in the harmonization process. Such monitoring should, in due course, enable ICAO to decide whether some form of action at multilateral level, such as the eventual development of a global code of conduct, is feasible or necessary to ensure harmonization of regulatory measures.

Agenda Item 2.5: Product distribution

CONCLUSIONS

From the documentation and ensuing discussion on product distribution under Agenda Item 2.5, the Conference concluded that:

a) the principles of ICAO Code of Conduct for the Regulation and Operation of CRSs should be considered as the reference framework for the regulation of CRSs in Contracting States or any other code of conduct of a regional nature. States should bear in mind that amendments of such regulations or codes of conduct do not undermine the principles of transparency, accessibility and non-discrimination;

b) while there exist several instances where the ICAO CRS Code has no applicable provisions as a result of industry or regulatory changes, the scope of application of the ICAO CRS Code already potentially applies to the internet, and States may take this up at their discretion according to their particular circumstances;

c) States should consider the need to ensure that internet-based systems provide consumers with comprehensive and non-deceptive information and airlines with a comparable opportunity to use these new systems as they have with conventional global CRSs, where necessary; and

d) although it is not yet clear whether new regulations covering airline product distribution through the internet should be adopted, some States have been actively examining this issue under the existing CRS rules/regulations, consumer protection laws and competition laws. ICAO should continue monitoring developments closely and disseminating information on this issue, and keep the effectiveness of the ICAO CRS Code under review.

Agenda Item 2.6: Dispute resolution

CONCLUSIONS

From the documentation and ensuing discussion on dispute resolution under Agenda Item 2.6, the Conference concluded that:

a) in a liberalized environment, different kinds of disputes may arise as a result of increased competition and new market forces and, therefore, there is a need for States to resolve such disputes in a more efficient and expeditious manner; and

b) States and the air transport industry need a dispute mechanism that:

  i) instills trust and is supportive of safeguarded liberalization and participation by developing States;

  ii) is customized to the particular circumstances of international air transport operations and competitive activity;

  iii) ensures that the interests of third parties directly affected by a dispute can be taken into account; and

  iv) as regards interested parties directly affected by the dispute, is transparent and provides access to relevant information in a timely and efficient manner.

The Conference agreed that States should give consideration to the following model clause as an option for use at their discretion in air services agreements.

"Dispute settlement"

...

x. Any dispute which cannot be resolved by consultations, may at the request of either [any] Party to the agreement be submitted to a mediator or a dispute settlement panel. Such a mediator or panel may be used for mediation, determination of the substance of the dispute or to recommend a remedy or resolution of the dispute.

x. The Parties shall agree in advance on the terms of reference of the mediator or of the panel, the guiding principles or criteria and the terms of access to the mediator or the panel. They shall also consider, if necessary, providing for an interim relief and the possibility for the participation of any Party that may be directly affected by the dispute, bearing in mind the objective and need for a simple, responsive and expeditious process.

x. A mediator or the members of a panel may be appointed from a roster of suitably qualified aviation experts maintained by ICAO. The selection of the expert or experts shall be completed within fifteen (15) days of receipt of the request for submission to a mediator or to a panel. If the Parties fail to agree on the selection of an expert or experts, the selection

may be referred to the President of the Council of ICAO. Any expert used for this mechanism should be adequately qualified in the general subject matter of the dispute.

x. A mediation should be completed within sixty (60) days of engagement of the mediator or the panel and any determination including, if applicable, any recommendations, should be rendered within sixty (60) days of engagement of the expert or experts. The Parties may agree in advance that the mediator or the panel may grant interim relief to the complainant, if requested, in which case a determination shall be made initially.

x. The Parties shall cooperate in good faith to advance the mediation and be bound by any decision or determination of the mediator or the panel, unless otherwise agreed. If the Parties agree in advance to request only a determination of the facts, they shall use those facts for resolution of the dispute.

x. The costs of this mechanism shall be estimated upon initiation and apportioned equally, but with the possibility of re-apportionment under the final decision.

x. The mechanism is without prejudice to the continuing use of the consultation process, the subsequent use of arbitration, or Termination under Article _."

Agenda Item 2.7: Transparency

CONCLUSIONS

From the documentation and ensuing discussion on transparency under Agenda Item 2.7, the Conference concluded that:

a) transparency should be regarded as an objective to be pursued within the regulatory framework and as an essential element in the liberalization process. States and interested parties in the regulatory system benefit from improved transparency;

b) in view of the ongoing liberalization in international air transport and the need to enable ICAO to fulfill its primary role in developing policy guidance, a number of approaches involving States can be used to render the regulatory regime more transparent, including the following:

   i) States should register with ICAO any unregistered air services agreement in accordance with their obligation under Article 83 of the Convention;

   ii) States should, as a matter of priority, review their internal procedures and, pursuant to their obligations under Article 83, should develop practical means to improve their registration process. States may consider attributing the responsibility of registering the agreements with ICAO to an official or department where this has not already been done; and

   iii) States should consider making better use of electronic means of disseminating information, such as government web sites for publicly available information on the

status of their air transport liberalization as well as for posting information or the texts of relevant air services arrangements;

c) ICAO should further encourage States to comply with their obligation to register all agreements and arrangements, ensure the effectiveness of the system of registration and make the database of registered agreements more accessible and useful for States and the public; and

d) transparency should also be regarded as an objective to be pursued within national and regional regulatory frameworks and as an essential element in the liberalization process, and that States and interested parties in the regulatory system benefit from improved transparency. Contracting States should be invited to adopt and apply transparency principles, such as those laid out in the APEC Transparency Standards, for national and regional regulatory actions relating to international civil aviation.

The Conference agreed that States should give consideration to the following model clause as an option for use at their discretion in air services agreements:

"Article X: Registration with the International Civil Aviation Organization

This Agreement and any amendment thereto shall be registered upon its entry into force with the International Civil Aviation Organization by [name of the registering Party]."

Agenda Item 3.1: Review of template air services agreement (TASA)

CONCLUSIONS

From the documentation and ensuing discussion on review of template air services agreement under Agenda Item 3.1, the Conference concluded that:

a) in actively promoting its role in developing policy guidance for States on the economic regulation of international air transport, ICAO's development of the Template Air Services Agreements (TASAs) in Attachments A and B of this paper is intended to facilitate the liberalization process;

b) the TASAs provide practical source documents for liberalization for States to use at their discretion in their air services relationships as well as in the development of their approaches and options in liberalization, serving as a useful tool in the liberalization process. The TASAs are "living documents" that should continue to be developed, particularly regarding additional material as to their application, in order to provide comprehensive guidance to States to facilitate liberalization and improve the harmonization of air services agreements in terms of language and approach;

c) States should be encouraged to use the TASAs in their bilateral, regional or plurilateral relationships and to provide feedback to ICAO on the use of the TASAs; and

d) ICAO should continue to monitor closely the regulatory experiences of States and regions in liberalization and in the use of the TASAs. It should disseminate to States

relevant information on these developments and provide assistance on the use and application of the TASAs.

Agenda Item 4.1: Mechanisms to facilitate further liberalization

CONCLUSIONS

From the documentation and ensuing discussion on mechanisms to facilitate further liberalization under Agenda Item 4.1, the Conference concluded that:

a) over the years ICAO's work on economic regulation has intensified as States have turned to the Organization for policy guidance and assistance, particularly in response to a rapidly evolving globalized and liberalized air transport marketplace;

b) ICAO's role on economic regulation needs to be refocussed in order to give a global impetus to regulatory reform and liberalization. ICAO's policy guidance, on which States have come to rely, should focus in particular on liberalization and the Organization should facilitate and promote the liberalization process through its work and in its assistance to States;

c) looking to the long term ICAO should explore the feasibility and possible benefits of serving as a global marketplace, where ICAO provides the facilities and any expertise that may be required, for States to discuss and exchange market access at the bilateral and/or plurilateral levels; and

d) in its relations with all organizations having an interest or involvement in global regulatory matters ICAO should cooperate to ensure that ICAO's mandate and role and the broader interests of the aviation community are taken into account by such bodies. Furthermore, ICAO and its Contracting States should ensure coordination with such organizations to harmonise and avoid duplication of effort at the global level. As a paramount objective in its relations with other organizations involved in economic regulation of international air transport, ICAO should ensure that safety and security are not compromised.

RECOMMENDATION

RECOMMENDATION 4.1/1

THE CONFERENCE RECOMMENDS THAT:

a) ICAO's future role on economic regulation should focus on the development of policy guidance for economic liberalization which permits States to choose their own path and pace and ensures the safety and security of international air transport. This role should also include the facilitation, promotion and provision of assistance to States in harnessing liberalization for their broader benefit; and

b) in its relations with the WTO-OMC, ICAO should continue to draw attention to the Organization's policy on trade in services, as currently reflected in A33-19, while emphasising the linkage and interrelationship between safety, security and economic regulation and the Organization's focus on facilitating, promoting and assisting States in the liberalization process.

DECLARATION OF GLOBAL PRINCIPLES FOR THE LIBERALIZATION OF INTERNATIONAL AIR TRANSPORT

The Worldwide Air Transport Conference on Challenges and Opportunities of Liberalization, convened by the International Civil Aviation Organization (ICAO) at its Headquarters in Montreal from 24 to 29 March 2003 and attended by 145 States and 29 organizations:

Recalling the noble goals in the *Preamble* to the *Convention on International Civil Aviation* (the Chicago Convention);

Conscious of the important role of international air transport and its contribution to national development and the world economy;

Emphasizing the critical importance of safety and security in international air transport;

Noting the changes since the fourth Worldwide Air Transport Conference in 1994 in the regulatory and operating environment of international air transport brought about by economic development, globalization, liberalization and privatization; and the desirability for ongoing regulatory evolution to facilitate commercial change in the air transport industry while ensuring the continued safe, secure and orderly growth of civil aviation worldwide;

Reaffirming that the basic principles of sovereignty, fair and equal opportunity, non-discrimination, interdependence, harmonization and cooperation set out in the Chicago Convention have served international air transport well and continue to provide the basis for future development of international civil aviation;

DECLARES that:

1. **Overall principles**

1.1 ICAO and its Contracting States, together with the air transport industry and other stakeholders in civil aviation, will work to ensure that international air transport continues to develop in a way that:

a) ensures high and improving levels of safety and security;

b) promotes the effective and sustainable participation in and benefit from international air transport by all States, respecting national sovereignty and equality of opportunity;

c) takes into consideration the differing levels of economic development amongst States through maintenance of the principle of "community of interest" and the fostering of preferential measures for developing countries;

d) provides adequate supporting infrastructure at reasonable cost;

e) facilitates the provision of resources, particularly for developing countries;

f) allows for growth on a basis that is economically sustainable, supported by adaptation of the regulatory and operating environment;

g) strives to limit its environmental impact;

h) meets reasonable expectations of customers and public service needs, particularly for low traffic or otherwise uneconomical routes;

i) promotes efficiency and minimizes market distortions;

j) safeguards fair competition adequately and effectively;

k) promotes cooperation and harmonization at the sub-regional, regional and global levels; and

l) has due regard for the interests of all stakeholders, including air carriers and other operators, users, airports, communities, labour, and tourism and travel services providers;

with the ultimate purpose of giving international air transport as much economic freedom as possible while respecting its specific characteristics and in particular the need to ensure high standards of safety, security and environmental protection.

2. **Safety and security**

2.1 Safety and security must remain of paramount importance in the operation and development of international air transport and States must accept their primary responsibility for ensuring regulatory oversight of safety and security, irrespective of any change in economic regulatory arrangements.

2.2 States should work in cooperation to ensure safety and security oversight worldwide consistent with their obligations under the Chicago Convention.

2.3 States should consider the safety and security implications of transborder operations involving aircraft leasing, airline code-sharing and similar arrangements.

2.4 Safety and security measures should be implemented in a cost-effective way in order to avoid imposing an undue burden on civil aviation.

2.5 Security measures should to the extent possible not disrupt or impede the flow of passengers, freight, mail or aircraft.

2.6 Further economic liberalization must be implemented in a way so as to ensure that there is a clear point of responsibility for each of safety and security in a clearly identified State or other regulatory authority designated by that State for any given aircraft operation.

3. Participation and sustainability

3.1 All States share a fundamental objective of effective and sustained participation in and benefit from international air transportation, respecting national sovereignty and equality of opportunity.

3.2 States should develop and maintain safeguards to ensure safety, security, economic stability and fair competition.

3.3 States should ensure that the necessary infrastructure of airports and air navigation services is provided worldwide at reasonable cost and on a non-discriminatory basis.

3.4 Airport and air navigation services charges should only be applied towards defraying the costs of providing facilities and services for civil aviation.

3.5 The interests and needs of developing countries should receive special consideration, and preferential measures and financial support may be granted.

3.6 The global aviation community should continue to work to promote the development of air transport in an environmentally responsible way, limiting the impact of air transport so as to achieve maximum compatibility between safe and orderly development of civil aviation and the quality of the environment.

4. Liberalization

4.1 The objective of ongoing regulatory evolution is to create an environment in which international air transport may develop and flourish in a stable, efficient and economical manner without compromising safety and security and while respecting social and labour standards.

4.2 States which have not yet become parties to the International Air Services Transit Agreement (IASTA) should give urgent consideration to so doing.

4.3 Liberalization should be underpinned by the worldwide application of a modern uniform air carrier liability regime, namely the Montreal Convention of 1999.

4.4 Each State will determine its own path and own pace of change in international air transport regulation, in a flexible way and using bilateral, sub-regional, regional, plurilateral or global avenues according to circumstances.

4.5 States should to the extent feasible liberalize international air transport market access, air carrier access to international capital and air carrier freedom to conduct commercial activities.

4.6 States should give consideration to accommodating other States in their efforts to move towards expanded transborder ownership and control of air carriers, and/or towards designation of air carriers based on principal place of business, provided that clear responsibility and control of regulatory safety and security oversight is maintained.

4.7 States should give consideration to liberalizing the regulatory treatment of international air cargo services on an accelerated basis, provided that clear responsibility and control of regulatory safety and security oversight is maintained.

4.8 Transparency is an important element in promoting economic growth, competitiveness and financial stability at the domestic, regional and international levels, and enhances the benefits of liberalization.

4.9 The air transport industry should continue to be encouraged to improve services to passenger and freight customers, and to develop and implement appropriate measures to protect consumer interests.

5. Competition and cooperation

5.1 The establishment and application of competition law represents an important safeguard of fair competition as States progress towards a liberalized marketplace.

5.2 Cooperation between and among States facilitates liberalization and avoids conflicts, especially in dealing with competition law/policy issues and labour conditions involving international air transport.

5.3 States should avoid adopting unilateral measures which may affect the orderly and harmonious development of international air transport and should ensure that domestic policies and legislation are not applied to international air transport without taking due account of its special characteristics.

5.4 Where State aids provided for the air transport sector are justified, States should take transparent and effective measures to ensure that such aids do not adversely impact on competition in the marketplace or lead to unsustainable outcomes, and that they are to the extent possible temporary.

5.5 Subject to compliance with applicable competition law, States should continue to accept the availability of multilateral interlining systems that enable States, air carriers, passengers and shippers to access the global air transport network on a non-discriminatory basis.

6. Role of ICAO

6.1 ICAO should continue to exert the global leadership role in facilitating and coordinating the process of economic liberalization and ensuring the safety, security and environmental protection of international air transport.

6.2 ICAO should continue to promote effective communication and cooperation with other intergovernmental and non-governmental organizations with an interest in international air transport, to harmonize and avoid duplication of effort at the global level.

6.3 States should consider using the regulatory options provided through ICAO for the liberalization of international air transport.

6.4 States should continue to keep ICAO informed of developments in international air transport, including liberalized arrangements introduced at various levels; and to promote, in other fora, a full understanding of the mandate and role of ICAO.

— END —

2004-2005-2006-2007

The Parliament of the
Commonwealth of Australia

THE SENATE

Presented and read a first time

Qantas Sale (Keep Jetstar Australian) Amendment Bill 2007

No. , 2007

(Senator Fielding)

A Bill for an Act to protect Jetstar from foreign ownership and ensure jobs and operations stay in Australia, and for related purposes

A Bill for an Act to protect Jetstar from foreign ownership and ensure jobs and operations stay in Australia, and for related purposes

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Qantas Sale (Keep Jetstar Australian) Amendment Act 2007*.

2 Commencement

This Act commences on the day after the day on which it receives the Royal Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendment of the Qantas Sale Act 1992

1 Section 9 (heading)

Omit "**Qantas to maintain a register of shares in which foreign persons have a relevant interest**", substitute "**Additional obligations of Qantas**".

2 At the end of section 9

Add:

(5) Qantas must ensure that:

(a) the head office of Qantas and each associated entity is located in Australia;

(b) the facilities taken in aggregate which are used by Qantas and by any associated entity in the provision of scheduled international air transport services (for example, facilities for the maintenance and housing of aircraft, catering, flight operations, training and administration), located in Australia, when compared with those located in any other country, represent the principal operational centre for Qantas and its associated entities;

(c) at all times, at least two-thirds of the directors of Qantas and the directors of each associated entity are Australian citizens;

(d) at a meeting of the board of directors of Qantas and of a meeting of the board of directors of each associated entity, the director presiding at its meeting (however described) is an Australian citizen.

(6) Qantas and each associated entity must not, directly or indirectly, enter into, commence to carry out, or carry out any scheme if it would be concluded that the person or any of the persons who entered into, commenced to carry out or carried out the scheme or any part of the scheme did so for a material purpose of avoiding the application or operation of any provision of this Act (including any of the mandatory articles), and any such scheme will have no force or effect.

(7) In this section, ***scheme*** means:

1 Employee ownership: Why we need it

Macro Principles

The purpose of employee ownership is to provide a means by which the mass of employees can become direct co-owners of the businesses where they work.

Employee share ownership has been developed as a way of reforming one of the key problems confronting the free enterprise economy: how to share the ownership of society's capital resources among the widest number of people without compromising either private ownership or economic freedom. Employee Share Ownership preserves both of these principles. It does so by providing employees with the means to purchase a personal stake in the enterprise that employs them. In sum, employee ownership aims to assist employees to become genuine 'capitalists'.

Without the kind of widespread joint ownership offered by employee share plans, there is no sure ground upon which to reconcile the old hostility between capital and labour. This is because the basis of that antagonism has been precisely the ownership - and (or) control - of capital on one side and the lack of capital on the other. For this reason Employee Share Ownership Plans (ESOPs) offer an historic opportunity to address a source of major social and economic dislocation and conflict and to strengthen, in a fundamental way, the free enterprise system.

Micro Principles

There are certain implications that flow from employee ownership, and the structure of employee share plans, which provide additional incentives for strong, pro-ESOP policies.

Productivity

Research indicates that companies whose employees share in the ownership of the business decisively outperform their rivals whose employees are not shareholders in the firm.

Companies with high levels of employee ownership demonstrate higher measures of commitment to the interests of the business by their employees and, consequently, higher productivity and profit levels, than their peers with lower levels of employee ownership, or none at all. (See Appendix A for a summary of the key studies undertaken in the United States on this question.)

Savings

The long-term shortage of savings in an ageing Australian community, identified in the Intergenerational Report 2002-03, seems to require the development of a more sophisticated approach to national savings policy.

In addition to superannuation, a serious national savings policy would seem to demand a range of savings instruments designed to meet a spectrum of different savings objectives. In this, ESOPs would have a vital role to play. ESOP savings can clearly be distinguished, on one hand, from obligatory, managed, indirect investments in a super fund and, on the other, from discretionary, personal share investment in businesses over whose fate the investor has no control.

ESOP savings offer both the directness of a personal share investment and a measure of influence over the performance of the investment. (We expand on savings issues in Appendix E.)

Investment Tool

ESOPs also serve as a venture capital vehicle. They provide employees with a way of participating in buy-ins and buy-outs and of financing, in return for equity, the capital expansion of a business.