



Economic Commission for Africa

Compendium of  
Air transport Integration and  
Cooperation Initiatives in

# Africa





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Cooperation Initiatives  
in **Africa**

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Publications  
Economic Commission for Africa  
P.O. Box 3001  
Addis Ababa, Ethiopia  
Tel.: 251-1-44 31 68  
Fax: 251-1-51 03 65  
E-mail: [ecainfo@uneca.org](mailto:ecainfo@uneca.org)

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# Acknowledgments

This report is a compilation describing ECA's major activities in air transport, which led to the liberalization of the African air transport markets as outlined in the Yamoussoukro Decision. Air transport liberalization in Africa is now a reality thanks to the commitment of ECA Executive Secretaries, Adedeji Adebayo and K.Y. Amoako, and to the work of various former and current ECA Divisions with programme focus on transport development in Africa.

The work was carried out under the general direction of Hachim Koumaré, Senior Team Leader for infrastructure in the former Regional Cooperation and Integration Division and currently Director of ECA's Subregional Office for Central Africa in Yaoundé. Aberra Makonnen, a former Director of Corporate and Industry Affairs of AFRAA coordinated the exercise, with support from ECA's Trade and Regional Integration Division.

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The compilation also reflects the great work done by OAU/AU, Regional Economic Communities such as ECOWAS, COMESA, ECCAS, CEMAC, UEMOA, and SADC/SATCC.

# Foreword

1. After almost four decades of bureaucratic inertia, African air transport is at a crossroads, seeking to steer its direction towards the creation of an environment propitious for a viable, efficient and sustainable air transport system. Following decades of protectionism, the air transport sector is undergoing transformation as a result of the combined impact of internal and external pressures.
2. The external pressures emanate from the “revolutionary changes” in the traditional operating and regulatory environment of international air transport that was established under the Chicago Convention of 1944. Domestic deregulation in the United States in 1978 has spearheaded these changes, followed by European liberalization. Since then, the movement has been unstoppable, spreading widely across the globe: Asia - Pacific, North, South and Central America, the Caribbean etc., to such an extent that today the debate over why governments should continue to control market entry, the capacity supplied by each airline and the fares and rates charged appear to have been settled, definitively. At present, the focus of attention has shifted to deregulation and liberalization, privatization; to the emergence of global carriers in a transnational industry and to the problems faced by an increase in concentration and by capacity limitation at airports.
3. The internal pressures, on the other hand, are the result of the incremental changes in attitude brought about by four decades of sustained efforts in relation to the imperatives of integration and cooperation as enshrined in the Charter of the OUA. Later on, the economic reform programmes that started in the 1990s within the framework of structural adjustment have added a new dimension as African countries adopt policies of disengagement from economic activities, liberalization, withdrawal of subsidies, break-up of monopolies and increased inducement for private sector participation.
4. These pressures have led to the gradual loosening of rigid African policies, bringing with them a certain degree of realism in their aero-political relations and have accelerated the liberalization of the domestic air transport market, although the degree of liberalization varies from one African State to another, as some countries still consider air transport a strategic sector.
5. As a result of the combination of these factors, the various integrationist air transport initiatives of the Economic Commission for Africa (ECA) and some other partners culminated in the adoption of the Yamoussoukro Decision in 1999, after a long and protracted journey, although much still remains to be done to complete the cycle and ensure that the continent participates in the global economy.
6. In one way or another, a great many people and organizations both within and outside Africa have contributed to the various initiatives for the improvement of African air transport since the early 1960s. This compendium is a tribute to the unrelenting efforts deployed by these individuals and organizations during this long period.
7. While these efforts, at face value, may seem not to be fully compensated by results that would have brought African air transport from its doldrums, it is because a powerful constellation of factors has made things what they are in Africa. However, these individuals and organizations should take pride in the fact that,



at long last, their efforts have, albeit belatedly, been rewarded by the rejection of the old and rigid policies and the adoption of the Yamoussoukro Decision in 1999 and the various subregional initiatives. This is so much so that today in Africa, as elsewhere in the world, the focus of attention has shifted from protectionism to liberalization and privatization.

8. It is hoped that the Compendium will be a useful reference material for use by policy makers and managers, not only in the airlines, but also in governments, regulatory departments, regional organizations and other institutions concerned with African civil aviation.

# List of Acronyms

AA	Aeronautical Authority
AAA	Aeronautical Agreements and Arrangements
ACAA	African Civil Aviation Administrations
ACAC	Arab Civil Aviation Commission
ADB	African Development Bank
ADC	Aéroports de Cameroun
ADL	Aéroport de Libreville
AEC	African Economic Community
AFCAC	African Civil Aviation Commission
AFRAA	African Airlines Association
AFRATC	African Tariff Conference
AFTATC	African Air Tariff Conference
AIR	Aviation Investment and Reform
ANAC	Agence Nationale de l'Aviation Civile
APEC	Asia Pacific Economic Cooperation
ASECNA	Agency for the Safety of Air Navigation in Africa and Madagascar
ATC	Air Traffic Control
ATS	Air Traffic Services
ATSR	Air Transport Services Regulations
AU	African Union
CAA	Central African Airways
CAA	Civil Aviation Authority
CAB	Civil Aeronautics Board
CAO	Civil Aviation Organization
CAR	Central African Railways
CARS	Central Africa Road Services
CAT	Commercial Air Transport
CCAA	Cameroon Civil Aviation Authority

CEEAC	Communauté économique des Etats de l'Afrique centrale
CEMAC	Communauté économique et monétaire de l'Afrique centrale
CENSAD	Community of Sahel-Saharan States
CICA	Convention on International Civil Aviation
COMESA	Common Market for Eastern and Southern Africa
CRS	Computer Reservation System
CSC	Le Comité de Suivi et de Contrôle (Follow-up and Control Committee)
DCS	Departure Control System
DGACM	Direction générale de l'Aviation civile et de la Météorologie (Directorate General of Civil Aviation)
DHL	Dutch Lufthansa
EAAC	East African Airways Corporation
EAC	East African Community
ECA	Economic Commission for Africa
ECAC	European Civil Aviation Conference
ECCAS	Economic Community of Central African States
ECOSOC	Economic and Social Council
ECOWAS	Economic Community of West African States
EU	European Union
FNR	Federation of Rhodesia and Nyasaland
GATS	General Agreement on Trade-In-Services
GDP	Gross Domestic Product
GSA	General Sales Agency
GSCCA	General Secretariat for Civil and Commercial Aviation
IATA	International Air Transport Association
ICAO	International Civil Aviation Organization
ICAO-SARPs	ICAO- Standards and Recommended Practices
ICC	International Chamber of Commerce
IGAD	Inter-Governmental Authority on Development
IOC	Indian Ocean Commission
LACAC	Latin American Civil Aviation Conference
MOU	Memorandum of Understanding
NACA	National Agency for Civil Aviation

NCAC	National Civil Aviation Codes
OAU	Organization of African Unity
OECD	Organization for Economic Development and Cooperation
OSC	Organ of Supervision of Competition (Organe de Surveillance de la Concurrence)
RPK	Revenue passenger kilometres
RTK	Revenue tonne-kilometres
SADC	Southern African Development Community
SAM	Single Aviation Market
SATCC	Southern African Trans and Communications Commission
SGACC	Secrétariat General a l'Aviation Civile et Commerciale
TASA	Template Air Services Agreements
TWAAL	Trans West African Airlines Limited
UDEAC	Union Douanière et Economique de l'Afrique Centrale
UEMOA	Union Economique et Monétaire Ouest Africaine
UMA	Arab Maghreb Union
UNDP	United Nations Development Programme
UNCTAD	United Nations Conference on Trade and Development
UNTACDA	United Nations Transport and Communication Decade for Africa
WAEMU	West African Economic and Monetary Union
WTO	World Trade Organization

# Part I: Context and Background



# 1 Introduction

## 1.1 History of air transport

9. The history of air transport in Africa traces its origins to the colonial era when, in the mid-1920s, Air France, Imperial Airways and Dutch Lufthansa (DHL) initiated air services to Africa, primarily conceived to serve the interests and administrative requirements of the colonial powers within their respective zone of influence.<sup>1</sup>

10. In West Africa, *Air Afrique* (the predecessor of the multinational airline Air Afrique established in 1961, now defunct as a result of severe financial problems and lack of vision) was created by Air France in the 1920s with the purpose of connecting the French West African countries with the then route network of Air France.

11. Imperial Airways also started air services to East Africa, linking Khartoum, Dar-as-Salaam to Durban in South Africa, utilizing flying boats. In Central Africa, Sabena began air services in 1935 to the Congo and later to Mozambique and Madagascar.

12. After the Second World War, the colonial powers established regional airlines within their respective spheres of influence: East African Airways Corporation (EAAC), comprising Kenya, Uganda, Tanganyika and Zanzibar (now Tanzania) was established in 1946. Political differences later led to the break-up of the consortium in 1975. Kenya Airways, Uganda Airways and Air Tanzania were subsequently established.

13. In central Africa, the governments of Nyasaland (now Malawi), Southern Rhodesia (now Zimbabwe) and Northern Rhodesia (now Zambia) established the Central African Airways (CAA) to operate domestic and regional air services; it continued its operations until it was disbanded in 1967 when Zambia Airways, Air Rhodesia (now Air Zimbabwe) and Air Malawi were later formed.

14. The governments of Gambia, the Gold Coast (now Ghana), Nigeria and Sierra Leone established the West African Airways Corporation in West Africa. Again, due to disagreement, independent airlines were subsequently established in 1958, namely Gambia Airways, Ghana Airways, Nigeria Airways and Sierra Leone Airlines.

15. Starting in the mid 1960s, practically all of the newly independent African countries started establishing their own national airlines - so much so that by 1987 there were an estimated 70 African airlines. Even though a trans-African air service was started in 1960, it was not until the 1970s that due importance was given to the intra-African route network

## 1.2 Importance of air transport in Africa

16. Africa is a vast continent of 30 million square kilometres occupying 20 per cent of the earth's land mass; it is 5000 miles long and 4,600 miles wide and its coast line measures 18,950 miles. From a socio-political perspective, the continent is divided into 53 countries out of which 15 are landlocked and 38 are under the

tropics. This balkanization into 53 air transport markets constitutes the first major obstacle to integration and the liberalization of air transport.

17. For this vast continent with harsh terrain, the different modes of surface transport<sup>2</sup> are inadequate in terms of network, the cumbersome administrative procedures, poor facilities within the transit countries<sup>3</sup> and the heavy investment<sup>4</sup> required to build and maintain these infrastructures.

18. As a result of these inadequacies, air transport is the most crucial facilitator of the economic and physical integration of the 53 countries and the driving force behind the social and economic development of the 15 landlocked countries which require an efficient, reliable, fast and safe air transport system. Much of the growing physical contact in Africa would not exist, or only on a more limited scale, if it were not for air transport.

19. In comparison to surface transport, air transport has few of the physical constraints and is destined to be the most credible mode of transport by which Africa makes contact with itself and the outside world. Despite the constraints, air transport has brought African countries together, has been able to link most African capital cities and has contributed to inter-African commerce and trade as the primary mode of transport available within Africa.

20. For high value goods and fresh agricultural products, air transport is the most reliable and safe mode of transport. It is estimated that for goods whose value is in excess of US\$ 2, air transport can be more competitive in terms of cost, reliability and time.

21. Accordingly, air transport is the most important mode as a crucial facilitator of the integration of African economies. It plays a key role in the development of national economies and African commerce and trade. Much of the growing physical contact in Africa would not exist, or only on a more limited scale, if it were not for air transport.

22. An efficient air transport system will help the economic competitiveness of African countries through access to world markets, labour mobility, attractiveness to private investment in aviation, and the development of key hard currency earning export industries, as well as businesses dependent upon the expeditious delivery of goods and services

23. Air transport supports Africa's economic growth and tourism. Tourism, especially international and intra-regional, cannot be developed in Africa without air transport, despite the trans-African highway concept developed by ECA. Intra-African surface transport is not yet completed due to financial constraints and conditions imposed by institutions.

24. In summary, due to the geographic conditions, cost of investment on surface transport, and facilitation issues, air transport when viewed against the background of the inadequacies of other modes of transport (road, rail) has a vital role to play in Africa in providing rapid and efficient transportation of people, goods and services.

### 1.3 Institutional context - Key actors and players

25. The history of the initiatives for integration and liberalization of African air transport cannot be conceived nor considered in isolation and outside the context of the activities, contributions and involvement

of the African regional organizations, in particular the OAU/AU, ECA, AFCAC, AFRAA, the subregional economic organizations and the other development partners.

26. These organizations are the key actors and catalysts providing the main substructure on which the various initiatives were built and the resources needed for the integrationist initiatives. Some of the most prominent of these institutions are briefly described below.

### **1.3.1 Economic Commission for Africa (ECA)**

27. Since its establishment in 1958,<sup>5</sup> the United Nations Economic Commission for Africa (ECA) has played a catalytic role at the forefront of the conception and development of the major air transport initiatives in Africa.

28. The activities of ECA influence air transport at two levels: at the macro-economic level through the formulation of overall cross-sector economic policy objectives for the continent and at the micro-economic level through its direct involvement in air transport specific initiatives. In respect to air transport, the direct involvement of ECA started with the initiative it took to convene the first ever African Conference on Air Transport in November 1964 in collaboration with ICAO as a result of which the African Civil Aviation Commission was established, which later became a specialized agency of the OAU/AU.

29. On the economic front, ECA has been instrumental in setting in motion a process of rethinking against the backdrop of the failing economies of African countries in the 1980s<sup>6</sup> whose outcome was the Lagos Plan of Action and the establishment of the African Economic Community.

30. During the decade 1978 to 1988,<sup>7</sup> the economic performance of Africa was dismal with real GDP growing by a meagre 0.6 per cent. As a result of this dismal economic performance, ECA convened the first ever African economic summit. At that summit, African leaders were made to face the bleak realities of their failing economic policies. This process led to the adoption of the Monrovia Strategy<sup>8</sup> and the Lagos Plan of Action<sup>9</sup>. These actions by ECA had an indirect impact on air transport.

31. The direct involvement of ECA includes sector-specific initiatives in transport and communications. The development of major programmes and policy definitions, such as the United Nations Transport and Communication Decade for Africa, the Mbabane Declaration on the Freedoms of the Air, the Yamoussoukro Declaration of 1988 as well as the Yamoussoukro Decision of 1999 and the various studies undertaken under UNCTADA programme, as will be seen later, were all conceived and agreed under the auspices and leadership of ECA.

32. Through the Conference of Ministers responsible for civil aviation and the Conference of Ministers of Transport, Communication and Planning from 1978 to 2000,<sup>10</sup> ECA has provided the coordination and harmonization of civil aviation matters within the overall United Nations Transport and Communication Decade for Africa.

### **1.3.2 Organization of African Unity (African Union)**

33. The establishment of the Organization of African Unity in May 1963 provided the additional impetus at the political level for the general progress of Africa. The broad aims of the OAU are the promotion



of the unity and solidarity of African States, coordinating and intensifying cooperation (Article 11), to which end member States pledge to coordinate their policies, especially in areas such as political, diplomatic and economic cooperation, including air transport. The OAU is “dedicated to the general progress of Africa”.<sup>11</sup>

34. The OAU has adopted a number of very important resolutions on regional development of air transport and has given the political support and endorsement at the highest level. Most importantly, the OAU/AU has given in 2000 the political umbrella and empowerment of the Yamoussoukro Decision of 1999 as it has done for the General Policy Declaration on Civil Aviation in 1980.

### **1.3.3 African Civil Aviation Commission**

35. In 1969, the African Civil Aviation Commission (AFCAC) was established as a specialized inter-governmental body to provide the forum for cooperation in the broader policy issues on civil aviation and to harmonize and coordinate aviation policies of its member States. A number of initiatives and resolutions were adopted by the AFCAC supreme governing body.

36. AFCAC cooperates with the OAU and ECA, as well as other regional governmental and non-governmental organizations to develop regional approaches to the development of air transport. It remains the centre of operations aimed at liberalization of the African air transport industry. The activities of AFCAC have been felt in such areas as the various resolutions on traffic rights, cooperation, collection and publication of air transport data (AFCAIS), the setting up of the African Tariff Conference (AFRATC), organizing workshops and seminars.

### **1.3.4 African Airlines Association**

37. In 1968, the African Airlines Association (AFRAA) was also established to provide the forum for cooperation in air transport, acting at the level of the airlines for commercial and technical cooperation. AFRAA is the continental trade association of the major African airlines with the primary objective of fostering inter-airline cooperation.

38. Since its establishment in 1968, AFRAA has sought to create a measure of consensus on the development of common policies in the area of traffic rights and inter-airline cooperation. It has been involved in all matters organized by ECA. Its sustained efforts at commercial and technical cooperation among the airlines have produced some timid results, although not fully implemented (the GRID system, schedule coordination, training, joint insurance, joint station handling, joint fuel purchase, pooling and common specification for aircraft, namely B737, 747, 767, DC10).

### **1.3.5 Regional Economic Communities**

39. The subregional economic communities also have an impact on intra-African relations generally and on air transport in particular. These subregional economic communities were the brainchild of ECA as the vehicle for harnessing the potential for cooperation at the subregional level. In 1965, the seventh ECA session held in Nairobi passed a resolution<sup>12</sup> recommending that African States establish as soon as possible subregional intergovernmental machinery for the harmonization of their socio-economic development.

40. Some of the most important subregional institutions include: the Economic Community of West African States (ECOWAS); the Common Market for Eastern and Southern Africa (COMESA - formerly the Preferential Trade Area - PTA); the East African Community (EAC); the Economic and Monetary Community of Central African States [or *Communauté économique et monétaire de l'Afrique centrale* (CEMAC)]; West African Economic and Monetary Union (formerly known as the *Union douanière et économique de l'Afrique centrale – UDEAC*) or *Union Economique et Monétaire Ouest Africaine* (UEMOA); the Economic Community of Central African States (ECCAS); the Southern African Development Community (SADC); the Arab Maghreb Union (UMA); the Indian Ocean Commission; the Inter – Governmental Authority on Development (IGAD); the Community of Sahel-Saharan States (CEN-SAD); Mano River Union etc.

41. To a large extent, questions of closer cooperation and integration are dealt within the subregional economic communities and preferential trade areas. These subregional economic institutions are prominent at bundling the splintered economies and encouraging trade among the members.

42. These subregional economic groupings have established a clear policy framework in the transport sector. However, they need to set and harmonize a clear strategy, benchmarks or targets and timeframes for meeting and harmonizing the policy objectives. UEMOA, SADC, COMESA and UMA have fairly developed strategies for realizing some air transport objectives, but benchmarks and timeframes have yet to be adopted and followed up. The requirement for each country to develop micro-implementation action plans is an attempt to achieve these objectives. Without clear benchmarks and targets, it could be difficult to monitor progress. For all these institutions the level of implementation of agreed objectives in air transport is yet below expectation.

## 1.4 Impact on air transport

43. The above key actors and players have been active in evolving policies on air transport developments and acting as vehicles for harnessing cooperation that is essential to the implementation of programmes designed to achieve the optimum development of air services in Africa, *inter alia*, developing policy leadership in the technical and economic fields of civil aviation in Africa.

44. In the field of air transport, these continental organizations, such as the OAU and ECA, set the general policy framework and the specifics are left to be worked out and implemented at the subregional and national levels. The OAU and ECA set the stage by conceptualizing the common policies and seeking to create a measure of consensus on the liberalization and integration of air transport, traffic rights, and airline integration, commercial and technical cooperation in Africa.

45. These institutions have provided the forum for Africa's policy makers, civil aviation authorities and national airlines to meet on a regular basis and seek to forge a common position on air transport development in Africa and elsewhere.

46. **Chapter 5** presents an overview of the continuing evolution and deepening of the worldwide liberalization on the basis of work undertaken by different organizations: (i) the results of the 4<sup>th</sup> and 5<sup>th</sup> ICAO worldwide air transport conferences; (ii) the World Trade Organization (WTO); (iii) the Organization for Economic Development and Cooperation (OECD); (iv) the International Chamber of Commerce (ICC) and others.

47. **Chapter 6** examines, in light of the deepening and geographical expansion of liberalization and structural changes occurring in the international air transport industry, the alternatives for the repositioning of African air transport to ensure its continued participation in international air transport and assesses the policy implications of the key regulatory issues that will govern intra-African and international air transport.

48. Part II reproduces the texts of the various initiatives that were considered in the field of integration, cooperation and traffic rights. The main texts are those dealing with economic aspects of African air transport regulation that have received the endorsement at the highest political level and some important subregional initiatives.

49. For African policy makers and stakeholders, there are many important questions yet to be resolved as a new international civil aviation industry takes shape, the major characteristics of which are a liberal environment and freedom in the provision and pricing of airline products.

50. A major by-product of this evolution is the emergence of mega carriers that enjoy enormous economies of scale and a near monopoly of marketing through expanded CRS. The industry is also moving away from one dominated by “flag carriers” owned or supported by governments to one in which privatized airlines pursue commercial objectives.

51. These issues ultimately involve trade-offs between the pro- and anti-competitive effects of liberalization and weighing the positive efficiency enhancing effects of liberalization against any adverse effects flowing from increases in market power.

# 2 Baseline Assessment – African Air Transport

## 2.1 Introduction

52. The assessment of the overall situation of air transport in Africa immediately prior to deregulation and liberalization of international air transport is extracted from previous studies commissioned by ECA since the mid-1960s.<sup>13</sup> These studies provide valuable information for the period 1980 to 1990. Although prepared at different intervals, their conclusions are almost identical in respect to the more substantive issues facing African air transport.

53. From the findings and conclusions of these studies, the general distinctive characteristics of air transport in Africa in 1987 were, *inter alia*, the following:

- (a) The overall financial difficulties of African countries during this period;
- (b) The restrictive and rigid regulatory environment and lack of a coherent aviation policy;
- (c) The proliferation of small national airlines, many in poor financial situations with inadequate management, shortage of appropriate human resources and at times inappropriate utilization; inadequate and obsolete equipment, limited access to capital; government and political interferences;
- (d) Thin air transport market with international, regional, subregional and domestic traffic growing very slowly in comparison to other regions;
- (e) Poor route network aggravated by a lack of cooperation and coordination of activities;
- (f) Poor quality of service aggravated by unreliable and inconvenient schedules, declining level of services (on-time performance not respected; reserved seats not honoured);
- (g) Intense competition on the Europe/Africa route where 26 African airlines compete with 27 non-African airlines; and
- (h) Lack of cooperation in commercial, maintenance and training areas.

## 2.2 African economies and financial difficulties

54. In its 1989 annual report, the African Development Bank (ADB) stated that during the 10 years period (1978 to 1988), the economic performance of Africa was dismal with real GDP growing by a mere

0.6 per cent. In 1988 and 1989, GDP growth was 2.6 per cent and 2.9 per cent respectively which was far below the annual population growth of 3.9 per cent. The external debt reached US\$ 256.9 billion amounting to about 93.3 per cent of the regional GDP. Debt servicing consumed 32.2 per cent of the export of goods and services.

55. The share of Africa in world trade fell steeply from 4.7 per cent in 1980 to 2.2 per cent in 1989. The African continent has not been able to reap the gains from global integration to the extent of other developing regions.<sup>14</sup> Africa's share in world merchandise export fell from 6.3 per cent in 1980 to 2.5 per cent in 2000 in value terms. It recorded a mere 1.1 per cent average annual growth over the 1980-2000 period compared to 5.9 per cent in Latin America and 7.1 per cent in Asia. The overall economic situation was bleak against the hostile external environment: low commodity prices, the external debt burden and the fragility and vulnerability of the economies of the region.

56. Under these adverse economic circumstances, it was not surprising that African air transport was also in a crisis. According to ICAO, there is a direct relationship between the growth of air transport and economic performance. Statistical analysis has shown that growth in GDP explains about two-thirds of air travel growth, reflecting increasing commercial and business activity and increasing personal income and propensity to travel. Demand for airfreight service is also primarily a function of economic growth and international trade.

57. In addition, starting in the 1990s, within the framework of structural adjustment negotiated with the Bretton Woods institutions, African countries have accepted a series of measures of which privatization and structural and organizational reorientation of public sector parastatals was the most important. In most cases, the emphasis was on liberalization. These reforms resulted in massive reduction of public expenditure, including investments and the liquidation of some airlines and the creation of an enabling environment for private sector participation. In respect to the air transport sector, these reforms aimed at redefining the role of the public sector with a view to reducing or eliminating direct government involvement in the operation of air transport services, limiting their intervention to the regulatory function.

## 2.3 African regulatory framework and aviation policy

58. As in most other countries, the operation of air services in Africa is based on a complex and cumbersome regime of bilateral air service agreements concluded between African countries through which decisions on market access and related issues were made in the exercise of sovereignty over their air space.

59. Although there were about 560 bilateral air services agreements reported to have been signed between African countries covering the intra-African routes,<sup>15</sup> only about 40 per cent of these agreements were actually implemented. The obstacle to the development of air services and the route network in Africa must, therefore, be seen in light of the negotiation and actual implementation of these agreements, in particular the difficulties and the long process required for exchanging traffic rights, mainly the 5<sup>th</sup> freedom.<sup>16</sup>

60. In any case, what was significantly different in the African context, unlike in many other regions, was that these bilateral agreements were the most rigid and restrictive in the world, highly protectionist, bordering "parochial nationalism". Specifically, these bilateral air services agreements mirrored:

(a) A restrictive traffic rights environment, not only as it relates to limitations imposed on the exercise

of 3<sup>rd</sup> and 4<sup>th</sup> freedoms of the air and reluctance to authorize technical landing for a flight continuing to other destinations but also the curtailment of the exercise of the 5<sup>th</sup> freedom for the airlines of the region as opposed to the rather flexible manner in which traffic rights, especially the 5<sup>th</sup> freedom, were granted to non-African airlines;<sup>17</sup>

- (b) Restrictions on frequencies and capacity, type of aircraft operated, volume of traffic to be carried etc.;
- (c) Restrictions on routes to be served;
- (d) Limitations on the number of designated carriers. Usually the designated flag carriers enjoyed exclusive and monopolistic rights in these markets; and
- (e) Payment of royalty and other compensation, which at times was prohibitive.

61. Against the backdrop of very limited point-to-point traffic within Africa, the support of 5<sup>th</sup> freedom traffic was most crucial in ensuring the sustainability and profitability of any service. The search for a practical solution to the stiff and rigid bilateral environment was to dominate the discussion in Africa for over four decades and definition of the modalities of overcoming the restrictive policies of African governments, not only with respect to 5<sup>th</sup> freedom traffic rights but also in respect to 3<sup>rd</sup> and 4<sup>th</sup> freedoms within Africa.

62. In consequence of these factors, the quantity and quality of air services have not improved. In practical terms, the system has not served the interests of or helped to strengthen the operations of most African airlines. It has restrained the potential for growth. The current weaknesses of some African airlines are perhaps the result of this overtly protectionist policy.

63. In retrospect, the current structure of African air transport, as it has evolved over the past four decades, had been a reflection of these protective bilateral agreements, in which economic logic has played a very modest role and the question today concerning the structure of the system still remains unanswered.

## 2.4 Airlines

64. Contesting and competing in the African market, there were an estimated 70 African airlines in 1987, of which 36 were AFRAA member airlines,<sup>18</sup> operating equipment and facilities with less than optimum efficiency. These airlines existed in different forms, shapes and size. They fall into three broad categories:

- (a) Intercontinental long-haul operators supplemented by a regional and subregional feeder network. These operators enjoy a relatively high load factor and relatively higher average daily aircraft utilization than those operating domestic and regional services;
- (b) Purely domestic and regional airlines; and
- (c) Charter and third level operators.

65. With very few exceptions, all of these airlines were government owned and managed as an extension of the mainstream public service. Only few of these airlines were marginally viable. Compared to other airlines

in the world, the African airlines were too small to validly aspire for economic survival without massive government subsidy.

66. The continued government subsidies, more often than not, depressed the urge for airlines to cooperate. The many recommendations for inter-airline commercial and technical cooperation, restructuring and regrouping advocated in a number of studies remained unimplemented. Due to the highest operating and capital cost in the world, these airlines have been beleaguered by poor financial performance, shortage of appropriate human resources (and when available inappropriate utilization), ageing fleet, and other inadequate and obsolete equipment.

67. Thus, the operations of African airlines during the period immediately preceding liberalization has been characterized, *inter alia*, by persistent financial difficulties, the small size of the market and thin traffic, high operating cost, low productivity, inadequate fleet, low aircraft utilization, limited financial and human resources and lack of cooperation.

## 2.5 Fleet

68. In 1987, there were over 600 aircraft ranging from the DC-3 to the Boeing 747, (the B737 with 70 units being the most popular), out of which the 36 AFRAA member airlines operated 108 turboprops and 216 jet aircraft (Table 2.1).

**Table 2.1**

**Fleet Composition - AFRAA member airlines - 1987**

Type	Quantity	Type	Quantity	Type	Quantity
DC3/47	3	ATR42	8	B707	32
		F28	41	B737	70
		F50	5	B727	41
		Islander	1	B757	4
		Aztec PA-250E	1	B747	10
		Super Club	2	B767	11
		King Air	3	DC8	5
		Casa 212	3	DC9	2
		HS748	7	DC10	10
		Twin Otters	24	L1011	4
		L100-30	7	A300	11
		Dornier	3	A310	9
				F28	7
TOTAL	3		105		216

Source AFRAA.

## 2.6 Employment and productivity

69. AFRAA member airlines employed about 90,000 employees in 1987. The productivity of AFRAA member airlines in 1987 was by far below the industry average. An ECA Study<sup>19</sup> revealed that an employee of an African airline produces 262 passengers as against 855 passengers at American Airlines. This low productivity is in part a reflection of overstaffing and the lack of modern management tools and equipment. It was also estimated that in 1987 the productivity of AFRAA member airlines was estimated at 49,466 passengers per aircraft, whereas European airlines generated 133,530 passengers per aircraft or more than two and half times.

## 2.7 Air transport market

70. From data published by different sources, including ECA, ICAO and AFRAA, a general trend of the evolution of traffic for the period 1987-1990 is shown in Table 2.2 below.

71. The total number of passengers carried by the 33 AFRAA member airlines in domestic, intra-African and international operations amounted in 1987 to about 24.8 million passengers, compared to 27.9 million in 1990, a net gain of 3.1 million passengers or an increase of 12.81 per cent.

**Table 2.2:**

*Evolution of Traffic (domestic, intra-Africa and intercontinental – 1980-1990 (in thousands)*

TRAFFIC	1987	1990	Growth
1. Passengers number	24,754	27,925	12.81
2. Freight ton	405	450	11.11
3. Revenue Passenger Kilometres	35,666,545	44,809,794	25.64
4. Available Seat Kilometres.	60,053,223	72,227,109	20.27
5. Passenger Load Factors	59.4	62	4.38
6. Revenue Tonne Kilometres	4,326,840	5,446,286	25.87
7. Available Tonne Kilometres	8,125,276	10,149,479	24.91
8. Weight Load Factors	53.3	53.7	0.41

Source: ECA, AFRAA, ICAO.

72. Revenue tonne-kilometres (RTK) performed in 1990 increased to 5.4 billion RTK from 4.3 billion RTK in 1987, or an increase of 25.87 per cent. Overall capacity offered in 1990 expressed in terms of available ton kilometres likewise increased from the 1987 level of 8.1 billion to 10.1 billion in 1990. The average weight load factor staggered at 53 per cent.

### **Intra-African traffic flow**

73. Table 2.3 below portrays the evolution of the intra-African traffic for the period 1987 to 1990.



**Table 2.3*****Intra-Regional Traffic Developments: 1987–1990***

	<b>1987</b>	<b>1990</b>	<b>Growth per cent</b>
1. Passengers Carried	2,517	2,999	19.17
2. Revenue Passenger Kilometres.	3,384,594	4,117,293	21.65
3. Available Seat Kilometres	9,586,897	7,775,289	(36.11)
4. Passenger Load Factor (per cent)	63	53	(9.95)
5. Revenue Tonne Kilometres.	582,000	673,422	15.71
6. Available Seat Kilometres	1,227,149	1,439,131	17.27
7. Weight Load Factor	47	47	0

**Source AFRAA.**

74. In 1987, passenger traffic carried within Africa (i.e. traffic moving exclusively between points in Africa) amounted to 2.5 million. In 1990, the traffic increased to about 3 million passengers representing an increase of 19.17 per cent over 1987. Revenue passenger kilometres increased from 3.4 billion RPK in 1987 to 4.1 billion in 1990, representing an increase of 21.65 per cent. Capacity offered expressed in terms of available ton kilometres, on the other hand, increased by some 17.27 per cent from 1.2 billion in 1987 to 1.4 billion available tonne kilometres in 1990. A distinctive feature in understanding the performance of the inter-African market is the hefty decline observed in passenger load factor that went down by 9.95 percentage points from 63 per cent in 1987 to 53 per cent in 1990, as well as the reduction in available seat kilometres by 36.11 per cent.

## **Intercontinental traffic**

75. Table 2.4 below depicts the evolution of the intercontinental traffic for the period 1987 to 1990. Between 1987 and 1990 the performance of the intercontinental passenger traffic showed significant improvements in all categories.

**Table 2.4*****Evolution of Intercontinental Traffic 1987 – 1990 (in thousands)***

<b>Traffic</b>	<b>1987</b>	<b>1990</b>	<b>Growth per cent</b>
1. Passengers Carried	9,634	11,352	17.83
2. Revenue Passenger Kilometres.	24,512,725	31,873,414	30.03
3. Available Seat Kilometres	38,971,698	51,208,486	31.40
4. Load Factors (per cent)	47	62	(15.00)
5. Revenue Tonne Kilometres.	2,944,191	3,869,950	31.44
6. Available Tonne Kilometres.	5,338,821	7,060,986	32.26
7. Weight Load Factor	55	55	(0.34)

**Source: ICAO and AFRAA**

76. The number of passengers carried by African airlines grew from 9.6 million passengers in 1987 to about 11.4 million passengers in 1990, representing an increase of 17.83 per cent. Revenue passenger kilometres performed moved from 24.5 billion in 1987 to 31.9 billion in 1990 for an increase of 30 per cent.

77. Tonne-kilometres performed increased from 2.9 billion in 1987 to 3.9 billion in 1990, an increase of 31.44 per cent over 1987, while capacity offered expressed in terms of available tonne-kilometres increased by some 32.3 per cent to 7.1 billion available tonne kilometres in 1990 over the 1987 level.

78. The intercontinental traffic constituted the most important market for African airlines, accounting for over 41 per cent of the number of passengers carried and 71 per cent of the revenue passenger-kilometres performed in 1990. This market was characterized by intense competition with foreign airlines. The share of these non-African airlines was estimated at 75 per cent of the traffic. This situation has continued to increase as a result of liberalization and introduction by the European airlines of innovative marketing arrangements such as code sharing, franchising and equity participation.

## Domestic traffic flows

79. Table 2.5 below depicts the evolution of the domestic traffic for the period 1987 to 1990.

**Table 2.5**

### *Domestic traffic 1987 to 1990*

Domestic	1987	1990	Growth per cent
1. Passengers Carried	12,603	13,574	7.70
2. Revenue Passenger Kilometres.	7,769,226	8,819,087	13.51
3. Available Seat Kilometres	11,494,628	13,243,334	15.21
4. Load Factors (per cent)	68	67	(1.00)
5. Revenue Tonne Kilometres.	800,649	902,914	12.77
6. Available Seat Kilometres	1,559,306	1,649,362	5.78
7. Weight Load Factor	51	55	3.40

Source: AFRAA.

80. In 1987, about 12 million passengers travelled on the domestic routes growing by 7.7 per cent in 1990 to 13.6 million.

## Share of world traffic

81. In 1987, Africa's share of world traffic was 1.2 per cent of world passengers, 2.7 per cent of world revenue passenger kilometres (RPK) and 1.0 per cent of world freight ton kilometres (RTK). During the same period, the share of European airlines was 33 per cent of world passengers, 34.1 per cent of world RPK.

82. Since the 1980s, air transport has grown below the world average by a mere 3.5 per cent, the highest growth being in Asia/Pacific region (8 per cent) as shown in the Table 2.6 below.

**Table 2.6****Share of World Traffic - Revenue Passenger Kilometre performed 1980-1990 (000)**

Region	1987		1990		
	Traffic	Share per cent	Traffic	Share per cent	Growth per cent
Africa	29 724	2.7	42 026	2.2	3.5
Asia/Pacific	160 120	14.7	344 103	18.2	8.0
Europe	365 221	33.5	590 358	31.2	4.9
Middle East	28 366	2.6	49 951	2.6	5.2
North America	445 538	40.9	782 305	41.3	5.8
Latin America/Caribbean	60 159	5.5	87 366	4.6	3.8
World	1 089 129	-	1 893 099	-	5.7

Source: ICAO.

## 2.8 Route network

83. Although, there is no recent study of the intra-African route network, a paper submitted to the Seminar on Optimum Development of Air Transport in Africa presented in 1980 summarizes the situation as follows.<sup>20</sup> It was estimated that the potential country pair links that could be established in 1987 among the 51 OAU member countries were 2550.

84. In June 1982, the country pair links increased by 26 to 519, which is a 5 per cent increase over that of 1977.<sup>21</sup> This increase was primarily due to new services established between Zimbabwe and some African countries following the independence of Zimbabwe in 1980. When the 519 country pair links existing in 1982 were distributed among the countries, the paper illustrates that:

- 11 countries had 1 to 5 country pair links;
- 14 countries had 11 to 15 country pair links;
- 18 countries had 6 to 10 country pair links;
- 4 countries had 21 to 24 country pair links; and
- No country had over 24 country pair links.

85. Out of the 4 countries that have air links with more than 20 countries, 3 are in the Western region. About half of the countries that maintain up to 10 direct links with other African countries were in the Eastern region. When the country pair links (519) existing in 1982 are further classified into intra- and inter-regional connections, the following points were noted:

- Out of the potential 30 intra-regional connections in the northern region,<sup>22</sup> there were in 1982 18 country pair links amounting to 60 per cent of the potential.
- The western region<sup>23</sup> has 140 intra-regional connections constituting 51 per cent of the 272 potential intra-regional country pair links.

- The Eastern Region<sup>24</sup> had 101 actual intra-regional connections or 33 per cent of the potential 306 country pair links.
- Similarly, 36 intra-regional connections existed in the Central Africa region accounting for 33 per cent of the potential 110 country pair links.

86. In 1982, intra-regional routes represent 58 per cent of the number routes but account for 81 per cent of the traffic.<sup>25</sup> Trans-regional routes between the subregions represented 42 per cent of the number of routes but only 19 per cent of the traffic; 66 per cent of the routes have a traffic of fewer than 5000 passengers a year, 31 per cent a traffic of between 5000 and 50,000 passengers a year and 3 per cent a traffic exceeding 50,000 passengers a year.

87. The study also showed that routes operated under 3<sup>rd</sup> and 4<sup>th</sup> freedoms were used by 1,883,000 passengers in 1982. Fifth freedom traffic represented only 13 per cent of total traffic, i.e. 282,000 passengers: 59 per cent of this traffic was carried by African airlines and the balance by non-African carriers.

88. The total number of passengers carried within Africa on scheduled and non-scheduled services accounted to about 2.5 million passengers in all, of which 8 passengers out of 10 travelled within the same subregion and this shows the limited number of routes between subregions. Table 2.7 below shows details of the country pair links as of 1982.

89. From the above data, the following general observations could be drawn on the route network:

- (a) 80 per cent of the possible country pair connections have no through plane services (i.e. without change of aircraft), as a result of which the quality of the air links offered to the travelling public were inadequate to the extent that it was not uncommon either to travel outside the continent or to make multiple transfer connections within the continent to get from one African point to another;
- (b) There appeared to be a pronounced subregional imbalance both in terms of the inter- and intra-regional distribution of air services in the continent. Some regions have a more developed level of scheduled connections than others;
- (c) The route network is marked by the preponderance of north-south routes over transversal services. In response to this trend, AFRAA had proposed a scheme based on priority development of east-west routes (known as the AFRAA Grid System), which has not been implemented; and
- (d) Certain African capitals such as Lagos, Abidjan, Dakar, Nairobi, Cairo, Addis Ababa, Douala and Brazzaville have emerged as important traffic transfer points. The analysis of the network also shows that a large portion of the links between city pairs is provided through connections at these major hubs. For obvious reasons, Johannesburg was not covered in the study.

90. The studies also showed that a large number of sectors were not linked at all and some were linked by marginal frequencies of less than three flights per week. As a result, traffic, in most cases seeks connections via airports outside the region. A more recent study commissioned by ECA in 1993 validated the conclusions reached in 1983,<sup>26</sup> and concluded that the route net work in 1993 does not link the various African capitals by efficient air services to such an extent that many passengers have to transit at intermediate points to reach their final destination.

91. A more recent study carried out by ECA at 16 African airports showed that from 1992 to 1999 the number of air links and frequencies in these airports rose from 453 to 556 constituting an increase of 22.7 per cent.

92. The unsatisfactory condition of the regional and subregional network is attributed to one or a combination of the following factors:

- (a) Restrictive traffic rights environment;
- (b) Lack of cooperation and schedule coordination, resulting in duplication of services and wasteful competition among the airlines, Duplication and wasteful competition could be seen mostly on the few lucrative routes;
- (c) Low traffic volume on many city pairs; and
- (d) Lack of operational flexibility experienced by some airlines as a result of limited fleet.

## 2.9 Commercial and technical cooperation

93. The above referred studies underscored the limited number of commercial and technical cooperation among African airlines, the dependence of Africa on the outside world for maintenance, technical assistance and training, the almost complete lack of airline leasing arrangements between African airlines and the very limited number or total lack of other cooperative agreements, other than agreements of a purely technical nature such as ground handling etc. or agreements on routine commercial matters such as general sales agency agreements (GSA), ticketing, traffic handling etc.

94. The lack of cooperation was an obstruction to the development of air transport in the region and an important factor in inhibiting cost reduction measures. The only cooperative arrangements that have been successful to a limited extent are the AFRAA joint fuel purchase among a very limited number of airlines and at limited airports and the Technical Pool, schedule and tariff coordination. But the other plans for cooperative arrangements, such as joint operations, joint insurance, joint station handling, joint promotion, joint use of aircraft, joint maintenance and training etc. developed within AFRAA did not materialize for one reason or another.

95. In its extreme form, this lack of cooperation among airlines is reflected in the absence of mechanism for coordination of schedules and timetables at the regional and subregional level, despite the efforts of ECOWAS, AFRAA, and SADC.

96. This lack of commercial cooperation was reflected in duplication of flights in the same day on some of the more lucrative routes. It was often noted that passengers spend one to three days en route before reaching their final destination even within the same subregion or transit through Europe in order to arrive within reasonable time at their final destination. Thus air transport was found to be inconvenient, inefficient and costly.

## 2.10 Tariffs

97. From a survey of international fares published by ICAO in 1988 (Tables 2.8 and 2.9 below), the average economy class fare per passenger kilometre was the third lowest in the world preceded by South America and Asia/Pacific. The data for Africa was between US cents 25.3 to 13.4 for distances between 250 and 4000 kilometres compared to the world average of 37.5 to 15.4 US cents per passenger kilometre.

98. The tariff structure has certain problems related to directional fair imbalance, currency disparity and income level. The study also considered the problem of tariffs by comparing economy class fares at the regional level with those of other continents.

Although, the study concludes that the level of fares does not show major distortions placing Africa at a disadvantage, it should be noted that the difficulties associated with currency conversion problems and the average standard of living in Africa make the fares inaccessible.

**Table 2.8**

**Comparison of average economy class normal fares per passenger kilometre**

Route Group	Us Cents per passenger Distance (KM)						
	250	500	1000	2000	4000	8000	12000
International Total -World	37.5	30.0	24.0	19.3	15.4	12.4	10.9
Africa	25.3	21.6	18.4	15.7	13.4	-	-
Europe	54.7	40.9	30.6	22.9	17.1	-	-
Middle East	32.0	25.3	20.1	15.9	-	-	-
Asia/Pacific	19.6	17.8	16.2	14.8	13.4	12.2	11.6
North America	33.9	24.1	17.1	12.2	8.7	-	-
South America	22.2	18.7	15.8	13.3	11.2	-	-
Central America	34.1	24.9	18.2	13.3	-	-	-
North – Central America	37.2	27.3	20.0	14.6	10.7	-	-
North – South America	-	20.7	17.8	15.4	13.3	11.4	10.5
Europe-Africa	-	26.2	22.6	19.4	16.7	14.4	13.2
Europe – Middle East	-	22.4	21.1	20.0	18.8	-	-
Europe – Asia/Pacific	-	-	14.4	13.9	13.4	12.9	12.6

**Source: ICAO Circular 219 – AT/87: Survey of International Air Transport Fares and Rates, September 1988.**

99. Economy class excursion fares were widely available in Africa with a level of some 30 per cent lower than the applicable full economy fare. There were also preferential fares available to certain categories of passengers (youth, students). However these fares have not generated enough traffic either because of not being advertised or because of the income level. The study concluded that promotional fares mostly concern north-south routes and not intra-African routes. When compared to income level in Africa, the fares are much higher for the average African traveller.

**Table 2.9**

*Comparison of average general cargo rates per ton kilometre for shipment of less than 45 kilos by route group and by distance, 1988.*

Route Group	Us Cents per ton kilometre by Distance						
	250	500	1000	2000	4000	8000	12000
International Total -World	266	218	179	146	120	98	88
Africa	178	155	136	118	103	-	-
Europe	366	276	209	158	110	-	-
Middle East	269	209	162	126	-	-	-
Asia/Pacific	187	161	138	119	102	88	80
North America	251	163	106	68	44	-	-
South America	327	254	197	152	118	-	-
Central America	313	228	165	120	-	-	-
North – Central America	216	170	133	105	82	-	-
North – South America	211	161	123	94	72	61	-
Europe-Africa	-	247	199	160	129	104	91
Europe – Middle East	-	131	135	138	42	-	-
Europe _Asia/Pacific	-	-	145	132	120	109	103

Source: ICAO Circular 219 – AT/87.

## 2.11 Quality of air services

100. Although, there are many yardsticks against which the quality of the inter-African air services could be measured,<sup>27</sup> due to lack of sufficient data the evaluation is made on aircraft type, fares, schedule connections and facilitation at airports.

101. *Aircraft type* - The type of aircraft operated plays a key role in the assessment of the quality of service

**Table 2.7**

*Country pair links*

From	TO											
	Central Africa			East Africa			Northern Africa			West Africa		
	Potential	Actual	per cent	Potential	Actual	per cent	Potential	Actual	per cent	Potential	Actual	per cent
Centre	110	36	33	198	17	8	44	8	12	107	37	20
East	198	17	8	306	101	33	108	10	9	306	8	3
North	66	8	8	108	10	33	30	18	9	102	21	3
West	187	37	20	306	8	3	102	21	21	272	140	51

in terms of passenger comfort, reliability of service, spaciousness and cleanliness etc. Out of the 363 jet aircraft operated in 1982, only 17 were wide body aircraft, while the balance was narrow body aircraft. This limited number of wide body aircraft operated to Europe and North America. Because of the type of aircraft operated by the majority of African carriers on the inter-Africa routes, the quality of service offered in terms of comfort and reliability of service is not to a level to fully satisfy the expectations of the travelling public in Africa.

102. ***Schedule connections and reliability*** - The dimension of the problem is demonstrated by the fact that out of the potential country pair connections only 20 per cent or 519 connections existed in 1982. This situation was further compounded by the fact that the then existing connections were not conveniently inter-connected among themselves, thereby necessitating multiple transfers and considerable layovers at intermediate points. Despite efforts for more coherent schedule coordination, no substantial results have been achieved for various reasons including perhaps clashes in market strategies and differences in scheduling philosophy of African carriers.

103. As of June 1982, the level of frequencies operated showed that:

- 45 per cent of the country pair connections have only one frequency per week;
- 32 per cent are connected with 2 to 3 frequencies per week;
- 9.8 per cent have 4 to 5 frequencies;
- 6.2 per cent have 6 to 7 frequencies; and
- 7 per cent have over 7 frequencies per week.

104. The density of frequencies is more pronounced in the northern region and to some extent in the western region than the eastern and central regions. For example 70 per cent of the intra-regional scheduled services in northern Africa have more than 3 frequencies, whereas 45 per cent of the services in the western Africa, 12 per cent in central Africa and 10 per cent in eastern Africa have more than 3 frequencies per week.

105. The published schedules were unreliable in most cases in terms of on-time performance and passenger bookings; ageing fleet and unavailability of back-up equipment may well tend to aggravate the problem.

106. ***Facilitation at airports*** - Annex 9 of the Chicago Convention sets out the standards of facilitation at airports and comparison between these standards and the prevailing conditions at airports in Africa reveal discrepancies with the recommended standards.

107. The quality of service available to users of air transport in Africa in terms of the rapid movement of passengers and cargo is affected by the limited facilities and the bureaucratic procedures prevailing at African airports. These difficulties of facilitation arise from political consideration and national security, fraud prevention, currency control etc. and partly from the lack of coordination and harmonization of procedures of the various government agencies responsible for customs, immigration and quarantine. African passengers, in general, are not aware of and are not informed of their rights.



## 2.12 Financial performance

108. Published data on the financial and operating results of African airlines are extremely scarce and when available are not complete and reliable. However, from data published by AFRAA, there has been improvement in the revenue generated by African airlines that rose from US\$ 3.5 billion in 1987 to US\$ 5.6 billion in 1990.

109. On the other hand, data published by ICAO for the period 1980-1990,<sup>28</sup> reveals that operating revenues of African airlines increased annually by an average growth rate of 7.1 per cent against a world average growth rate of 8.5 per cent.

110. Operating expenses, on the other hand, for the same period increased by 6.8 per cent. An industry publication estimates that in 1981 the total operating cost of African airlines were higher by 82 per cent than the world industry average.<sup>29</sup> The operating cost per available ton kilometre of African airlines in 1981 was 80.98 US cents, while the world average stood at 44.36 US cents. When the various components of the operating costs of African airlines are compared to that of the world industry average the situation appeared as follows:

- (a) Fuel accounts for about 31 per cent of the total operating cost of African airlines, compared to the world industry average of about 28 per cent. When expressed in terms of available ton kilometre, the cost of fuel for African airlines is 98 per cent higher than the world average;
- (b) Maintenance and overhaul costs of African airlines account for about 9 per cent of the total operating cost. In terms of available ton kilometre, African airlines spend about 86 per cent more than the world average;
- (c) African airlines costs per available ton kilometre for flight equipment, insurance, landing, station and ground handling were higher by about 155 per cent than the world industry average; and
- (d) Cost of acquisition of aircraft is higher by almost 175 per cent than the world average, as a result of foreign currency fluctuation, interest rates and economies of scale.

111. The overall poor financial performance and low profitability are caused by two groups of factors: high operating cost and poor competitiveness. The high operating cost is the result of the small size of the airlines, which do not have the size to justify in-house facilities and capabilities for training and maintenance and as a consequence have to pay high training and maintenance costs; low utilization of aircraft and lack of flexibility due to small fleet; high insurance costs; high capital costs on purchase of aircraft and equipment.

112. Operating results were reported to be negative in the period 1988 to 1990. In accordance with data published by AFRAA, AFRAA member airline showed an accumulated loss of US\$ 490 million during the period 1987 to 1990. These losses were covered by state subsidy. It is not hard to see the underlying reasons for the poor performance: (a) the general economic recession in Africa – air transport is extremely sensitive to fluctuations in economic activity; (b) weak currencies and exchange rate fluctuations.

## 2.13 Summary of the regulatory, economic and commercial environment

113. In summary, the regulatory, economic and commercial operations of air transport in Africa had the following general features at the time of the advent of liberalization. The airlines were ill-equipped to face the challenges and opportunities offered by liberalization and Governments were unable to create an environment conducive for a viable, efficient and sustainable air transport system:

- (a) While an adequate number of bilateral agreements existed among African States, the major blockage for the optimum development of air transport in Africa was not due to the insufficient number of agreements but rather to the restrictive nature of these bilateral agreements;
- (b) Proliferation of small and weak airlines, with poor financial performance and poor and inadequate services;
- (c) Lack of commercial and technical cooperation to offset the high operating cost and improve overall competitiveness; and
- (d) Thin and fragmented intra-African market with great disparity in traffic flow, from a few hundred passengers to 130,000 a year; uneven distribution with two-thirds concentrated in the bracket of under 5000 passengers a year; average volume of passenger traffic flow of 6,700 passengers a year or 128 a week, both ways. This corresponds to the utilization of a single 100 seat aircraft once a week with a load factor of 64 per cent.

114. In practical terms, the then prevailing regulatory framework and protectionism have not served the interests of or helped to strengthen the operations of most African airlines. The regime has restrained the potential for growth. The current weakness of some African airlines is perhaps the result of this overtly protectionist policy, as evidenced in retrospect by the failure of major airlines (for example Zambia Airways, Uganda Airlines, Air Mali, Royal Swazi National Airlines, Air Afrique, Nigeria Airways etc.).

115. It is against this background that the international air transport industry was undergoing radical transformation nearly 45 years after the signing of the Chicago Convention. These changes present serious challenges, uncertainties and opportunities for African airlines as will be seen in the following chapters.

# 3 Integration and Cooperation Initiatives

## 3.1 Background

116. Since the early years of independence, air transport has been regarded by Africa as a strategic instrument for accelerating the process of the physical integration of the continent. In pursuit of this objective, a number of national airlines were established by African countries as the “chosen instruments” for the advancement of this policy objective. Since then, regional integration and cooperation in air transport have featured prominently in the political and economic agenda of African States, regional governmental organizations and subregional economic communities.

117. Over the next four decades various initiatives were taken by African Governments and regional organizations for the purpose of attaining the objectives of inter-African air transport integration and cooperation, culminating in 1999 in the adoption of the Yamoussoukro Decision.

118. Ever since the first Air Transport Conference organized by ECA in 1964, a considerable number of studies and recommendations were formulated to offset the inherent disadvantages of African air transport: too many airlines, thin traffic, poor financial performance, high operating cost etc.<sup>30</sup> The analysis of these initiatives is made on the basis of these documents, studies and recommendations that were formulated over a period spanning almost four decades.

119. The recommendations and conclusions of these studies involve broadly three major areas:

- (a) Market access and the exchange of traffic rights - the opening-up of the air transport market by the removal of barriers to airline operations, replacement of the restrictive and rigid environment by a more flexible regime and unification of the fragmented air transport market;
- (b) Integration of airlines; and
- (c) Inter-airline cooperation in commercial (pool, schedule coordination, joint sharing of capacity; harmonization of schedules); technical (joint maintenance facilities, ground handling, standardization of training, pooling of spare parts), training and human resources.

120. The path along which the integrationist and cooperative initiatives in air transport has followed in order to influence the development of air transport in Africa started with the OUA Charter, solidified in the air transport programme of the two United Nations Transport and Communications Decade for Africa that ultimately culminated in the adoption of the Yamoussoukro Declaration in 1988 and the Yamoussoukro Decision of 1999 after a long and protracted journey.

121. These air transport initiatives are schematically presented in Box No. 3.1 below which shows the evolutionary process followed over nearly four decades of efforts through three distinct phases namely:

- (a) Phase One: Period of Conceptualization that paved the Road to Yamoussoukro, 1964 to 1987;
- (b) Phase two: the period of concretization and adoption of the Yamoussoukro Initiatives, 1988 to 1997; and
- (c) Phase Three: The period of consolidation, 1997 to date.

### **Box 3.1**

#### ***Chronology Of The Evolution Of Major African Policies***

<b>PHASE I 1964 -1987: THE ROAD TO YAMOOUSSOUKRO</b>	
1963 - Adoption of the Charter of OAU	Provided the political umbrella and empowerment Integration and cooperation - underpinning of the history of African civil aviation is the political commitment to cooperate and integrate air transport at the continental level
1964 - First Air Transport Conference	Establishment of AFCAC; Various ntegrationist proposals formulated
1978- Launching UNTACDA I	Aimed at providing the infrastructure basis for air transport: 25 per cent of projects; several studies, such as: 1984: Optimum Development Of Air Transport 84-85: Coordinated Network Of Aircraft Maintenance And Servicing Centres
1980 - Lagos Plan Of Action	Provide the political and economic basis for air transport development in Africa.
1980 General Civil Aviation Policy Declaration	Basis of AFCAC action in the technical, economic and cooperation areas
1980 - African Tariff Conference	Convention For The Establishment Of A Regional Forum For Tariffs developed
1984 - Mbabane Declaration	First comprehensive set of rules on traffic rights – Led To YD; AFCAC Model Multilateral Agreements
<b>PHASE II 1988 To 1997: THE YAMOUSOUKRO INITIATIVES</b>	
1988 - Yamoussoukro Declaration	
1994 - Mauritius Guidelines On Traffic Rights	
<b>PHASE III 1997 TO DATE: PERIOD OF CONSOLIDATION</b>	
1999 - Yamoussoukro Decision	
1999 To Date - Subregional Initiatives	

122. Each of these landmark events will be briefly examined in the following paragraphs.

## 3.2 Phase I - Road to Yamoussoukro (1964 to 1987)

123. The period starting with the adoption of the OAU Charter in 1963 and extending to 1987 was characterized by the search for consensus building and conceptualization of various policy options for African air transport. The period was also marked by the depth of the important studies undertaken, the conferences organized and the important recommendations formulated, the problems and difficulties of African air transport and the recommended courses of action were widely and exhaustively studied and discussed.

124. This was also the period, during which various modules of integration and cooperation were conceptualized, ranging from the establishment of a pan-African airline to schedule coordination and consensus building on traffic rights issues by reconciling the opposing viewpoints then prevalent.

125. The chronology of the evolution of the integrationist and cooperative initiatives during this phase were marked by the following events:

- (a) Adoption of the Charter of the OAU May 1963;
- (b) Convening by ECA of the first Air Transport Conference in 1964;
- (c) Launching of the First United Nations Transport and Communication Decade for Africa (UNTAC-DA I 1978-1988);
- (d) Lagos Plan of Action and Monrovia Strategy 1980;
- (e) Adoption by the OAU/AU of the General Civil Aviation Policy Declaration, in June 1980; and
- (f) Adoption of the Mbabane Declaration in November 1984.

### 3.2.1 Adoption of the OAU Charter

126. A central policy issue of African statesmen since the early 1960s has been the manner in which economic development of the continent, including intra-African transportation, should be organized on the basis of multi-lateral cooperation among African States. A wide spectrum of opinion was to form a tight geographical grouping without borders seeking to establish a continental framework to overcome the disadvantages of the African civil aviation - too many airlines, too much politics, and thin traffic. Hence greater regional cooperation, on a continent-wide basis, was thought to offset these disadvantages.

127. When the Organization of African Unity (OAU) was first established in May 1963, the founding fathers recognized in its Charter the advantages of economic cooperation.<sup>31</sup> The adoption of the Charter set the stage by creating the political forum for cooperation. Since then, the objectives of cooperation and integration enshrined in the Charter have been the underpinning of the history of African civil aviation<sup>32</sup>

### 3.2.2 Conference on Air Transport in Africa

128. The convening by ECA of the first Conference on Air Transport in Africa in November 1964 was the second important event in the chronology of the evolution of air transport initiatives in Africa. The conference was organized on the initiatives of the Economic Commission for Africa and the International Civil Aviation Organization (ICAO) with the objectives of examining measures to be taken to develop air transport to, from and within Africa.

129. The Conference is important not only because it brought together for the first time African civil aviation policy makers to give impetus to the process of integration and cooperation in air transport, but also because it made the first initial attempts at joint collaborative programmes for air transport. The conference set the stage for three crucial issues that were to serve the basis of subsequent actions for Africa's aero political policies, namely: (i) creation of a unified African market; (ii) airline integration and cooperation; and (iii) traffic rights issues. The Conference examined a number of broad issues that resulted in the adoption of two major recommendations.

130. *Integration of African airlines* - Three proposals on the modalities of integration of African airlines were considered by the Conference, as a solution for the development of air transport services in Africa. The first proposal submitted to the Conference was the creation of one or several smaller airlines that would be under international control. These airlines would be authorized to operate special air transport services; the proposal was rejected as it met considerable resistance from participants at the Conference.

131. *Subregional airlines* - A second proposal submitted by ECA was the regrouping and integration of subregional airlines and establishment, in lieu thereof, of multinational airlines controlled by African governments. This option was retained by the Conference, which requested further studies to be undertaken to deepen and give substance to the recommendation, including the feasibility of the concept of subregional airlines at the level of each subregion. To that end, African States were urged to start a process of subregional consultation to determine the ideal subregional groupings to which each State desires to be a member and to explore all issues relating to the establishment of subregional airlines with the assistance of ECA and ICAO. They were supposed to take appropriate policy decisions and other measures necessary for the creation of such airlines at the level of the subregions and to inform ECA and ICAO through the OAU by no later than 31 March 1965 of actions taken. No document was found recording the subsequent actions taken, if any.

132. *Pan-African airline* - The third proposal examined by the Conference related to the establishment of a Pan-African airline as the sole instrument to operate all international air services within Africa and the rest of the world. The recommendation was shelved as it was considered premature at that time to be revisited at an opportune time at a later stage.

133. *Cooperation in matters of civil aviation* - The Conference further considered the measures to be taken to strengthen civil aviation cooperation among African governments to ensure a harmonious development of air transport in Africa. The Conference was of the view that it was necessary to create a permanent civil aviation body. It requested ECA, in cooperation with ICAO, to start consultations with the OAU with a view of the establishment of such a permanent civil aviation body. It was this recommendation that gave birth to the African Civil Aviation Commission in 1969.<sup>33</sup>

134. The 14 year-period following the Air Transport Conference in 1964 up to the time of the launching of the first United Nations Transport and Communication Decade for Africa in 1978 appear to be barren as

no major event occurred during this lull period, except the repeated calls by the OAU, AFCAC and AFRRA Annual General Meetings for greater cooperation and relaxation of the grant of traffic rights.

### 3.2.3 Launching of UNCTADA I

135. The launching of the United Nations Transport and Communication Decade for Africa (UNCTADA I: 1978-1988) is an important turning-point in the evolution of air transport initiatives coming after a 14-year lull period. UNCTADA is the overarching landmark event that was to serve as the basis for all of the major air transport initiatives during the following two decades. The first Decade programme covered the period 1978-1988 (UNTACDA I). The second Decade programme was proclaimed by the United Nations General Assembly in 1991, covering the period 1991-1999 (UNTACDA II). The two Decades programmes provided the global policy framework for air transport and a comprehensive plan of action was established for the air transport sub-sector.

136. The various initiatives and studies undertaken during this period are the end product of a two-decade long assessment of the problems facing African air transport. Indeed, that all of the major policy initiatives, including the Yamoussoukro Declaration, came about as a result of the evaluation made under the Decade programmes is significant. Transport and communication were considered the two pillars of economic development and essential for the physical integration of the African land mass.

137. The air transport component<sup>34</sup> of the programme seeks to establish an integrated air transport system by addressing key elements aimed at encouraging African States and airlines to cooperate in air transport in order to be able to create the necessary conditions for the optimum development of air services. Specifically, the objectives identified for air transport were:

- (a) Cooperation for better use of air transport facilities and services by adopting bilateral and multilateral arrangements aimed at: (i) pooling traffic; (ii) pooling equipment; (iii) joint establishment and pooling of training facilities; (iv) pooling and joint establishment of maintenance and overhaul facilities; (v) exchange of personnel and standardization of training and licensing requirements; (vi) liberalization of traffic rights among African states; (vii) provision and, where applicable, joint operation and pooling of air navigation facilities and services;
- (b) Integration of airlines through the formation of multinational airlines which, in theory, will have greater resources (human, financial and material) better than the individual airlines, thus being in a better position to improve efficiency and profitability, but also improving the African air transport to become more competitive and better equipped to contribute to social and economic development and integration;
- (c) Harmonization of domestic, intra-African and international traffic; and
- (d) Promotion of the development of airfreight and airmail in Africa.

138. During the two Decades, many conferences were organized at which the conclusions and recommendations of various studies were examined and new policy orientations addressed. ECA, through the Conference of African Ministers of Transport, Communications and Planning, and the OAU during the Decade adopted numerous important resolutions that touched on regional development of air transport and liberalisation of the sector. In many of the resolutions, reference was made to the Decade.

139. Although no direct substantial impact could be attributed at the time of the evaluation, UNCTADA had a major indirect impact in sensitizing governments of the need to develop infrastructure and the need to pursue regional policies that would ensure efficiency. In the evaluation report of the Decade it is noted that: *“One area in which the impact of the Decade programme is clear is that UNCTADA global objectives and strategy have become the de facto African Transport and Communication Policy. The Decade programme was incorporated in its entirety into the Lagos Plan of Action.”*<sup>35</sup>

### **3.2.4 General policy declaration in the field of civil aviation**

140. In 1979, a General Policy Declaration in the Field of Civil Aviation was adopted in May 1979 by the African civil aviation authorities at the Sixth AFCAC Plenary Session and subsequently endorsed at the highest political level by the 17th OAU summit of Heads of State and Government in July 1980. The General Policy Declaration covered a wide range of subjects both in the technical and in the economic area that included personnel training, cooperation and integration of African airlines, optimum development of air services within Africa, financing of aeronautical activities, etc.<sup>36</sup>

### **3.2.5 The Monrovia Strategy and Lagos Plan of Action**

141. The search for alternative approaches to air transport regulation is intimately linked to the process of rethinking that was set in motion in the 1980s by ECA when African leaders were made to face the bleak realities of the failing economic policies which consequently led to the adoption of the Monrovia Strategy<sup>37</sup> and the Lagos Plan of Action.<sup>38</sup>

142. The depressing economic performance of African countries in the 1970s set in motion a process of rethinking the initiatives of ECA with the publication of a study in 1977 on the economic situation in Africa – “Preliminary Assessment of the long-term trends in Africa”.<sup>39</sup> The study showed that African economies had since 1970 been sliding downwards and called for a reassessment of the economic policies of African countries. The shock that resulted from the study led to the convening of the first ever economic summit in Lagos in 1980. This Conference was preceded by the 1979 Monrovia session of the OAU that has adopted the Monrovia Strategy.

143. At the Lagos Conference, it was recognized that that no fundamental change can be bought about to the economic problems of Africa without beginning by the “substitution of an inward-looking development strategy for the inherited externally oriented one”.<sup>40</sup> They also agreed on the need to take action to provide the political support necessary for the success of measures to achieve the goals of “rapid self-reliance and self-sustaining development”. They made the “commitment individually and collectively to promote the economic development, social integration of our economies with a view to achieving an increasing measure of self-sufficiency and self-containment”. More importantly, the Lagos Plan of Action committed African countries to “develop domestic and regional infrastructure and set up regional, subregional and national institutions to promote self-respect”.

144. These commitments led in 1990 to the signing of the Treaty Establishing the African Economic Community (AEC). In the Treaty, African states undertook to promote the integration of transport and communication and progressively harmonize their rules and regulations in order to achieve a harmonious and integrated development of transport and communications network. In Article 61(2), African countries agreed with respect to air transport to harmonize their air transport policies.



145. Air transport is not only dependent on an improved economic performance but also on an enlarged market without the hurdles that airlines have to negotiate to be able to operate economically. It was no surprise therefore that African countries gave their support to the then ongoing United Nations Transport and Communications Decade for Africa. UNTACDA I aimed at providing the infrastructure basis while the Lagos Plan of Action and the Monrovia Strategy, the economic basis for air transport.

### **3.2.6 Resolutions adopted**

146. During this period, the OUA, the AFCAC Plenary, the Conference of African Ministers of Transport, Communications and Planning, the Annual General Assembly of AFRAA, all adopted a series of resolutions. Some of the most important resolutions were:

- (a) AFCAC Resolution S5-18 requesting African States to grant 5<sup>th</sup> freedom traffic;
- (b) Resolutions of the Ministers of Transport, Communications and Planning resolutions, in particular ECA/UNTACDA/RES.79/8 of May 1978; ECA/UNTACDA/RES.83/34 of March 1983 on the freedoms of the air; ECA/UNTACDA/RES.79/7 of May 1979 on the development of an African Tariff conference and ECA/UNTACDA/RES.86/60 of March 1986 relating to the establishment of a coordinated maintenance and repair facilities; ECA/UNTACDA/RES. 79/6, 81/19, 83/34 urging African States to facilitate and show flexibility in the grant of 5<sup>th</sup> freedom traffic rights; and
- (c) OAU Resolution CM/RES. 980 (XXXIII) on the same subject of flexibility in the granting of 5<sup>th</sup> freedom and Resolution CM/RES.804 (XXXV)- General Policy on Civil Aviation.

147. The Lagos Plan of Action of 1980 and the Mbabane Declaration of 1984 have all urged African countries to engage in liberalized air transport agreements, including the free exchange of 5<sup>th</sup> freedom. These policy documents have also called upon the subregional economic groupings to engage in the drive to create a larger and freer air transport market in Africa.

148. As the years passed and despite the many resolutions and important studies commissioned, no major breakthrough occurred that would take the recommendations beyond the study stage and the conference venue. Many of the good ideas were not acted upon.

149. At the same time, the external transformations were accelerating in the 1980s by far-reaching changes in the design and implementation of policies in the civil aviation industry, exerting considerable pressure on the traditional operating and regulatory environment of international air transport established under the Chicago Convention of 1944. Domestic deregulation in the United States in 1978 has spearheaded these changes, followed by European liberalization as will be seen later. However, Africa remained immune to these changes. Africa's inertia was in stark contrast to the rapidity with which international air transport was changing.

### **3.2.7 Establishment of the African Air Tariff Conference**

150. One immediate result of the external pressures for change was the withdrawal of anti-trust immunity to the IATA Tariff Coordination machinery. This action led to the adoption in 1980 of the Convention on the Establishment of the African Air Tariff Conference (AFTATC), which was conceived as a direct response to the US Civil Aeronautics Board (CAB) Show-Cause Order. The CAB, in conformity with its deregulation

measures, removed anti-trust immunity from the IATA tariff coordination activities. As a result, no US carrier could participate in IATA rate making, as any decision made within that framework would infringe US anti-trust laws.

151. The Convention on the Establishment of the African Air Tariff Conference, although never implemented, can be said to be an example of the efforts at regional cooperation. The Convention had the main objective of establishing a regional tariff coordination mechanism for all tariffs and act as machinery for negotiating all tariffs.

152. It is regrettable, of course, that the functioning of AFRATC has been moribund up to now, thus mirroring the then prevailing attitude of inaction by the failure to ratify the Convention. The expectations of African carriers for stable and harmonized tariffs have thereby suffered great disappointment.

153. However, AFRATC Experimental, as it has come to be known, is continuing within AFRAA, to meet and undertake functions of tariff coordination. It has played an appreciable role as a forum primarily for Africa's airlines to meet on a regional basis and seek to influence the international machinery for the establishment of international fares and rates and to forge a common position among its members on proposals related to fares and rates.

### **3.2.8 Mbabane Conference on the Freedoms of the Air**

154. It was in the context of the continued external pressure as well as the difficulties encountered in the grant of traffic rights that the African Ministers of Transport, Communication and Planning adopted in 1978 a resolution urging flexibility in the granting of traffic rights.<sup>41</sup> The non-implementation of these resolutions showed the intrinsic conflict in respect to traffic rights.

155. A further important initiative was therefore required to be taken, this time focusing on traffic rights. A conference on the freedoms of the Air was organized as part of the Decade activities by ECA in collaboration with the OAU, and AFCAC in Mbabane (Swaziland) from 19 - 23 November 1984.<sup>42</sup>

156. The Mbabane Conference was important in many respects, in particular for the in-depth examination, for the first time, of the issue of traffic rights.<sup>43</sup> It specifically dealt with traffic rights in Africa. The results of the Conference gave impetus to the Yamoussoukro Declaration.

157. The primary objectives of the Mbabane Conference were the exploration of all available avenues to advance the implementation of resolutions on traffic rights that had in the past created considerable implementation difficulties. It was thought important that, despite the complexities of the problems, a consensus could emerge on the modalities of implementation of these resolutions.

158. Important documentation was prepared by ECA for consideration by the Conference, covering a wide spectrum of issues pertinent to the air transport sector. These documents underscored the principal factors that were obstacles to the contribution of air transport for the economic integration and development of Africa. Among these factors, protectionism was the most important which entailed the difficulties in the exchange of traffic rights and the lack of coordination and cooperation in air transport.<sup>44</sup>

159. The principal factors affecting air transport that were identified by the conference included: (a) difficulties relating to the granting of traffic rights and protectionism; (b) proliferation of airlines which, in the

absence of a harmonized programme, resulted in the acquisition of different equipment, wasteful duplication of efforts and competition, poor route network and quality of services; (c) lack of cooperation and coordination; (d) lack of integration of airlines; (e) the need for harmonization of legislation; (f) ratification of AFRATC convention; (g) currency conversion and remittance problems; (h) facilitation at airports; (i) the low level of traffic, the concentration of traffic on a limited number of routes and the lack of adequate connections characterize the air transport situation;<sup>45</sup>; (j) the proposal to establish the AFRAA Grid which will allow for the organization of better connections.

160. The outcome of the Conference was the adoption of the Mbabane Declaration on the Freedoms of the Air. The conference reiterated some of the UNTACDA global objectives and came out to specifically address the issue of traffic rights; it decided to set up a technical committee whose main objectives would be to establish a common African approach on the free exchange of the first two freedoms of the air and to explore all “possibilities of enhancing commercial and technical cooperation between African countries, including compensatory financial schemes or arrangements and joint operations of services.”

161. The Technical Committee was also to persuade governments to facilitate the exchange of 3<sup>rd</sup> and 4<sup>th</sup> freedom freely. With regard to the 5<sup>th</sup> freedom, the Conference was of the view that the Technical Committee should encourage states to exchange it in order to improve air transport services in Africa.

162. The consensus that emerged at the Conference was:

- (a) The implementation of prior resolutions on the granting of traffic rights has created numerous problems, of which the most important were on the one hand the protectionism adopted by African states and on the other the proliferation of national carriers as a manifestation of national sovereignty;
- (b) Having regard to the many problems in the granting of freedoms of the air, in particular the 5<sup>th</sup> freedom, the solution would appear to be in the direction of the integration of airlines and the establishment of multinational airlines that ultimately would facilitate the exchange of traffic rights. The integration would be an evolutionary process to be accomplished in phases: (i) cooperation in the technical field; (ii) cooperation in the commercial area; (iii) granting of traffic rights; (iv) training; (v) establishment of multinational airline and subregional airlines; and (vi) the establishment of a pan African airline in conformity with the Lagos Plan of Action.

163. The Mbabane Conference gave an idea of the attitude African governments were going to adopt with respect to intra-African air transport. The Conference reiterated the UNCTADA global objectives and came out specifically to deal with traffic rights in Africa. One clearly sees that at long last, after almost two decades, African governments were made to evaluate their policies and pave the way to Yamoussoukro. The fact that they assembled in Yamoussoukro in 1988 to discuss some of their old policies was not therefore surprising.

164. The results of the Mbabane conference were examined by the working group and its conclusions presented to the conference of African Ministers of Transport and Communications that was held in Kinshasa in March 1987. The Ministers requested ECA to organize a special meeting of African Ministers responsible for Civil Aviation for an in-depth study of the matter. A working group was thereafter established composed of officials from civil aviation authorities, airlines and subregional organizations to assist ECA in the preparation of the special conference.

### 3.2.9 AFCAC Model Multilateral Agreements

165. Following the endorsement of the Mbabane Declaration by AFCAC in 1986,<sup>46</sup> a Panel of Legal Experts was established to develop model multilateral agreements reflecting the Mbabane principles with regard to the exchange of traffic rights. These model air transport agreements were adopted by the 11<sup>th</sup> Plenary of AFCAC in Blantyre as reference documents that African states could use in the exchange of traffic rights. The model agreements adopted were:

- (a) Model Multilateral Agreement among African Countries, which is a group agreement;
- (b) Model Air Transport Agreement between Two Groups of States, which is a group to group agreement; and
- (c) Model Air Transport Agreement between a Group of States and One State.

166. The value of the model agreements can be seen only as an effort to standardize and nothing more; the models did not add much value to the relaxation of the exchange of traffic rights. They simply codified the then prevailing thinking, other than the free exchange of the 1<sup>st</sup> and 2<sup>nd</sup> freedoms (transit rights); the other rights were based on commercial exchange of the 3<sup>rd</sup> and 4<sup>th</sup> freedoms beyond a certain weekly frequency and a commercial exchange of the 5<sup>th</sup> freedom.

### 3.2.10 Yaoundé Treaty

167. Finally, a word on the now defunct Yaoundé Treaty<sup>47</sup>. The Yaoundé Treaty of 1961 was one of the first multilateral air transport agreements. It served as a powerful integration tool between the countries of the region as it provided for the creation of a regionally owned long-haul carrier – Air Afrique.

168. The main provisions of the Treaty covered the creation of Air Afrique, the assignment of the international traffic rights of each signatory to Air Afrique and the definition of the relationship between Air Afrique and the national airlines of the signatory states.

169. In retrospect, the net effect of the Yaoundé Treaty was the creation of a strong monopoly over both long-haul and intra-regional air transport services. In evaluating the net benefits of the Treaty, one study remarked that “while there were many at that time who were proud to have created the multinational carrier (RK), it is now clear that in hindsight, the Yaoundé Treaty has only served to isolate the region from external pressure and competition and has been the main obstacle to efficient and profitable air transport in the region.”<sup>48</sup>

### 3.2.11 Summary

170. In summary, the period starting in the mid-1960s to 1987 is generally characterized by protectionist air transport policy, lack of cooperation and the elusiveness of regional integration and cooperation. The strategies for the development of air transport in Africa considered during this long period of gestation revolved around the following clusters of integration and cooperation initiatives.

- (a) **Traffic rights issues** – The difficulties in achieving a more flexible exchange of traffic rights are the result of the clash of two opposing viewpoints that emerged during this period. The conflict between those carriers that placed emphasis on the operation of 3<sup>rd</sup> and 4<sup>th</sup> traffic with those other carriers attempting to operate viable continental or subregional routes requiring access to 5<sup>th</sup> and 6<sup>th</sup> freedom traffic. A compromise sought by way of monetary compensation for operating 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> freedom traffic routes in excess of those available on a reciprocal basis did not either become effective. Against the background of very limited point-to-point traffic, the support of 5<sup>th</sup> freedom traffic was most crucial in ensuring the sustainability and profitability of any service. The search for a practical solution to the stiff and rigid bilateral environment was to dominate the discussion in Africa for over four decades.
- (b) **Integration of airlines** – The proliferation of African airlines (the PTA region alone had 20 airlines) of different stages of development and size, ranging from the “relatively large” airlines to the small regional airlines was considered a hindrance to the development of African air transport. The ECA proposal for “Linkage of African Airlines”,<sup>49</sup> initially focusing on a small group of selected airlines did not take off the ground or go beyond the study stage as well as the recommendations of number of studies undertaken by ECA for the establishment of a joint airline – establishment of an airline for the great lakes region, AJAS, Mano River, ECOAIR, Air Maghreb etc.
- (c) **Subregional aviation policy coordination machinery** – Subregional Aviation Policy Coordination Machinery based on the work already done by AFCAC and AFRAA was proposed to be developed and refined for a consolidated approach to the negotiation of air services agreements with third countries on behalf of the countries constituting a subregion and standardization of common aviation policy, including certification, licensing and safety and multilateral air services agreement among the countries of the subregion.
- (d) **African Air Tariff Conference** – The objectives of the African Air Tariff Conference (AFRATC) were to establish regional fares and tariff coordination mechanism which will be the forum for establishing intra-African tariff and serve as a framework for negotiation with other airlines. The Convention was signed by 20 countries and ratified by 11 but needed 25 ratifications for entry into force.
- (e) **Technical and commercial cooperation** - a number of commercial and technical cooperation projects conceived during this period did not materialize among African airlines. These projects were designed to reduce dependence on the outside world for maintenance, technical assistance and training and achieve economies of scale and cost reduction, the most important of which were: (i) the two joint training centres (Addis Ababa training centre for Anglophone countries and the Mvengue Centre in Gabon for the Francophone countries) remained not fully utilized; (ii) joint insurance, joint purchasing and subcontracting (spare parts; catering, disposable items, technical and ground handling, joint commercial representation ) designed as a collective approach to enable better economies of scale and resulting substantial cost savings (iii) aircraft leasing and operating entity, the objectives being to evaluate different mechanisms for the use of the airlines of modern technology aircraft and to satisfy the different requirement of the airlines to be able to operate commercial aircraft at optimum level; and (iv) coordinated maintenance centres.

171. The protection of national airlines and the go-it-alone syndrome summarizes eloquently the situation during this phase. It should however be borne in mind that the practices of protection accorded to national airlines by governments are a permanent factor of aero-political relations among States. Developed nations

have not, in the past, hesitated to implement protectionist measures in favour of their national airlines under conditions where their survival is perceived to be threatened.<sup>50</sup>

172. Considering Africa's lack of financial resources, the level of development and therefore inability to extend direct subsidies to its airlines, protection in the regulatory field becomes the inevitable form of government assistance to airlines.

173. From the above brief canvas, it is evident that African countries have been motivated by the desire of integration of the activities of airlines. However implementation of decisions adopted and the recommendations formulated has been elusive as no practical solution was found to adopt a common aviation policy to overcome the restrictive policies of African governments, not only in respect to 5<sup>th</sup> freedom but also 3<sup>rd</sup> and 4<sup>th</sup> freedoms then prevailing.

### 3.3 Phase II - Yamoussoukro initiatives (1988 – 1997)

174. The second phase in the evolution of air transport initiatives in Africa starting in late 1988 was being pursued during a period of far-reaching changes in the operating environment of the civil aviation industry. The need for a new policy reorientation became more and more urgent and compelling for African countries as a result of the implications of US deregulation and its effects on the policies adopted by other countries and European liberalization, the creation of a single European market in 1995 and its negative potential effects on African airlines.

175. The pressures to implement important prior commitments resulting from past recommendations and decisions emanating from the OAU and the Ministers of Transport, Communications and Planning relating to air transport and the need to reinforce regional integration and to restructure the African air transport industry grew in importance as the realisation of the irreversible nature of the transformation of the industry started to filter through to Africa.

176. As a result of the combination of these factors, this period is marked by a higher level of commitments to engage in policy reorientation, as reflected in the following initiatives:

- (a) Adoption of the Yamoussoukro Declaration in October 1988;
- (b) Reorientation of on traffic rights in Mauritius in September 1994; and
- (c) The various subregional initiatives.

#### 3.3.1 Yamoussoukro Declaration - October 1988

177. The origin, concept and process that led to the Yamoussoukro Declaration on a new African air transport policy are amply recorded in ECA studies.<sup>51</sup> The 1980s have been characterized by far-reaching changes in the policies governing the civil aviation industry particularly by deregulation in the United States that progressively expanded to Europe and elsewhere. Throughout the world measures were being taken to ensure

the harmonization and development of safer, more efficient and more competitive air services, while Africa remained immune to all these changes.

178. The report of the working group, which was established within the framework of the Mbabane Declaration on traffic rights in Africa, and its conclusions were presented to the conference of African Ministers of Transport, Communications and Planning, held in Kinshasa in March 1987. The Conference requested ECA to organize a special meeting of African Ministers responsible for Civil Aviation for an in-depth study of the matter. A working group was also established composed of officials from civil aviation authorities, airlines and subregional organizations to assist ECA in the organization of the special ministerial conference.

179. The special Conference, which was preceded by a meeting of experts, was held on 6 and 7 October 1988 in Yamoussoukro, Côte D'Ivoire and adopted the now famous Yamoussoukro Declaration on a New African Air Transport Policy. The Declaration came with a big bang, heralding a new era for African air transport, full of bold ideas for revamping the African airline industry in order to meet the new challenges of the nineties.<sup>52</sup> The ministers made the solemn declaration committing their governments to “individually and collectively” promote a climate of cooperation and solidarity.” The adoption of the Yamoussoukro Declaration was thought to signal a turning-point. The Declaration covers three main issues: (i) integration of airlines; (ii) traffic rights; and (iii) costs and tariffs.

180. **Integration** - One of the major objectives of the Lagos Plan of Action was the creation of a unified African air transport market and a single international airline for the continent. The Mbabane Declaration could also be identified with this objective. The Yamoussoukro Declaration moved the subject a step further by setting a time frame within which to implement the policies that will ensure the integration of airlines and the creation of some form of a Pan-African airline. The Declaration committed African Governments to achieve the integration of the “airlines within a period of eight years”. The eight year time frame was divided into three phases. Each phase had very specific objectives.

181. In **Phase I**, scheduled for two years (1989-1990), African countries were expected to complete: (i) the taking of an inventory of operational resources; (ii) the gathering and sharing of information; and (iii) the initiation of actions for the optimum use of available facilities with particular emphasis on maintenance and training.

182. In **Phase II**, covering the three year period 1991 to 1993, African countries were to “commit their airlines to the joint operation of compatible and international routes and to carry out certain aspects of airline operations” and to pool certain commercial activities. The areas identified for cooperation included acquisition of aircraft and parts, maintenance, joint insurance, computerized reservation system (CRS).

183. **Phase III** covered the three year period from 1994 to 1996, during which African Governments were to achieve the complete integration of the airlines. Integration was to take any of the following three approaches of forming consortia, creating jointly owned new airlines and mergers of existing airlines either on a subregional or community of interest basis. Pending the implementation of the programme for integration of African airlines and for the transitional period, the Declaration urged Governments to show more flexibility in the granting of the 5<sup>th</sup> freedom to African airlines.

184. **Traffic rights** - The Yamoussoukro Declaration is almost silent with regard to traffic rights, the main focus being on integration of airlines. The ministerial conference took the view that the importance of the bilateral exchange of traffic rights will dwindle as the process of integration of the airlines materializes.

185. *Follow-up mechanism* –The Declaration established a follow-up mechanism for the coordination of the implementation of the Declaration at the subregional level. In developing this mechanism, no specific role was given to airlines and subregional African organizations. However, ECA in its coordinating role was requested to work closely with the African subregional organizations.

### **3.3.2 Policy reorientation on traffic rights- Mauritius 1994**

186. Nearly six years after the adoption of the Yamoussoukro Declaration in 1988, the big question remained: what had happened since then. Many subregional meetings were organized and studies undertaken by ECA and other institutions to evaluate the level of implementation of the Declaration. Not much was achieved and the studies revealed discrepancies in level of implementation and a frank recognition of the shortcomings.<sup>53</sup>

187. At the same time, the external pressures for reform were accelerating and fundamental changes were continuing to reshape the world aviation industry. The key elements of this trend include the movement by a number of countries towards a less regulated and more competitive air transport regime bilaterally or within a regional context; widespread privatization of airlines and greater willingness to allow foreign investment; world-wide CRS and marketing alliances and transitional mergers and emergence of multinational mega-carriers.

188. The underlying reason for the fundamental change in approach to air transport regulation is the widespread abandonment of some previously-held assumptions about the need for control on market entry, capacity and tariffs. It was part of a general move away from economic regulation in many other industries. Other countries have followed the United States' lead in deregulating domestic airline operations and the basic reasoning motivating this trend is also increasingly influencing the liberalization of international aviation regulation, culminating with the 4th ICAO Air Transport Conference in Montreal during the last quarter of 1994 that will explore new concepts for the future regulation of international air transport.

189. Against this background, the 9<sup>th</sup> Meeting of African Ministers of Transport, Communications and Planning held in Addis Ababa in March 1993 had deplored the slow pace of implementation of the various phases of the Declaration. In light of the growing dissatisfaction with the pace of implementation of the Yamoussoukro Declaration and the external pressures, the Declaration was again revisited by a special ministerial meeting convened by ECA early September 1994 in Mauritius.<sup>54</sup>

190. Two important subjects were on the Agenda of the Mauritius Conference: (i) preparation for the forthcoming 4th ICAO worldwide Air Transport Conference; and (ii) assessment of the progress made in the implementation of the Yamoussoukro Declaration and to recommend other necessary measures to accelerate its implementation.

191. *Preparation for the 4th ICAO Worldwide Air Transport Conference* - In the context of the preparation for the 4th ICAO Air Transport Conference scheduled to be held in Montreal from 23 November to 6 December 1994, almost exactly to the day 50 years from the signing of the Chicago Convention, the Mauritius meeting was able to reach a consensus on the major Agenda items for discussion at the ICAO conference. The meeting agreed that it was important for Africa to harmonize its position with the world-wide trend on a wide range of regulatory issues and to show commitment to the gradual and progressive liberalization that will take into account the special characteristics of African aviation than continuing with an inflexible position of maintaining the status quo. This, by itself, was a departure from the policies in respect to intra-African air transport.



192. A number of recommendations were formulated by the experts and adopted by the meeting covering the major subjects of the agenda of the ICAO Conference. A common position on the crucial issues on the Agenda were adopted, namely: (i) the objectives of the future regulatory framework of international air transport; (ii) market access and safety net; (iii) safeguard measures; (iv) aviation safety and security; (v) ownership and control of airlines; (vi) structural impediments; (vii) currency conversion and remittance.

193. **Implementation of the Yamoussoukro Declaration** - In the context of expediting the implementation of the Yamoussoukro Declaration, important measures were approved that were geared towards creating the enabling environment in three broad areas: (a) the progressive relaxation of the exchange of traffic rights within Africa and guidelines on the granting of traffic rights and the liberalisation of non-schedule and cargo air services; (b) the commitment to create conducive commercial operating environment through the relaxation of political control and interference in airline management; and (c) the institution of regional and subregional follow-up and implementation mechanism.

194. The Mauritius conference took the Yamoussoukro Declaration one step further by developing guidelines for the exchange of traffic rights and related issues inadequately covered in the Declaration. A comprehensive document entitled “Solutions for Achieving the Implementation of the Yamoussoukro Declaration”<sup>55</sup> was adopted identifying “solutions” for accelerating the implementation of the Declaration.

195. **Legal framework and enforceability** –The first action recommended to be taken involved the preparation of an appropriate legal instrument integrating the Yamoussoukro Declaration into national legal framework that would internalize the Declaration as a basis of national air transport policy. The incorporation of the Declaration into national policy framework was considered necessary to elevate the Declaration to an official statement of principles, and not merely a declaration of intent. In addition the meeting supported the need to develop a binding legal framework in the form of a treaty.

196. Pending the development of an appropriate legal instrument, the incorporation of the Declaration was to be provisionally effected immediately after the Mauritius meeting while a legal framework is being prepared in the form of an international agreement to be ratified by governments. ECA working in cooperation with subregional, regional and international organizations was entrusted with the responsibility for following up this activity.

197. **Traffic rights** - The policy framework agreed for the exchange of traffic rights was centred on a distinction made between relations of States belonging to the same subregion on the one hand and relations with States of other subregions on the other hand.

#### ***Relations within a subregion:***

198. According to this blue print, the exchange of traffic rights within the same subregion would be liberalized as follows: (i) exchange of 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> freedoms freely without restrictions, (ii) exchange of 5<sup>th</sup> freedom traffic rights by granting these rights without restriction on sectors where there are no 3<sup>rd</sup> and 4<sup>th</sup> freedom operations; (iii) where 3<sup>rd</sup> and 4<sup>th</sup> freedoms operations exist, grant up to 20 per cent of total traffic (based on total traffic of the previous year) or a number of seats offered on the route to 5<sup>th</sup> freedom operations provided however that 80 per cent of the total traffic on the route or number of seats offered is reserved for 3<sup>rd</sup> and 4<sup>th</sup> freedom operations; (iv) full and unrestricted traffic rights for all cargo operations; and (v) lifting of all restrictions on aircraft type, combination of points etc.

### *Relations among subregions:*

199. In respect to relations with other African States of other subregion, the framework agreed upon, likewise, granted (i) the 1<sup>st</sup> and 2<sup>nd</sup> freedoms freely without limitation; (ii) 3<sup>rd</sup> and 4<sup>th</sup> freedom traffic rights of at least two frequencies was agreed to be granted. Within a minimum period of ten years, the exchange of 3<sup>rd</sup> and 4<sup>th</sup> freedoms should facilitate the introduction of daily flights with each airline operating four frequencies or more if the traffic so warrants.

200. In respect to 5<sup>th</sup> freedom traffic rights, the 20/80 per cent rule was introduced. According to this principle up to 20 per cent would be granted without any conditions in order to enhance the African transport network, with 80 per cent of the traffic on any given route or number of seats offered being reserved for the 3<sup>rd</sup> and 4<sup>th</sup> freedom operators. Where there is no service, unrestricted 5<sup>th</sup> freedom right will be granted between two points without any conditions.

201. **Implementation and coordination mechanism** - A three tier coordination mechanism was agreed to be established operating at the regional, subregional and national level.

- (a) **Regional level** - A regional mechanism composed of the designated subregional coordinating minister. The President and Secretary General of AFCAC, the President and Secretary General of AFRAA, the director in charge of Transport and communications at ECA; a representative of OAU; representatives of subregional groupings. The regional machinery should meet once year under the chairmanship of the coordinating authority designated at each meeting to assess progress made and to take remedial action.
- (b) **Subregional mechanism** composed of the current coordinating minister (Chairman); Directors of civil aviation, Chairmen and or managers of airlines, representatives of subregional organizations, representatives of airport authorities.
- (c) **National level** - the minister responsible for civil aviation; the director of civil aviation, representatives of national and private airlines operating in the country, representative of airport authorities, representatives of the tourism department and chamber of commerce.

202. Other areas covered by the guidelines included a wide array of issues ranging from the time frame for implementation of Phase III pushed to 2000, redefined role for Governments, cooperation in air transport, designation, the ratification of the Convention establishing the African Air Tariffs Conference, autonomy and independence of management of civil aviation authorities including financial management and investment planning, airline management autonomy and independence.

### **3.3.3 Evaluation of Yamoussoukro Declaration and Mauritius Guidelines**

203. Much optimism was placed on this package of measures that were hoped to serve as an incentive for African airlines to look at more cooperative actions. However, in the assessment of the degree of success of these initiatives, the conclusions of a paper submitted to the Mauritius ministerial meeting in September 1994 by ECA were still valid; while the adoption of these policies was important, "The success [of the policies] has been felt less in the improvement of African airlines than in politics and public relations".

204. The basic objective of Yamoussoukro Declaration is aimed to prepare African carriers to meet the challenges of the fast changing global industry environments. The Declaration aimed at ensuring:

- (a) Harmonious development of air transport within Africa;
- (b) Development of the intra-African route network;
- (c) Contribution to the economic development and creation of a strong enabling environment that would promote intra-African communication;
- (d) Unification and integration of markets; and
- (e) Expansion and financial viability of African airlines.

205. A study undertaken by ECA<sup>56</sup>, covering the period from March 1995 to June 1997, made an exhaustive analysis of the status of implementation of the Declaration and the Mauritius Guidelines; it concluded that implementation falls far below expectations. The analysis revealed great divergence between the policy statements and the realities on the ground and much remained to be done to implement the key elements of the Declaration. Specifically, the study underscored the following:

- (a) While Phase I of the Declaration and part of Phase II have been implemented, Phase III has been abandoned. This last phase is one of the pillars of the Declaration namely the integration of airlines and/or the establishment of joint companies;
- (b) Despite the adoption of common policies, considerable reservations still remained over the granting of traffic rights as countries are bent on the pursuit of protectionist policies, the effect being that the intra-African network did not improve and travelling within Africa is difficult and expensive; tariffs have not been reduced and the quality of air services has not been improved;
- (c) Cooperation and integration have not been effectively carried out because of lack of initiative, trust and the financial difficulties faced by most of the airlines.

206. There were, however, some timid positive developments, even though not all can be said to be the direct results of the Declaration such as the proposal for the establishment of Air Maghreb involving Algeria, Tunisia, Mauritania, Libya and Morocco; the proposal for the establishment of the African Joint Air Services involving Uganda, Tanzania and Zambia; the proposal to establish a southern Africa regional aircraft maintenance centre; the announcement of a private West African airlines – Trans West African Airlines Limited (TWAAL) etc. These developments should not be seen as success stories flowing from the Yamoussoukro Declaration. Some of them started well before 1988 but gained momentum and significance after the Yamoussoukro Declaration.

207. In retrospect, the failure to achieve the objectives of the Yamoussoukro Declaration and the Mauritius guidelines in the two major components of a common intra-African air transport policy and the integration of African airlines is reflected in broad areas of problems. These problems essentially derive from: (a) the sheer size and balkanization of the continent into 53 independent countries, with diverse political, cultural and linguistic differences; (b) the apolitical stance of the airline and CAA bureaucracy which was bent in perpetuating the

status quo; (c) the existence of Air Afrique “Zone Unique” considered as a cabotage area creating difficulties of cooperation, especially in West Africa. It is also observed that, there were no major political obstacles in implementing simple airline to airline cooperation in the commercial, technical and training areas if the will to do so was there. It is incomprehensible why an aircraft that could be maintained by CAMAIR should be sent to Sabena.

208. The deadline set to achieve integration of airline in 1996 was not realistically achievable. Additionally, at that time, most of the airlines were government owned and perpetuated the dual role of the governments in both policy regulation and the management and operation of airlines.

## 3.4 Phase III - Period of consolidation - 1998 to present

### 3.4.1 The Yamoussoukro Decision

209. The period starting in 1998 was the beginning of a period of consolidation of the of the various initiatives of the previous decades resulting from the Yamoussoukro Declaration under the combined internal and external pressures for a major policy reorientation, in particular in the field of traffic rights. The 11<sup>th</sup> Conference of African Ministers of Transport, Communications and Planning held in Cairo from 25 to 27 November 1998) took place against the backdrop of profound changes in the air transport industry and generally of the world economy in stark contrast to the slow pace of implementation of the Yamoussoukro Declaration.

210. The Conference examined the status of implementation of the 1988 Yamoussoukro Declaration and the overall consensus was that the Yamoussoukro Declaration which was crafted in 1988 may have been overtaken by events<sup>57</sup> and needed to be reviewed in light of the changing environment in the air transport industry which is being affected like all other sectors by deregulation, liberalization and globalization.

211. Since the adoption of the Declaration in 1988, many changes have occurred both at the national and international levels. First, the effects of structural adjustment at the national level has seen to bring about the disengagement of African States from economic activities, liberalization, the withdrawal of subsidies, the break-up of monopolies and increased inducement for private sector participation. One effect of structural adjustment has been the economic deregulation or liberalization of the domestic air transport market in general and the dilution of the traditional attachment to the concept of “flag” carriers.<sup>58</sup> Under these circumstances, the politico-economic basis of the Declaration may no longer be valid, as the role of governments is now restricted to the confines of regulatory functions as opposed to operational matters in air transport.

212. The second major development was the acceleration of the transformation in the traditional operating and regulatory environment of international civil aviation and the convening of the 4<sup>th</sup> ICAO Air Transport Conference in 1994 and the necessity to harmonize the Declaration with these development

213. Taking into account all these factors, the conference agreed that a special meeting of African Ministers in charge of civil aviation should be convened to review the Yamoussoukro Declaration and the modalities of speeding up its implementation on the basis of a comprehensive review of the Declaration and prepare appropriate recommendations to the special Conference. It further requested ECA to establish a Preparatory

Committee in collaboration with the OAU, AFCAC, AFRAA, subregional groupings and selected civil aviation authorities and airlines to undertake an in-depth and comprehensive review.

214. The working group that was set up proposed that the 1988 approach should be reviewed and that a binding legal framework be adopted on the gradual liberalization of market access. The recommendations of the Working Group were submitted to a conference of African Ministers responsible for Civil Aviation held under the auspices of the United Nations Economic Commission for Africa from 9-14 November 1999 in Yamoussoukro, Côte d'Ivoire.

215. Forty-nine (49) African States, out of which 39 at ministerial level<sup>59</sup>, twenty-six (26) airlines<sup>60</sup> and eleven (11) United Nations specialized agencies and African intergovernmental organizations attended as observers<sup>61</sup>. The Arab Civil Aviation Commission (ACAC), British Airways and France also attended the conference as observers.

216. At the end of its deliberations, the conference adopted the Decision Relating to the Implementation of the Yamoussoukro Declaration Concerning the Liberalization of Access to Air Transport Markets in Africa. On July 12, 2000, the heads of State and Government of the OAU endorsed in Lome, Togo, the Decision under Article 10 of the Abuja Treaty. The Decision was published in the Official Journal of the African Economic Community (AEC) on 12 July 2000. In terms of Article 10 of the Treaty, the Decision entered into force on 12 August 2000 among 44 African countries who have ratified the Abuja treaty.

217. **Scope of the Decision** - The Yamoussoukro Decision is the first Africa-wide legally binding arrangement for the liberalization of scheduled and non-scheduled air transport services within Africa. It represents a comprehensive agreement of agreed concepts and principles for liberalisation of intra-African air services. The Decision deals only with intra-African air transport; domestic air services and relations with third countries will continue to be governed by intergovernmental bilateral air services agreements negotiated with such third countries. However in the next stage, there may be a distinct need to develop common positions to define relationships with other countries.

218. The main elements of the Decision are featured in 12 articles and consist of: (i) a Preamble providing the context and the framework within which the instrument was prepared; (ii) core provisions; and (iii) various Annexes that lay the general framework for the liberalisation process.<sup>62</sup> The following is a summary of the key provisions of the Decision.

219. **Traffic rights** - The Decision espouses the principle of full liberalization of the five freedoms of the air including fifth freedom among African states of market access for the operation of scheduled and non-scheduled passenger and cargo air transport services.<sup>63</sup>

220. It establishes the modalities for and removes all traditional restrictions on the granting of traffic rights, including the 5<sup>th</sup> freedom. Although the Decision allowed States to opt out from full liberalization in respect to the 5<sup>th</sup> freedom for a maximum transitional period of 2 years, this right has now expired. The Decision is not a full open skies agreement, as it does not cover the 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> freedoms.

221. **Pricing and tariffs**<sup>64</sup> In respect to the pricing of air transport services, the Decision introduces the principle of complete tariff liberalization removing the traditional government approval and oversight over tariff increase, merely filing such tariffs before competent aeronautical authorities 30 working days before they enter into effect.

222. **Capacity and frequency**<sup>65</sup> - The Decision removes all governmental control of frequencies and capacity offered on air services linking any city pair combination. Each airline is allowed to determine the frequency and capacity it offers based upon commercial considerations in the market place.

223. However, a State may refuse to authorize the offer of additional capacity by a designated airline if it proves that such additional capacity will result in unfair competitive behaviour (undefined in the Decision).

224. **Designation and authorization**<sup>66</sup> - The Decision allows each State to designate more than one airline on a city pair basis, provided the designated airline meets certain eligibility and operational criteria. An important point to note is that the designated airline must be capable of demonstrating its ability to maintain standards at least equal to those set by ICAO.

225. **Monitoring mechanism**<sup>67</sup> - The institutional framework for monitoring the implementation process and the regulation of the liberalized environment includes the Air Transport Sub-Committee of the African Economic Committee, which is responsible for the overall supervision, follow-up, and evaluation of the implementation of the Decision. It assisted by a Monitoring Body and the African Air Transport Executing Agency.

226. **Other provisions** -The Decision also includes other administrative and general provisions relating to, *inter alia*, commercial opportunities, fair competition, operating flexibility, consultation, periodic review, registration etc.

### 3.4.2 Subregional initiatives

227. Among the positive impacts of the Yamoussoukro Declaration and the Decision are the pressure they have exerted on African governments, airlines and African subregions for the implementation of liberalization. Practically all of the subregional economic communities have embraced the objectives of the Decision and a number of arrangements have been or are being developed for air transport liberalization in their respective geographical area. A brief summary of some of the most prominent initiatives follows.

228. **Air Transport Agreement among ECCAS Member States** - The member States of the Economic Community of Central African States (ECCAS)<sup>68</sup> adopted on 7 April 1989 in Bangui an air transport agreement (Bangui Agreement).<sup>69</sup> The Agreement has not entered into force due to the inability of the parties to agree on the route structure.

229. **The Banjul Accord** - The Banjul Accord for an accelerated implementation of the Declaration was concluded in April 1997 among six African countries (Cape Verde, Ghana, Guinea Bissau, Sierra Leone, Nigeria and the Gambia). It covers a wide range of cooperation relating to airline operations, infrastructure, traffic rights, aviation safety and security as well as a joint secretariat responsible for the coordination of activities in the identified areas of cooperation, namely: joint operations, code sharing, formation of alliances and partnerships, harmonization of schedules coordination, of tariffs, use of common Computer Reservation System (CRS) and Departure Control System (DCS).

230. In respect to traffic rights, the agreement grants unrestricted 3<sup>rd</sup> and 4<sup>th</sup> freedom rights, provided the designated airline has its headquarters and major operational activities located in the territory of the designating state. Each State has a right to designate a maximum of two (2) airlines for passenger and cargo services; tariffs must be fixed and based on Price Cap Policy taking into account primarily the operating costs of the

designated airlines and submitted for government approval; no restriction on capacity or aircraft; five frequencies per week per airline; two (2) destination points (where applicable) in each State.

231. 5<sup>th</sup> freedom is granted without conditions on sectors where there are no 3<sup>rd</sup> and 4<sup>th</sup> freedom operations. Where 3<sup>rd</sup> and 4<sup>th</sup> freedom operations exist, up to 20 per cent of the traffic (based on the total of the previous year) or number of seats offered on the route, would be granted to 5<sup>th</sup> freedom operations provided, however, that 80 per cent of the total traffic on route or number of seats offered is reserved for Third and Fourth Freedom operations. In November 2003, a draft multilateral Air Services Agreement has been prepared by the Banjul Accord Group.

232. **COMESA** - The Council of Ministers of the Common Market for Eastern and Southern Africa (COMESA) adopted a decision in May 1999 to liberalize scheduled and non-scheduled air services within the subregion in two phases beginning in October 1999 and ending in October 2000.

233. The first phase which was planned to start in October 1999 and end in October 2000 allowed free movement of intra-COMESA air cargo and non-scheduled passenger services up to a maximum of two frequencies between any city pair with no capacity restrictions and multiple airline designation.

234. **CEMAC** - The six member States of CEMAC<sup>70</sup> adopted on 18 August 1999 a multilateral agreement relative to Air Transport. The Agreement defines the conditions and modalities of the operation of intra-community air services, with a window open for its expansion to other countries in Central Africa who are not member States of CEMAC. The Agreement applies to commercial air transport with the exception of non-scheduled passenger services (charters).

235. The Agreement defines the conditions and modalities for the designation of airlines, the commencement and operation of air services, security and safety issues, the conditions governing the grant of traffic rights, frequencies, capacity, obligations of designated airlines, mechanism for the management, follow-up and control; the resolution of disputes; the conditions for expansion of the Agreement to other States in Central Africa; enforcement provisions and penalties for violation of obligations.

236. The Agreement has effectively liberalized access to the intra-community market, adopts a broader criteria similar to the Decision in respect to the conditions to be met by a designated airline to be eligible to operate and enjoy the rights granted, namely; have its headquarters, central administration and principal place of business physically located in the designating State.

237. The Agreement applies to all member States and their designated national carriers, a listing of which is maintained by the Executive Secretariat. This multilateral agreement demonstrates the political will of the member States to combine their efforts to pick up the challenge of liberalization and to achieve, in a lasting way the safe, orderly and effective development of air transport in their area.

238. **Arab Council on Civil Aviation (ACAC)** - The Arab Council on Aviation, which is a specialized agency of the Arab League, reached agreement to liberalize intra-Arab air services over a period of five years gradually ending restrictions on 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> freedom traffic rights for carriers of its member States. This plan was adopted by the Arab Ministers responsible for civil aviation in November 1998.

239. **Memorandum of Understanding** - A historic outcome of the Yamoussoukro Conference in 1999 was the Memorandum of Understanding (MOU) signed by the Ministers responsible for civil aviation of the 23 countries of West and Central Africa subregions on 14 November 1999, reaffirming their commitment to

fully liberalize scheduled and non - scheduled air transport services as laid out in the Yamoussoukro Decision. Since then the two subregions have been taking other measures to ensure the implementation of the Decision in the subregions.

240. At a meeting held in Bamako, Mali, the ministers responsible for civil aviation adopted an implementation time frame and established a coordinating committee comprising the 23 members. The Committee has broad mandates and is empowered to ensure uniform application of the terms of the Decision.

241. **West African Economic and Monetary Union (UEMOA)** - The member countries West African Economic and Monetary Union (WAEMU) or Union économique et monétaire ouest-africaine (known more popularly by its French acronym UEMOA) adopted community wide legal framework for air transport liberalization (Benin, Burkina Faso, Côte d'Ivoire, Guinea-Bissau, Mali, Niger, Senegal and Togo).

242. This common programme demonstrates the political will of the eight member States to combine their efforts to pick up the challenge of liberalization and to achieve the orderly and effective development of air transport in their area.

243. The common rules and regulations adopted by UEMOA is the most comprehensive and consist of rules defining: (a) the conditions of access for UEMOA air carriers to intra -community air routes, for scheduled and non-scheduled air services within the Union, including after 31 December 2005, the exercise of cabotage rights; (b) the licensing of air carriers within UEMOA; (c) tariffs applicable to air services within, to and from the member States of UEMOA; (d) investigation of aircraft accidents and incidents within the UEMOA; (e) slot allocation; (f) denied boarding; (g) competition rules and procedures; (h) air carrier authorization; (i) State aids etc.

244. **SADC Initiatives** - The SADC countries have likewise adopted a Protocol on Transport, Communications and Metrology which provides the overarching policy context for all civil aviation activities and the regulation thereof; it imposes obligations on the member States to develop common policy in respect of transparent, flexible, predictable and streamlined regulatory frameworks; the economic and institutional restructuring of SADC airlines, airports and air traffic and navigation services; and liberalization of the markets for civil aviation infrastructure and services provision.

245. Under the Protocol, three frameworks have been developed: (i) a legal framework for the establishment of autonomous Civil Aviation Authorities; (ii) a framework on Provision of Air Services; and (iii) a framework on Airports and Air Traffic and Navigation Services provide for the commercial and institutional reform of state -owned airports and air traffic and navigation services, measures to promote and support diverse private investment in airports and air traffic and navigation services and measures to liberalize market access.

246. In summary, these subregional regulatory initiatives described above aim at greater flexibility of rules which go beyond the existing bilateral regulatory framework. The subregional initiatives seem to indicate a trend towards subregionalization of air transport liberalisation in Africa, mostly undertaken as part of the construction of common markets or economic integration processes that imply close economic integration between member countries. It is notable that some of the subregional initiatives contain very significant restrictions on traffic rights, including prior approval of tariffs, restrictions on capacity.



### 3.4.3 Liberal bilateral agreements

247. At the bilateral level, a number of African countries have signed or amended bilateral agreements to introduce a more open and liberalized regime: lifting or not enforcing the traditional restriction in existing bilateral agreements on market access and traffic rights, capacity, frequency and tariffs, especially on the trans-African routes, such as Eastern, Western, Central Africa and Southern Africa.<sup>71</sup> The list of countries with liberal bilateral agreements is growing every day, practically in all su-regions e.g. Ethiopia with Cameroon, Congo, Kenya, Nigeria, Uganda, South Africa; Kenya in eastern and southern Africa, Kenya and Zimbabwe etc.

248. In parallel, a number of African countries have signed or initialled open skies agreement with the United States (Morocco, Nigeria, Ghana, Senegal, Tanzania, Namibia, Burkina Faso, Gambia, and Benin). Other countries are reported to be negotiating with the United States (Ethiopia, Kenya etc.).

## 3.5 Global impact of the Yamoussoukro Decision

249. The Decision has started an evolutionary process that has far reaching implications for the liberalization of intra-African air transport. The Decision, when fully implemented, will replace the current fragmented regulatory regime by a unified system that gives airlines commercial opportunities on an equal basis and ensures that their activities will be governed by a common body of aviation rules.

250. The adoption of the Yamoussoukro Decision and the subregional initiatives are illustrative of the desire of African governments to build a credible basis for inter-African liberalization and integration. However, the implementation of Decision is made particularly difficult by several factors:

- (a) The complexity of the reform involving many components, including safety and security regulations, to be implemented in parallel at regional and national levels;
- (b) The absence of a mandated entity with a relevant geographical constituency, the lack of corresponding funding mechanism for regional activities falling outside the legitimate private sector domain, and the lack of instrument for concerted and coordinated follow-up of the various air transport national reform;
- (c) The inadequate capacity among civil aviation authorities;
- (d) The uneven status of air transport sector reform among countries in the continent; and
- (e) The uneven understanding of and commitment to the full scope of the reform, and the resistance to reform, in particular by influential regional and local carriers.

251. An ECA study<sup>72</sup> prepared in August 2003, gives an overview of the progress, problems and prospects of air transport in Africa since the adoption of the Decision in 1999. On the positive side, the study underscores that growing number of African countries, economic communities and regional organizations (such as CEMAC, UEMOA, COMESA) are exerting pressure for the effective implementation of the Decision. Some of the positive aspects identified by the study include:

252. ***A Common Air Transport Policy*** - The Yamoussoukro Decision represents a common policy framework for air transport. Individual countries, regional economic communities and other African institutions consider the Decision as a blue print for liberalization, although there are still some constraints on its full implementation.

253. Since the adoption of the Yamoussoukro Decision and the various subregional arrangements, there is a heightened awareness in all African countries for the need for a more liberalized and open air transport market as evidenced by domestic air transport liberalization in many African countries with very few exceptions and a growing number of countries have now enacted national civil aviation policies which have similar objectives of gradual liberalization, improvement of safety, affordability of air transport.

254. ***Flexibility in the granting of traffic rights*** – Although, there are still pockets of resistance to continue the prior bilateral arrangements, there is some degree of flexibility observed in the granting of traffic rights in particular 5<sup>th</sup> freedom. This flexibility has permitted new route to be established within the different economic communities. Frequencies have increased among African countries, providing more services on certain routes. Consumers now have a choice of frequencies. Greater competition has been introduced on some routes that have led to the improvement of the quality of services and the introduction of several tariff ranges.

255. ***Reduction of tariffs*** -Where liberalization has been introduced there is a general reduction in fares. For example, in West Africa tariffs have gone down by 30 per cent on routes where more competition is introduced through liberalization of market access. This has allowed the users of air transport the choices from a range of tariffs.

256. ***Improved intra-Africa route network*** - Better route network observed which is the result of flexibility in the granting of 5<sup>th</sup> freedom and acceptance of mute-designation – Afriquiya and Air Senegal international linking North Africa to sub-Sahara Africa; Kenya Airways and Ethiopian Airlines have developed new routes to West and Central Africa; extension of services by Cameroon Airlines to West Africa after obtaining 5<sup>th</sup> freedom. Some private airlines in South Africa have started services to West Africa (Inter Air); South African Airways serves more new African routes.

257. ***Involvement of the private sector*** – The private sector has begun to show interest in the air transport sector through participation in the capital and/or establishment of new airlines. Several small private airlines have been established practically in every subregion where up to now the private sector has not shown interest in air transport – such as Togo, Air Benin, nouvelle Air Burkina etc in west Africa; Khalifa Airways in North Africa; Africa One in East Africa; trans-border investment between Air Senegal International and Royal Air Maroc, Air Tanzania and South African Airways, Kenya Airways and Precision Airline. The emergence of these private airlines has brought about competition on some routes resulting in improvement of services and reduction of fares.

258. However, the private African investors have reacted shyly to the floating of the shares of African airlines (i.e. the proposed CEMAC Air, for example). Basically, the elimination of non-physical barriers, the restructuring of national airlines and the financial reform of air transport companies constitute a precondition for the attraction of private investments and the establishment of multinational airlines and/or mergers.

259. ***Competition*** - The down side identified by the above cited study relates to the perception of the smaller airlines which were operating under government protection, that liberalization is a threat to their survival in the face of increased competition. These airlines are calling for the enactment of appropriate competition rules to ensure fair play.

260. The subregional groupings (CEMAC, UEMOA and COMESA) have developed competition rules applicable in their respective geographical areas. The draft competition rules prepared by COMESA were considered at a joint meeting of COMESA, EAC and SADC in August 2002 and recommended the adoption of the draft as a basis for the implementation of the Decision within COMESA, EAC and SADC.

261. The Ministers responsible for civil aviation of COMESA, EAC and SADC approved joint competition rules and a joint monitoring body. However, the SADC Council of Ministers did not approve the competition rules adopted by the Ministers as aforesaid. This would mean that the question of competition rules still remains open in the SADC region.

### 3.6 Conclusions

262. After almost four decades, African air transport is at a crossroad seeking to steer its direction towards the creation of an environment propitious for a viable, efficient and sustainable air transport system.

263. As noted earlier, the adoption of the Yamoussoukro Decision is commendable because it is a comprehensive framework to replace the current fragmented regulatory regime by a unified system that gives African airlines commercial opportunities on an equal basis and ensures that their activities will be governed by a common body of aviation rules.

264. However, for African policy makers and stakeholders, there are still many important questions to be resolved. The first issue revolves around the still unanswered question of how to effectively implement the Yamoussoukro Decision so as to be on a par with other regions of the world. The completion of the internal liberalization process will be of paramount importance and a condition *sine quo non* for the effective participation of Africa in international air transport and share in its benefits.

265. The second issue involves on how Africa will position itself to be able to effectively respond to the external aviation environment, namely whether such response would be on an individual State to State basis or whether a group approach should be adopted in their aviation relationship with the rest of the world, given the formation of economic blocks around the world.

# 4 Assessment of Current Situation – Case Study

## 4.1 Introduction<sup>73</sup>

266 An underlying reason for liberalization is to create a regulatory environment that allows effective market access by removing governmental control over entry, the capacity supplied by each airline and the fares and rates to be charged.

267 Although, the effects of such policies may differ according to basic economic conditions and stage of economic development, case studies suggest that there are some underlining similarities in the outcomes realized in liberalized marketplaces, regardless of the diversity of policies that involve different paths and paces of liberalization. Experience in other countries has shown that there are significant changes in key elements of air transport (such as traffic and competition) that have occurred, since liberalization was instituted by these states and which could be attributed in part to liberalization, as well as the degree of the ability of local airlines to effectively respond to the liberalized environment.

268 For that reason, the analysis of the liberalization experiences of four countries in the CEMAC sub-region may provide some valuable insight into the content, process and structure of the regulatory changes introduced by these countries, the aim being of identifying the effects of the liberalization policies pursued by these countries. The four countries selected were Cameroon, Central African Republic, Congo and Gabon. These countries together represent 57 per cent of the territory of CEMAC and 74 per cent of its population.

269 The analysis of the experience of these countries is structured around the following components. After a brief examination of the overall legal, regulatory and institutional context within which the liberalization process operates, the current level of air services (airline operations; traffic; level of competition; route network; financial performance) is examined.

270 This will be followed by an assessment of the status of implementation of the Yamoussoukro Decision, the chronology and scope of liberalization introduced from the perspective of the key provisions of the Decision. Finally, an evaluation of the global impact of the implementation of the Yamoussoukro Decision on the development of air transport in the four countries surveyed. After the impact assessment, the constraints and difficulties encountered that might have hinder or diluted the attainment of the objectives of liberalization will be identified.

## 4.2 Context of liberalization

### 4.2.1. General context

271 **Politico-economic structure** - The four countries surveyed are members of two economic communities that coexist in Central Africa; the Economic and Monetary Community of Central Africa (la Communauté économique et monétaire de l'Afrique centrale- (CEMAC)<sup>74</sup> and the Economic Community of Central African States (Communauté économique des États de l'Afrique centrale - CEEAC).<sup>75</sup> The two communities have essentially identical objectives of strengthening the process of integration of their economies through the coordination of national policies, adoption and implementation of common actions and common policies in different areas, including the operational and physical integration of air transport as well as the progressive harmonization of rules and regulations governing transport and communications.

272 Additionally, the four countries are also member countries of ASECNA (Agence pour la sécurité de la navigation aérienne en Afrique et à Madagascar). Three States in CEMAC (RCA, Congo, and Chad) were also members of the now defunct Air Afrique, which was designated as the instrument for the operation of air transport services on their behalf.

273 **Importance of air transport** - The four countries surveyed occupy a vast area of 1.7 million square kilometres, representing 56.6 per cent of the total CEMAC subregion. The physical and geographical environment of the four countries surveyed characterized by dense vegetation, heavy rains, flooding etc., are not conducive for the construction and maintenance of surface transport (roads, railways etc.).

274 The inadequacies of surface transport make air transport the most credible means for ensuring the physical integration of the countries and the movement of passengers and goods. It provides the essential links than other modes of transport for the economic and physical integration of the continent.

275 **The air transport market** - The air transport market of the four countries handled in 2002 a relatively important traffic, in terms of passenger, freight, mail and aircraft movements (Table 3.1 below).

**Table 3.1:**

#### Traffic

	Aircraft Movement (000)			Passengers (000)			Cargo (Tons 000)		
	2001	2002	Var. 02/01	2001	2002	Var. 02/01	2001	2002	Var. 02/01
Cameroon	24	23	-4.3	483	570	18.0	15	12	-20.0
RCA	8	9	11.1	62	53	-14.5	1.6	2	25.0
Congo	39	41	4.9	572	830	45.1	42	71	69.0
Gabon	52	60	13.3	990	1221	23.3	6	3	-50.0
Total all countries	124	133	6.8	2.107	2.674	26.9	65	88	35.4

Source: ASECNA Statistiques de Trafic d'Aéroport Bulletin Annuel 2001, 2002.

276 In terms of passenger, freight and mail traffic, the air transport system of the four countries handled 2.7 million passengers and 88,000 tons of cargo and mail in 2002, compared to 2.1 million passengers and 65,000 tons of cargo in 2001.

277 The same pattern of growth was observed for aircraft movements that grew by 6.8 per cent in 2002 over 2001, with 133,000 movements compared to 124,000 achieved in 2001. Cargo grew at a much higher rate than passenger traffic, with an increase of 35.4 per cent over 2001.

### **3.2.2. Institutional framework**

278 The legal and institutional framework within the context of which the air transport liberalization process operates in the four countries derives from: (i) the relevant common institutions and common rules and regulations adopted at the level of CEMAC with a community-wide application; and (ii) the respective national institutions, laws and regulations, bilateral and multilateral air services agreements enacted at the level of each country constituting the national legal and institutional basis.

279 **Community institutions** - The community institutions responsible for the management, follow-up and control of air transport consists of:

- (a) **Council of Ministers**, composed of 3 ministers in charge of civil aviation from each member State, is responsible for the overall management and supervision of the implementation of liberalization. The council has administrative, quasi-judicial and rule-making authority.
- (b) **Executive Secretariat of CEMAC** is responsible for the preparation and control of decisions and their implementation.
- (c) **Follow-Up and Control Committee (Le Comité de Suivi et de Contrôle - CSC)** responsible for ensuring the day-to-day follow-up and application of liberalization measures adopted by the Council of Ministers. The Committee assists the Council of Ministers in several areas.
- (d) **Organ of Supervision of Competition (Organe de Surveillance de la Concurrence - OSC)** is responsible for the supervision of all cross sector competition matters and controlling the application of the community competition rules. This body is composed of: (i) the Executive Secretariat, which is the administrative organ; and (ii) the Regional Council that is the deliberative organ.

280. In addition to the foregoing, there are also other community institutions having considerable impact on air transport: the Conference of Heads of State, supreme body which determines the general strategic orientations of the Community; the Court of Justice and the Community Parliament.

281. **National institutions** - The national institutions responsible for the administration of the different aspects of civil aviation at the national level consist of the following national civil aviation administrations.

282. In Cameroon, the overall technical and economic regulation of civil aviation is vested in the Cameroon Civil Aviation Authority (CCAA)<sup>76</sup> with separate legal personality and financial autonomy. It is responsible for the preparation, coordination and implementation of the national aviation policies.

283. In the Central Africa Republic, the Directorate General of Civil Aviation (*la Direction Générale de l'Aviation Civile et de la Météorologie – DGACM*)<sup>77</sup> assures the administration of civil aviation. It is a governmental department and does not have an autonomous structure. Its responsibilities include the study and recommendations of regulations designed for the development of civil aviation and metrological services within the overall policy direction defined by the government and to follow implementation.

284. In the Congo, the body responsible for the civil aviation function is the National Agency for Civil Aviation (Agence Nationale de l'Aviation Civile - ANAC)<sup>78</sup>, with its own legal personality and financial autonomy. It is responsible for the preparation, coordination and implementation of national aviation policies, the provision of metrological services and the maintenance of infrastructure.

285. In Gabon, the General Secretariat for Civil and Commercial Aviation (Secrétariat Général à l'Aviation Civile et Commerciale -SGACC)<sup>79</sup> is responsible for the implementation of national laws and regulations and the overall national aviation policy. The SGACC is a government department without financial or administrative autonomy.

286. **Airport management** – The conditions governing the management of airports vary according to each country. In Cameroon, Aéroports du Cameroun (ADC) is responsible for the management and operation of all airports that are open for commercial public transport). Other secondary airports are managed by the Civil Aviation Authority.

287. In Gabon, the management of airports is shared between l'Aéroport de Libreville (ADL) and the General Secretariat. In the Congo and the Central African Republic, airport management is entrusted to ASECNA within the terms of Articles 2 and 10 of the Dakar Convention.

288. **ASECNA**<sup>80</sup> - In addition to its statutory mission of providing air navigation service, ASECNA manages the international airports of Douala and Yaoundé in Cameroon, Brazzaville and Pointe Noire for the Congo, Libreville and Port Gentil for Gabon and Bangui for RCA. By special contract entered into with the Central African Republic and Gabon, it manages 25 airports in these countries.

289. **Other non-aviation governmental bodies.** In addition to the foregoing aviation related governmental bodies, there are also other non-aviation related governmental departments or bodies whose actions or inaction have considerable impact on air transport or which are otherwise involved in air transport. These non-aviation bodies include customs, immigration, security etc.

### 3.2.3 Legal framework

290. The legal and regulatory framework governing the liberalization process in the four countries surveyed is based on two bodies of rules and regulations, namely those that are of community-wide application and those national laws and regulations, bilateral agreements and national civil aviation policies specific to each country.

291. **Common legal framework** - The community-wide legal framework consists of various texts adopted within CEMAC having the force of law in each member State. These community-based legal instruments are: (i) the Common Civil Aviation Code; (ii) the Multilateral Air Transport Agreement; and (iii) the Common Competition Rules.

292. At the continental level within Africa, the four countries are parties to the following legal instruments with a wider application than the CEMAC subregional and covering other regions of Africa. These instruments include: (i) the Yamoussoukro Decision; (ii) the West and Central Africa Memorandum of Understanding; and (iii) the now defunct Yaoundé Treaty.

### ***Civil Aviation Code of CEMAC Member States***

293. With the objectives of creating a coordinated and homogenous legal regime, the member States of CEMAC have adopted in July 2000 a community-wide Civil Aviation Code intended to harmonize and replace the existing national civil aviation codes by uniform and common rules.<sup>81</sup> The Code entered into all the member States as of 21 July 2000, the date of adoption the Code by the Council of Ministers. The Code is enforceable and binding on its member States in terms of Article 335.

294. The Code covers a wide area of economic and technical regulations of civil aviation.<sup>82</sup> The Code represents the basic aviation legislation that provides the primary legal framework for the control, regulation and development of civil aviation in CEMAC member States.

295. Regulations implementing the Code specifying in detail the requirements for the technical and economic regulation of civil aviation have yet to be developed in accordance with the requirements of Articles 333 and 335.

### ***Agreement relative to Air Transport among CEMAC States***

296. An Agreement relative to Air Transport among the member States of CEMAC was adopted by the Council of Ministers on 18 August 1999<sup>83</sup> in Libreville, Gabon (hereinafter the Libreville Agreement). The Agreement defines the conditions and modalities of the operation of intra-community air services, with a window open for its expansion to other countries that are non-members of CEMAC in Central Africa. The Agreement applies to commercial air transport with the exception of non-scheduled passenger services (charters).

297. The Agreement defines the conditions and modalities for the designation, the commencement and operation of air services, security and safety issues, the conditions governing the grant of traffic rights, frequencies, capacity, obligations of designated airlines, mechanism for the management, follow-up and control; the resolution of disputes; the conditions for expansion of the Agreement to other States in Central Africa; enforcement provisions and penalties for violation of obligations.

298. The Agreement applies to all member States and their designated national carriers, a listing of which is maintained by the Executive Secretariat. This multilateral agreement demonstrates the political will of the Member States to combine their efforts to pick up the challenge of liberalization and to achieve, in a lasting way the safe, orderly and effective development of air transport in their area.

### ***Common competition rules***

299. Two separate legal instruments establish the legal regime applicable to competition within CEMAC. The first text of general cross-sector application to all economic activities and commercial practice derives from the provisions of Regulation No. 1/99/UEDAC/AC-CM-639 adopted by the Council of Ministers in June 1999; it regulates anti-competitive commercial practices and behaviour, such as abuse of dominant position, mergers etc.



300. The second legal instrument is the Code of Conduct introduced by the Civil Aviation Code which is specific to air transport with the objective of ensuring fair and sustained competition in air transport. The Code of Conduct prohibits price and capacity dumping, predatory prices and capacity and price discrimination.

### ***The Yamoussoukro Decision***

301. At the level of integration within Africa, the four countries are parties to the *Decision on the Implementation of the Yamoussoukro Declaration Concerning Access to the Air Transport Markets in Africa* which entered into force in August 2000, thus becoming a legally-binding instrument for all member States of the Abuja Treaty, including the four countries surveyed.

302. The Decision has introduced gradual and progressive liberalization of both scheduled and non-scheduled intra-African air transport services. This Decision has precedence over the provisions of national laws, bilateral or multilateral air service agreements to the extent incompatible with the Decision. Provisions that normally are included in these agreements and are not inconsistent with the Decision continue to apply and supplement the Decision. The Decision has created an ambitious regulatory framework, not only by the depth of the reform contemplated but also by the establishment continental regulatory regime designed to liberalize the air transport market of African countries.

### ***Memorandum of Understanding***

303. The four countries surveyed are parties to the Memorandum of Understanding (MOU) and have assumed commitment vis-à-vis the other 23 countries of West and Central Africa subregions signed on 14 November 1999 by the ministers responsible for civil aviation, committing themselves to achieve full liberalization of air transport services, in accordance with Yamoussoukro Decision.

### ***The Yaoundé Treaty***

304. Two of the four countries surveyed (Congo and RCA) were parties to the Yaoundé Treaty of 1961, which was the first multilateral air transport agreement in Africa. It served as a powerful integration tool between the signatory states.<sup>84</sup> The main provisions of the Treaty covered the creation of Air Afrique, the assignment of the international traffic rights of each signatory to Air Afrique and the definition of the relationship between Air Afrique and the national airlines of the signatory states.

305. ***National aeronautical legislations*** - In addition to the common legal framework described above, the legal and regulatory context within which the liberalization process is intended to operate in the four countries surveyed result from national regulatory texts consisting of laws, decrees and ministerial directives, rules and regulations. These provisions define the specific elements of the sector, organize, codify and determine the conditions applicable to the operation of air services. The totality of these texts and provisions constitute the national legal basis of civil aviation. There are also other pertinent non-aviation laws, which have a bearing on air transport or affect its efficiency and profitability, the most important being those laws governing the overall fiscal regime.

### ***Bilateral air services agreements***

306. The four countries surveyed have concluded a total of 143 bilateral air services agreements; 94 of them were with African countries that are parties to the Decision and 48 with the rest of the world (Table 3.2).

## Tableau 3.2

### Portfolio of Bilateral Agreement

Country	Exploited		Unexploited		Total
	Africa	Rest of the world	Africa	Rest of the World	
Cameroon	15	6	14	4	39
Central Africa	2	1	14	7	24
Congo	10	1	11	15	37
Gabon	16	5	12	10	43
Total	43	13	51	36	143

Source: Civil Aviation Authorities and other sources.

307. From the above table, it is clear that more than 50 per cent of the agreements are with countries in West and Central Africa (29 and 32 agreements respectively). Secondly, the traffic rights exchanged with States in other subregions are rarely exploited, essentially because of the poor actual or potential traffic and/or the difficulties in obtaining 5th freedom traffic rights or the absence of a national instrument (Congo and RCA).

308. In summary, a general observation about the foregoing legal and institutional framework to be made is that, first, a considerable amount of effort has been deployed by member States of CEMAC in putting in place the legal and institutional framework for liberalization and harmonization of civil aviation legislation. However, implementation regulatory texts have not been reviewed since the introduction of liberalization, including regulations specifying the modalities of application of the Civil Aviation Code as well as the conditions for the licensing and authorization process and other related matters. The detailed rules for technical oversight etc. have yet to be enacted.

309. Secondly, some of the civil aviation administrations do not enjoy financial and administrative autonomy, allowing greater efficiency in the administration of the national civil aviation function as independent regulators and to discharge the task of regulating and controlling effectively in particular in the supervision and oversight of safety of civil aviation. Their modus operandi and capacity may not be geared to cope with the liberalization process, given the fact that they were conceived essentially for a regulated environment.

## 4.3 Implementation of the Yamoussoukro Decision

310. The initiatives for the implementation of the Yamoussoukro Decision has been on a high gear in CEMAC as manifested by the important regulatory measures taken since 1999 that are legally-binding for member States; these complementary measures supplement and often going beyond the provisions of the Decision.

311. The status of implementation of the Decision is assessed from the perspective of the following key provisions of the Decision, which to a certain degree are the “pillars” of liberalization.

312. These parameters are the essential principles and form the substructure of the Decision. Box No.1 below gives in summary form the matrix of the implementation of the Decision at the level of the four countries surveyed.

## Box No. 1

### Matrix of status of implementation

Key Provisions	Means Used
Article 2 – Status and enforcement	By legislative text incorporating Decision in national laws (Cameroon and Gabon). General policy for application of Decision to all Yamoussoukro member countries on demand. Long term plan to modernize and update bilateral agreements to comply with Decision.
Article 3 – Traffic rights	Flexibility in granting traffic rights in accordance with Article 3 of Decision. Cameroon granted 5th freedom to Kenya and Ethiopia; RCA to Cameroon and Sudan; Congo to Ethiopia, Angola, Guinea, Mali, South Africa and Gabon to Togo, Mali, Benin, Côte d'Ivoire, Benin).
Article 4 - Tariffs	In practice, tariff liberalization without any conditions.
Article 5 – Frequency capacity	In practice, frequencies and capacity are liberalized.
Article 6 Right of establishment	Multiple designation: South Africa, Togo, Benin, Mali; in practice, recognition of eligibility criteria set in article 6.9 of Decision.

### 4.3.1 Precedence and enforceability of the Decision

313. The level of implementation of the Decision is a function of its recognition by State parties, in their national law, policy or administrative practice, that the Decision is a legally binding-instrument creating rights and obligations vis-à-vis all States parties to the Decision. This recognition normally is expressed by the measures taken by State parties to exteriorize their political commitments of being bound by the Decision, i.e. they recognize that the Decision has precedence over all national laws, rules and regulation, national policies and bilateral agreements and measures taken to harmonize these instruments with the express provisions of the Decision.

314. In this context, the four countries, individually and collectively, have taken concrete measures to internalize the text and principles of the Decision in community and national legislation and/or in their administrative practise. As a result of these actions all of the four countries recognize the precedence of the Decision over national rules and regulations, bilateral and multilateral agreements.

315. Within the framework of CEMAC, the adoption of the Common Civil Aviation Code and the Libreville Agreement are clear manifestations of their commitments to harmonize the community laws with the Decision that have progressively replaced the national legal framework.

316. At the national level, the example of Gabon, which has adopted a Presidential Decree, is illustrative and should serve as a model for other African countries in that it has translated good political intentions into concrete actions. In addition, the actions taken by Gabon in effect translate its commitments through positive legislative action to effectively apply the Decision at the level of the national civil aviation authority.

317. In addition to Gabon, Cameroon has likewise taken at the national level similar legislative measures, Congo and RCA have not taken identical measures, nonetheless, as a general policy, these two countries rec-

ognize in practice the Decision not only as having precedence over national laws and bilateral agreements but also implement the Decision with other Yamoussoukro State parties.

318. In this connection, it is abundantly clear that the national civil aviation administrations of the four countries consider the current bilateral air services agreements superseded by the Decision as being tacitly amended by the provisions of the Decision, in particular with respect to traffic rights, designation, frequency and capacity, tariff etc.

### **4.3.2 Market access and traffic rights**

319. *Traffic Rights* - Since August 1999, the Libreville Agreement and the community Civil Aviation Code have effectively liberalized access to the intra-community market, thus enlarging the air transport market that now encompass the totality of the six member States as a single air transport market. The liberalization of market access has enabled the community-based national airlines to operate air services where the market so requires.

320. In this connection, it is to be noted that both the Libreville Agreement and the Civil Aviation Code include specific provisions liberalizing intra-community market access and all the five freedoms of the air, including cabotage rights for the operation of scheduled and non-scheduled air services within CEMAC, with the exception of passenger charter operations.<sup>85</sup>

321. At the level of their aeronautical relationships with other African countries, the four countries surveyed have demonstrated greater flexibility in the granting of traffic rights and relaxation of 5<sup>th</sup> freedom within the confines of Article 3 of the Decision governing the grant of traffic rights.

322. As a result African countries that have manifested interest in commencing service to these countries and their airlines have benefited from 5<sup>th</sup> freedom, such as Kenya, Ethiopia, Angola, Guinea, Mali, South Africa, Togo, Benin, Cote d'Ivoire, Sudan, Sao Tome, Nigeria etc. - practically every country that has officially requested it.

323. *Frequency and capacity* - The Libreville Agreement, in addition has introduced complete liberalization of frequency adapted to the market demand without any restrictions, except for the requirements to coordinate and harmonize schedules.

324. In respect to capacity, the airlines are, in principle, free to determine the capacity they offer in the market, the traditional restrictions found in many bilateral agreements relating to restrictions on volume of traffic, type of aircraft to be operated have been removed, except that in the event of disparity between the capacity and type of aircraft operated, the airlines are required to enter into commercial arrangements.

325. Vis-à-vis relations with other African countries, notwithstanding the provisions of the bilateral agreements, the four countries surveyed, as a matter of policy and administrative practice have removed all governmental control of capacity and frequency in compliance with Article 5 of the Decision.

326. In practice, the four countries have not refused the increase in capacity requested by an African airline. The only justification for refusal of capacity increases is reported to be related to technical grounds, i.e. the capacity of the airport, availability of appropriate equipment and installation or respect of internationally accepted safety and security standards.

327. However, it should be noted that the four countries do not receive reciprocal treatment in some African countries located in west and southern Africa. This issue needs to be brought to the attention of the African Union through ECA, which assumes the secretariat of the Monitoring Body.

### **4.3.3 Right of establishment**

328. The right of establishment of a designated airline in the territory of the recipient country is a condition *sine quo non* for the enjoyment of the rights exchanged, without undue governmental bureaucracy and without delay to commence and continue operations of the agreed services. The right of establishment is generally expressed in terms of designation, eligibility and the procedures of authorisation and the granting of the appropriate authority to the designated airline.

329. **Designation** -In effect, the Libreville Agreement underlines the right each Member State to designate a maximum of two airlines for the operation of intra-community air services.

330. Vis-à-vis other African Countries outside CEMAC, the four countries recognize the principle of multiple designation provided for in the Decision for the operation of intra-African air services. Thus, several African countries have been given the right of designate more than one airline, such as South Africa, Togo, Benin, Mali etc. enjoyed dual designation.

331. **Eligibility Criteria** - The Libreville Agreement likewise adopts a broaden criteria similar to the Decision in respect to the conditions to be met by a designated airline to be eligible to operate and enjoy the rights granted, namely have its headquarters, central administration and principal place of business physically located in the designating State.

### **4.3.4 Tariff liberalization**

332. In relation to tariffs, the Libreville Agreement specifies that community airlines have the right to determine tariff to be charged for the carriage of passenger, cargo and mail, which must be set at a reasonable level taking into account as a reference point international tariffs. They have the duty to communicate all tariffs 60 days before their effective date to the aeronautical authorities and to respect community legislation governing competition.

333. In practice, the four countries surveyed follow the principle of tariff liberalization specified in Article 4 of the Decision and have abolished all governmental approval of tariffs, the designated African airline being free to set its tariff as dictated by market conditions.

### **4.3.5 Other measures**

334. Within the framework of CEMAC, the four countries have enacted other provisions governing:

- (a) Competition rules;
- (b) A structured mechanism for dispute resolution;

- (c) Institutional arrangement; and
- (d) Enforcement mechanism for non-respect of obligations resulting from community legislation in the form of penalties and sanctions etc.

335. In this respect, the four countries have gone beyond the requirements of the Decision by establishing a structured mechanism for dispute settlement, for the management, follow-up and control of the liberalization process under the overall oversight of the appropriate community organs.

### **4.3.6 Conclusion**

336. In summary, the foregoing brief canvas of the status of implementation of the Yamoussoukro Decision crystallizes the concrete actions taken by the four countries individually and collectively with other members States of CEMAC for the implementation of the Decision within their respective countries, often going beyond the minimum required by the Decision.

337. This being so, it is necessary to point out that the Libreville Agreement is not fully compliant with some of the provisions of the Decision in its current formulation, although this non-compliance has little effect on the fundamental principles of the Decision. The non-conformity relates to its limited scope of application – non-application to passenger charter flights; the mandatory nature of schedule coordination and harmonization; the requirement to enter into commercial arrangements to balance any discrepancy between capacity offered and type of aircraft operated by each designated airline; the longer period required for advance communication of tariffs (60 days).

## **4.4 Impact of the implementation of the Yamoussoukro Decision**

338. The short transitional period since the introduction of liberalization in the four countries and the socio-political instability then prevalent in the region may not perhaps allow meaningful conclusions to be drawn on the global impact of liberalization.

339. The liberalization experiences, albeit short, within CEMAC would provide some useful insight in identifying the effects of liberalization policies pursued by these States and some of the significant changes that have occurred and that could be attributed in part to liberalization.

340. Nonetheless, the implementation of the Decision and the complementary liberalization measures taken at the subregional level have opened access to a larger air transport market, devoid of governmental management of capacity and pricing. The counterpart of this is the expected improvement in the offer of air transport services, the connectivity, the reduction of tariffs and more generally improvement in the quality and quantity of air transport services offered by the airlines benefiting from the liberalization process. The impact of the implementation of the Decision will be examined on the basis of the following parameters: (a) private sector participation; (b) market access: traffic rights, capacity, frequency, designation etc.; (c) traffic volume; (d) tariffs; and (e) operation of national airlines: cooperation, competition etc.

## 4.4.1 Global impact

### (a) *Participation of the private sector*

341. The “open skies” policy within CEMAC has created favourable conditions to stimulate overall economic activities and increase commercial opportunities for private sector participation in the air transport industry. This phenomenon, in fact, seems to be widely prevalent in other parts of Africa where liberalization seems to stimulate the private sector to participate within its resources and capacity in air transport.

342. Following the participation of the private sector, the number of airlines established in the four countries increased by 19 airlines in 2002, as compared to 1998. In 1998, there were a total of 12 airlines operating within the four countries. Among these companies, three were operating regional and long-haul services (Air Afrique, Cameroon Airlines and Air Gabon), and 9 were operating domestic and regional services.

### **Box No. 2**

#### *Domestic and regional airlines*

	1998	2002
1. Long haul operators	3	02
2. Domestic and regional airlines (CEMAC zone)	9	29
<b>Total</b>	<b>12</b>	<b>31</b>

343. In 2002, the number of national airlines increased to a total of 31 airlines the four countries taken together, out of which 2 were international and long haul operators (Air Gabon and Cameroon Airlines), and 29 offered domestic, regional and charter services.

### (b) *Market access and traffic rights*

344. **Traffic rights** - The liberalization of intra-community air transport introduced in CEMAC has been translated by the broadening and unification of the market. The broadening of the market has resulted in the ability of national airlines to operate air services wherever the market so requires without restrictions on traffic rights, capacity or frequency. As will be seen later (effect on traffic), national airlines were able to extend their operations within the CEMAC region, as well as to West Africa such as Port Gentil, Libreville and Brazzaville (see below effects on traffic).

345. The greater flexibility shown by the four countries in the granting of traffic rights to other African countries have resulted in the latter being able to exercise 5<sup>th</sup> freedom traffic rights. For example, Congo has granted the 5<sup>th</sup> freedom to Ethiopia, Angola, Guinea, Mali and South Africa; Gabon to Togo, Mali, Benin and Côte d'Ivoire; Cameroon to Kenya and Ethiopia; and the Central Africa Republic to the Sudan, Togo and Benin. As a result, several African countries have started to operate under 5<sup>th</sup> freedom, such as Air Inter, West African Airlines, Ethiopian Airlines, Kenya Airways, and Sudan Airways.

346. **Frequency and capacity** – The flexibility shown in the granting of traffic rights has brought about an increase in the number of flights offered and the opening of new routes or addition of frequency to the

four countries. For example starting in 2000, new routes were operated to and from Congo to Brazzaville – Bamako, Johannesburg, Cotonou, Lagos, Conakry, Addis Ababa; and Pointe Noire – Douala, Franceville, Libreville and Cotonou. The same is true for Gabon, where the following airlines started services: Air Ivoire, Trans Air Congo, West African Airways, Nigeria Airways, Air Sao Tome, Benin Golf Air etc. Cameroon was linked with Kenya and Ethiopia.

347. **Designation**- A number of countries were also authorized to designate more than one airline: South Africa, Togo, Benin, Mali etc.

**(c) Impact on traffic development**

348. According to available statistical data for the four countries, the adoption of liberalization policy has witnessed a strong growth in traffic between 1998 and 2002. Passenger traffic increased from about 1.6 million passengers in 1998 to 2.7 million in 2002. Aircraft movement also showed a spectacular increase of 14.1 per cent in 2002, compared to 1998, moving from 116,772 movements in 1998 to 133,200 movements.

349. This traffic increase was mainly due to a sizeable growth in domestic traffic which represents over 50 per cent of the total traffic, at about 1.7 million passengers in 2002 and the scheduled services operated by foreign airlines, most of which were permitted to inaugurate under an “open skies” policy.

350. In summary, the implementation of the Decision and the complementary measures taken at the level of CEMAC had a significant impact on the volume of traffic and the four countries have recorded increased air transport activities between 1998 and 2002. However, these efforts need to be strengthened in the future.

**(d) Impact on airline operations**

351. **Competition** - Behind the experience of a strong traffic growth, there has been strong competitive pressure from African and European carriers. The number of foreign airlines (i.e. outside CEMAC) more than doubled in 2002 compared to 1998.

352. In 1998 there were seven foreign airlines headquartered outside CEMAC present on the market, out of which two were European airlines (Air France et Swiss Air) and five African carriers (Equatorial Airlines of Sao Tome, Kenya Airways, Nigeria Airways, Royal Air Maroc, and TAAG Angola Airlines).

353. In 2002 the number of foreign airlines jumped to 15 foreign airlines operating into the four countries (3 European carriers -Air France, Sabena/ SN Bruxelles Airlines; Swiss Air and 12 African airlines).<sup>86</sup>

354. At the national level, Gabon was served by four foreign airlines in 1998 (Air France, Equatorial Airlines, Air Sao Tomé, Royal Air Maroc) compared to nine airlines in 2002 (France, Air Ivoire, Bénin Air Golf, Equatorial Airlines, Air Sao Tomé, Inter Air, Nigeria Airways, Nouvelle Air Ivoire, Royal Air Maroc, Swissair and TAAG Angola Airlines).

355. In Cameroon, the situation is also similar with nine foreign airlines were operating to Cameroon in en 2002 (Air France, Air Ivoire, Nouvelle Air Ivoire, Bénin Air Golf, Ethiopian Airlines, Inter Air, Kenya Airways, Nigeria Airways, S.A. Sabena/ SN Bruxelles Airlines, Swiss Air) against six in 1998 (Air France, Air Guinea, Kenya Airways, Nigeria Airways, S.A Sabena, Swiss Air).



356. The same was true of Central African Republic where four foreign airlines served in 2002 (Air France, Bénin Air Golf, Sudan Airways, Trans-African Airlines), as opposed to only one in 1998 (Air France).
357. In the Congo, two airlines were present in 1998 (Air France and TAAG Angola Airlines). In 2002, eight airlines were present in the market (Africa Airline, Air France, Air Guinea, Bénin Air Golf, Ethiopian Airlines, Inter Air, TAAG Angola Airlines, Trans Air Bénin).
358. Hence the market is characterized by increased competition from foreign and regional airlines. The establishment of privately owned airlines has increased the number of airline capacity in the market.
359. Despite the establishment of national airlines operating domestic and regional services, the liquidation of Air Afrique compounded with the weakness of other national airlines and the main operators are CAMAIR and Air Gabon. As a result, long-haul and intercontinental services are largely dominated by foreign airlines: Air France on the European routes, Ethiopian Airlines, Kenya Airways and Air Inter on the African network.
360. **Route network** – Route network improvement is observed, in particular to east and southern Africa, where four companies currently provide services to and from the four countries: Ethiopian Airlines, Kenya Airways, Inter Air and Sudan Airways.
361. The route network of African airlines has been characterized by a poor regional route network and a greater focus on route development mostly to European capitals - usually those associated with a previous colonial presence. It is expected that regions other than Europe will receive more attention - in particular the USA, Middle East and Asia, or Moscow to Lagos, Nairobi, Dakar, Addis Ababa, than to travel within Africa by surface or air.
362. Frequencies have been increased and new services started to new destinations in Africa, Europe, the Middle East, Far East and the USA.. New entrants are linking east and west Africa, west and south Africa and to some extent the Central African subregions.
363. Poor route network, scanty services and a greater focus on routes mostly to Europe characterized the route network. A net improvement is observed in the intra-African route network in terms of greater frequencies and number of cities served.
364. At the subregional level, there are certain missing links: Bangui - Libreville; Brazzaville- Bangui; Brazzaville - N'Djamena; Libreville - N'Djamena; Malabo - N'Djamena. Better connections are between– Douala - Libreville; Douala-Malabo and Douala - Bangui. There are no direct services to North America, Far East. All connections are focused on Europe and West Africa.
365. A net improvement is observed in the intra-African route network in terms of greater frequencies and number of cities served. Other than the subregional services, the route network is focused on north-south instead of east-west.
366. The major difficulties of the national airlines which affect the development of air transport to the fullest extent possible arise from the low traffic volume on certain routes which has resulted in the non-operation of these sectors or the still continuing pockets of resistance to liberalization, in particular in west, central and southern Africa. As a result some of the national airlines had been refused 5<sup>th</sup> freedom to these destinations.

367. **Quality of services** – the quality of services offered by the national airlines leaves much to be desired and is characterized by unreliability of schedules, frequent delays, cancellation of flights etc.

(e) **Effect on tariffs**

368. The absence of reliable data does not allow at the present time to draw meaningful conclusions on the impact of liberalization on tariffs. The institution of liberalization for the time being has not resulted in reduction of fares as a result of the monopoly enjoyed by some airlines on most of the long-haul and intra-African routes. The limited competition has diluted the pressure for reduction of fares, thus placing the passengers at the mercy of the few airlines, or even one airline, providing services on some routes (e.g. Bangui).

#### **4.4.2 Conclusion**

369. In summary, despite the short transitional period since the introduction of liberalization by the four countries, the positive results of the implementation of the Decision through the adoption of corresponding regional measures allow certain conclusions to be drawn:

- (a) First, liberalization and the implementation of the Decision are today an accepted fact to an extent that the main focus of attention in the four countries has shifted to liberalization. All of the four countries have demonstrated their commitment by taking measures at the national and subregional level with the removal all regulatory barriers and governmental control of market access and other airline commercial practices.
- (b) The enactment of important regulatory instruments and the establishment of the appropriate common institutions to manage the process are important gains of liberalization both at the national and subregional level
- (c) The institution of a regime, devoid of *a priori* governmental management of market access, capacity and pricing have opened possibilities for an increased number of airlines, for greater competition at least on some sectors and for an increase in the volume of traffic.
- (d) The integrationist movement within CEMAC and the planned creation of Air CEMAC would solidify the basis for air transport and induce a greater movement of persons and goods within the subregion and beyond.

#### **4.4.3 Constraints and difficulties**

370. In light of the preceding analysis, the major problems and constraints of the liberalization process started by the four countries can be summarized as follows:

- (a) Complexities of the programme of liberalization;
- (b) Handicap and difficulties of the national airlines;
- (c) Administrative and regulatory constraints; and

(d) Institutional constraints.

**(a) *Complexity of the reform programme***

371. From a broader policy perspective, the liberalization process within the context of the four countries, as in most other African countries, is made particularly difficult by the complexity of the reform programme involving several components: (i) the need to surmount the protectionist bureaucratic habits and breaking-up of the monopoly of national airlines which were operating under government protection; (ii) the capacity of the national airlines to adapt to the new liberalized market; (iii) the necessity to put in place in parallel at sub-regional and national levels appropriate regulatory instruments; (iv) the lack of funding mechanism for sub-regional activities and for the coordinated follow up of the various components of the reform; (v) the uneven commitment to the full scope of the reform, and the resistance to reform, in particular by influential regional and local carriers.

372. The transition from a protectionist regime to an increasingly liberal regime raises intricate questions and the response to these is not always easy. Firstly, it will be necessary to surmount the protectionist reflexes firmly anchored in the bureaucracy for over three decades within the national civil aviation administrations and the monopoly of the national airlines. Secondly, it is also necessary that the national airlines be able to follow the pace of acceleration of the regulatory changes.

373. In order to survive in a competitive commercial environment, the carriers must be able to restructure and adapt in seeking greater economy of scale to be able to respond effectively to the liberalized market environment.

374. However, the experience of other countries shows (US, Europe, Asia Pacific, and Latin America) that airlines are often caught out of pace by the rapidity of the reform programme.

**(b) *Handicap and difficulties of national airlines***

375. The effects of liberalization have been complicated and diluted by the inherent difficulties and problems facing the national airlines resulting from their small size and fragility, adapting with difficulty to the newly liberalized environment. The constraints and difficulties faced by the national airlines are many and are caused by several factors. Firstly, there are the limitations of the national private sector to mobilize the resources necessary to finance air transport activities. The huge amount of investment and expertise required limit the possibilities of the private sector in Africa.

376. Secondly, the difficulties of the national airlines are linked to their size and competitive position, lack of cooperation and their inability to quickly adapt to the change brought about by liberalization.

377. ***Size of Operators*** – Compared to airlines of other regions, the size of African airlines taken individually is small. Compared to airlines of other regions, these airlines are small by all standards; even taken collectively, they are smaller than any airline in Europe or in Asia. As a result of their size, African airlines have not developed an operating efficiency that gives them a cost advantage over their major foreign competitors. Their financial positions were weak from the start. They have not developed an operating efficiency to be competitive and reduce operating costs, aircraft purchase, introduction of new technology and to overcome their financial and operational difficulties. Without some degree of consolidation, these airlines will continue to be small, fragmented and for the most part inefficient. As a result, it will be difficult, if not impossible, for these airlines

to have substantial domestic, regional and international routes, improve their overall competitiveness, offer better frequency, and competitive fares.

378. **Restructuring** – the process of restructuring, commercialization and privatization of the national airlines has been at the centre of the policies of some of these Governments in search of greater operating efficiency and to reduce the burden on the public purse, these countries are keen to privatize, but the operating losses have inhibited most potential purchasers with the objective of improving their financial situation and overall competitiveness. The majority of these restructuring plans have not brought about the expected results.

379. Management instability and political interference have aggravated the problem. Each change of chief executives is accompanied by a new management team, a new restructuring plan, even a new management approach. The major plans and projects often change hands often and are sometimes even completely abandoned.

380. Restructuring is a long term process; in the meantime, attention of the management of the national airlines is focused on day-to-day operational problems and mobilizing resources and hence the management does not have the time to engage in cooperation and other commercial arrangements with other African airlines.

381. **Competition** – To the already existing long list of challenges must be added the anticipated increased competition. The removal of government control hitherto exercised on market access, capacity, tariffs and other commercial practices has brought about an increased competitive pressure among the airlines of the subregion and foreign airlines.

382. This competitive pressure is accentuated by the increasing disparity between the local airlines and the European airlines in terms of size, equipment etc. The local airlines of the subregion have not been able to integrate their commercial operations, their financial and human resources in order to strengthen and improve their competitive position and financial basis.

383. **Cooperation and partnership** - Cooperation and partnership between the national airlines of the subregion are undeveloped. Collective approaches for improvement of quality of service have not shown positive results. The local airlines have remained captives of their day-to-day internal problems. They have not succeeded in crystallizing cooperation agreements among themselves or in seeking partnership and strategic alliances with foreign carriers.

384. **Difficulties of developing routes** – The constraints facing the local airlines, which are similar to many African airlines, are also compounded by the difficulties of obtaining 5th freedom rights, in particular in West and Southern Africa.

(c) **Administrative and legal constraints**

385. To the handicaps of the national airlines must be added the administrative and regulatory constraints facing the four countries under review. Despite the provisions of the Civil Aviation Code, national regulations have not been revised, harmonized and adapted to liberal market conditions, in particular in respect of the oversight of safety and national regulations governing licensing and authorization of carriers.

386. The diversity of national aeronautical laws and regulations do not take into account the imperatives of harmonization and coordination at the level of the subregion. In this context, the implementation of common

projects regarding the economic regulation of air transport and safety oversight with a collaborative effort will have the greatest importance for CEMAC.

**(d) *Institutional constraints***

387. The implementation of liberalization measures is further diluted by the institutional constraints that are the result of the lack of adequate financial and human resources available to the national and community institutions, adequate means to allow them to discharge their responsibilities.

388. Despite the existence of community institutions within CEMAC for the management, follow-up and control of the liberalization process, these institutions have not been effectively operational as a result of the limited financial resources and expertise.

389. The Executive Secretariat of CEMAC, for example, does not currently have adequate financial and human resources to effectively respond to its responsibilities resulting from the implementation of community legislation. As a result, the political commitment reflected in the community instruments are not properly followed by the common institutions. The framework for harmonization and consultation is not yet functional. Thus, the sustained follow-up and control has yet to be in place.

390. At the national level, the problems are also identical; the civil aviation administrations have financial difficulties. This situation has an impact on their capacity for safety oversight. The aeronautical authorities continue to use outdated legal texts for regulating liberalized air services. In addition, they lack administrative autonomy, financial and human resources to manage their activities in an independent manner and to control the national airlines.

391. The protection of consumers is inadequate. In general, African passengers are not aware or properly informed of their legal rights; there is no aeronautical legislation protecting passenger rights. The complaints of passengers are many and they relate to customs harassment, flight delays, services at airports, cancellation of flights without notice, denied boarding, infrequent services.

**(e) *Relations with other subregions and effects of implementation of the Decision***

392. The analysis of the efforts in implementing the Decision by the four countries has not been reciprocated by some countries in other subregions of Africa and this is a negative element that adversely affects the overall effective implementation of the Decision on a wider basis. The countries with which the four civil aviation administrations face difficulties are generally in West Africa and Central Africa and the SADC subregion. They are: Togo, Côte d'Ivoire, Mali, Benin and Nigeria in West Africa. In the SADC region, the countries that place restrictions on frequencies and/or 5<sup>th</sup> freedom are South Africa and Angola. In Central Africa, they are Chad, Equatorial Guinea and the Democratic Republic of Congo.

393. The type of difficulties facing the four countries are related to traffic rights (even on routes which are not operated), frequencies and often the desire to protect their national airlines from competition. These countries often seek to impose restrictions on market access. 5<sup>th</sup> freedom is squarely refused; request for increase of frequencies is rejected for reasons of insufficient traffic in a specific sector.

394. These difficulties cause the non-operation of some routes or simply the protection of the route in question from competition by refusing an increase in frequency. As a result, national airlines of the four coun-

tries have been unable to operate new routes or increase capacity (for example, Air Gabon and Cameroon Airlines) to improve air transport services for the benefit of users of air transport going to these destinations.

395. The view was expressed by the four countries that these difficulties result from the lack of an appropriate enforcement mechanism, together with measures to compel non-compliant States to adopt the Yamoussoukro Decision. This aspect of the problem should be addressed urgently by establishing the Monitoring Body contemplated in the Decision.

396. The replies to the questionnaire further indicate other constraints identified by the national civil aviation authorities of the four countries. These are:

- (a) The proliferation of small carriers within CEMAC and the implications for safety and security. By liberalizing market access, many private airlines were established which do not have the necessary resources for operation, cash flow, working capital, maintenance fuel, insurance etc.;
- (b) Some influential carriers are still attached to the concept of protectionism;
- (c) The lack or absence of a national instrument for the operation of air services and the concomitant dependence on foreign carriers (Congo and Central African Republic);
- (d) The monopolistic situation created on some routes – East Africa, Europe, South Africa and some subregional sectors; the irregularity of flights and absence of a legal mechanism for the protection of consumers;
- (e) The hesitations and non-responsiveness to adopt common positions on major air transport developments;
- (f) Lack of adequate financial resources to finance the activities of the organizations; absence of sustained interaction among the various stakeholders at the national and regional basis and exchange of experiences through workshops and seminars.

#### **4.4.4 Prospects and recommendations**

##### *Prospects*

397. In an environment imbued with radical transformation of the air transport industry worldwide, the four countries surveyed pursue liberalization of air transport individually and collectively with other countries in CEMAC and partners. These efforts will benefit the subregion, despite current constraints and difficulties.

398. Air transport plays a vital role when viewed against the background of the inadequacies of the other modes of surface transport (road, railways etc.), which do not provide efficient and reliable transport of people and goods internally as well as externally with other countries of CEMAC. In addition, air transport is the preferred means of transport and is suitable for transporting high-value goods and perishables, such as cut flowers available in the subregion.

399. *Tourism potential* – At present, the subregion attracts very few tourists, despite the diversity of the fauna and flora, the rich socio-cultural heritage etc. This potential represents the essence of a tourist industry

and if properly exploited would be a means of creating an additional tourist influx, generating air transport traffic in the CEMAC region.

400. ***Economic recovery*** – the standard of living in the CEMAC subregion is improving as indicated in the report of the ECA Subregional Office for Central Africa on “The Economies of Central Africa 2004”. The report notes a significant recovery of national economies, in particular as a result the increased production of fuel in six States of CEMAC. If this trend is to be confirmed, the prospects for growth and development of the air transport industry are indeed high and the national airlines would have an important role to play.

### ***Recommendations***

401. Despite the many operational constraints and difficulties, air transport in CEMAC has major advantages and plays a vital role in facilitating the movement of persons and goods and is destined to bring about the economic and physical integration within CEMAC and beyond. Given the importance of air transport and natural advantages over the other modes of surface transport, priority should be accorded by the Governments concerned for the sustained development of air transport by taking appropriate and adequate measures to alleviate current constraints and difficulties, focusing on:

- a. The necessity of making community institutions fully operational and alleviating the constraints related to inadequate financial and human resources to ensure their ability to carry out their duties;
- b. Safety oversight – regulations implementing the community Civil Aviation Code as well the COSCAP project; airworthiness programme (COSCAP) project for safety oversight. The objective of the COSCAP project is to improve the safety of air transport in the Member States (personnel licensing, operation and airworthiness of aircraft, certification of aerodromes) through the strict application of harmonized rules in accordance with ICAO Standards and through the creation eventually of a community civil aviation safety agency for CEMAC;
- c. Modernization and harmonization of national regulations adapted to the liberalized environment, in particular safety oversight, the licensing and authorization of carriers etc.;
- d. Encourage CEMAC member States that have not done so, to take appropriate national measures (Congo and RCA) to internalize the Decision at the national level;
- e. Harmonization of the Libreville Agreement and the Civil Aviation Code, examining the elements that are incompatible with the Decision.

402. The experience of liberalization within CEMAC presents valuable insight into the process, content and structure of the liberalization policy followed by the four countries, the effects on air transport development and the constraints and difficulties encountered.

# 5 Deepening of Worldwide Liberalization

## 5.1 Background

403. In the annals of international air transport, the 1990s will go down in history as the decade of profound changes and structural transformation of the air transport industry. For most of the period 1945-1994, the industry was dominated by state control of market entry and state owned airlines, called “flag carriers”. Often the governments that owned them subsidized and used them as instruments to further their mercantilist interests or to promote their countries’ status, power and prestige.<sup>87</sup> Even where airlines were in private ownership, like in the United States, Governments still exercised close control over where they could fly, and the prices they could charge.

404. In the international sphere, the system of government control and regulation was established by the Chicago Convention signed in 1944, after the failure of the Chicago Conference to achieve a widely accepted multilateral agreement on the exchange of economic rights. Since then, States have relied primarily on bilateral agreements, through which decisions on market access, pricing and quantity of services supplied are taken by States in the exercise of sovereignty over their air space.<sup>88</sup> This has led to a complex web of bilateral agreements between pairs of countries under which Governments exchanged traffic rights.

405. By 1990, not less than 4880 bilateral agreements and arrangements are reported to have been registered with ICAO.<sup>89</sup> This figure does not depict the true picture, as not all agreements are registered. Many other agreements are known to exist.

406. These intergovernmental agreements have had a profound influence on the development of international air transport and were popular, providing the airlines (including African airlines) a measure of protection and ensured participation in international air transport and in large measure permitted and ensured the enormous growth of the industry in the post-World War period.

## 5.2 Global liberalization trends

### 5.2.1 US Deregulation and Open Skies Policy

407. Starting in the 1970s, fundamental changes occurred that were spearheaded by US domestic deregulation during President Carter’s administration through the adoption of the Airline Deregulation Act in 1978. It was followed by the announcement by the US Department of Transportation in 1992 of the pursuit of an “open skies” policy with the objectives of attaining liberalization.<sup>90</sup> This was aimed initially at liberalizing air transport in Europe and subsequently in other countries.



408. In the beginning, US Deregulation was forcefully opposed by countries in Europe, Latin America, Asia and Africa. But the movement was unstoppable and gradually took hold of Europe 10 years later, which in turn, now endeavours to impose on other regions, including Africa, either by means of market realities in which the “rapport de force” is paling or by exerting pressure on the international regulatory regime, a movement which in the long run will become difficult to resist.<sup>91</sup>

409. Some of the major events that have set the new direction of international air transport policy are shown in Box 5.1 below.

### **Box 5.1**

#### ***Major events that have marked the international air transport***

- 1969 - Sir Ronal Edwards in his 1969 famous report on British air transport described it as follows: “however romantic, exciting and important the airline industry may seem, it should be acknowledged that in the final analysis, its ‘raison d’etre’ is the same as that of the butcher, the baker and the candlestick maker; in other words, the airline is there to provide service for remuneration”
- 1974 - The non-scheduled airlines phenomenon prompted the developing countries to urge ICAO to convene a conference on air transport. The first conference was held in 1977, followed by a second in February 1980
- 1978 - US Deregulation Act adopted a long-term objective – open skies in the world; the US government to work hard towards the liberalization of international air transport
- 1985 - Third Air Transport Conference (Oct-Nov 1985) which discussed among other things, unilateral measures affecting air transport
- 1986 - EEC adopts the single act – three phases liberalization established a regulatory regime aimed at the creation of a single market for intra-Europe air services  
The last of the liberalization packages took effect on 1 January 1993  
Objective – abolition of barriers and accomplishing the extension of EU regulations to areas such as licensing, market access, pricing, capacity and competition, computer reservation systems and airport access
- 1986 - Uruguay round - brought economic regulation of air transport within multilateral negotiation - Adoption of Annex on Air Transport
- 1992 - Announcement of the US Department of Transportation of the pursuit of open skies policy with the objectives of attaining liberalization first with Europe and subsequently with other countries
- 1990 – 1<sup>st</sup> Us Open Skies Agreement, Netherlands
- 1994 – Fourth ICAO Air Transport Conference
- 2003 – 5th ICAO Air Transport Conference

### **5.2.2 European liberalization**

410. Ten years after US Deregulation and in three phases, the liberalization in the European Union (EU) established a regulatory regime aimed at the creation of a single market for intra-Europe air services. The last of the liberalization packages took effect on 1<sup>st</sup> January 1993, accomplishing the extension of EU regulations to areas such as licensing, market access, pricing, capacity and competition, computer reservation systems and airport access. The Third Package created an EU-wide aviation market where an EU person (individual or company), irrespective of nationality, could establish an air carrier anywhere within the unified market and from there operate wherever market opportunities arose without any need for government

permission to do so. Price setting was also left to airlines to decide, along with the level of capacity they wanted to offer in the market.

411. Deregulation of the air transport industry in the United States by any measure has been a success. The same is also true of the liberalization of the aviation industry in Europe and other parts of the world. Deregulation and liberalization have brought about tremendous benefits to both the consumers and the air transport service providers/operators. The global industry trend is to liberalize air traffic rights and promote active private sector participation in the air transport industry.

412. A fact often forgotten is that these changes, particularly in the United States, would not, however, have been attempted in the absence of such in-built strength as a broad and highly developed domestic market, highly trained manpower, access to capital, adequate infrastructure, strong airlines etc.

### **5.2.3 General Agreement on Trade-In-Services (GATS)**

413. An important external factor that points to the future is the continuing multilateral discussion within the World Trade Organization (WTO). For the first time since early failures, the economic regulation of air transport has become the subject of multilateral talks as part of the Uruguay round.<sup>92</sup> In 1986, after considerable wrangling, the GATT Ministerial meeting agreed to include services to the ongoing multilateral trade talks. This has been as a result of a US initiative to export its deregulation of various services to other countries.

414. The Uruguay Round of Trade Negotiations concluded in December 1993 included a General Agreement on Trade in Services (GATS), which brought air transport services within a multilateral framework of principles and rules similar to that covering trade in goods.

415. The GATS Annex on Air Transport Services is formulated so as to apply, in principle, to all aspects of trade in air transport services whether scheduled or non-scheduled, as well as to ancillary services. However, GATS, including the dispute settlement procedures do not apply to (a) traffic rights or (b) services directly related to the exercise of traffic rights. Consequently, only three areas of air transport are currently included in the transport Annex of the GATS: (i) aircraft repair and maintenance services; (ii) Computer Reservation System services; and (iii) the selling and marketing of air transport services.

416. 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 GATS is an effective option for air transport liberalization. There is difficulty in reconciling bilateral air service agreements with the GATT principles of most favoured nation (MFN) and national treatment. Applying the basic GATS principle of most favoured nation (MFN) treatment to traffic rights remains a complex and difficult issue, because access to agreed routes is limited to national carriers of the bilateral parties. This initiative is, however, fraught with difficulties and challenges.

417. In fact it is doubtful whether it will be feasible to bundle air transport with telecommunication, insurance and banking in a world-wide multilateral agreement. There is also the question of the scope of such a multilateral agreement – whether soft or hard rights will be included.

418. In 2000, the WTO launched a review process of the General Agreement on Trade in Services (GATS), which includes an Air Transport Annex, with a view to the possible extension of its application. During the review process, there were some indications that some WTO-OMC Members are considering not only possible

addition of certain further “soft” rights in the Air Transport Annex, such as “airport services”, but also certain aspects of “hard” or traffic rights.

#### 5.2.4 Involvement of other air transport organizations

419. Another significant development at the world stage is the increasing interest shown and the growing involvement of other organizations in air transport liberalization. The Organization for Economic Cooperation and Development (OECD) has developed a model bilateral and a multilateral agreement on the liberalization of air cargo services; the same is also true of the International Chamber of Commerce.

420. A proposed Tourism Annex to the GATS which is supported by the World Tourism Organization and the United Nations Conference on Trade and Development (UNCTAD) has been tabled with WTO.

### 5.3 Worldwide dispersion of liberalization

421. Since the 1990s, there has been significant geographic dispersion of liberalization, resulting in major developments on the air transport regulatory scene at both bilateral and regional levels, as well as fundamental changes in the structure of the industry. The period has also been marked by the increasing interest and involvement of other organisations in air transport liberalization.

422. The analysis of the continuing evolution and deepening of the worldwide liberalization trends is based on the results of the 4<sup>th</sup> and 5<sup>th</sup> ICAO world wide air transport conference as well as the work being done at other organizations, including the World Trade Organization (WTO), the Organization for Economic Development and Cooperation (OECD), the International Chamber of Commerce (ICC) and others.

423. For African policy makers and stakeholders, there are many important questions to be resolved as a new international civil aviation industry takes shape, the major characteristics of which are a liberal environment and freedom in the provision and pricing of airline products. A major by-product of this evolution is the emergence of mega carriers that enjoy enormous economies of scale and a near monopoly of marketing through expanded CRS. The industry is also moving away from one dominated by “flag carriers” owned or supported by governments to one in which privatized airlines pursue commercial objectives.

#### 5.3.1 Regional developments

424. Since the 1990s, there has been wider geographic dispersion of liberalisation resulting in significant developments in the air transport regulatory scene at both bilateral and regional levels as well as fundamental changes in the structure of the industry, with a wider geographic dispersion of air transport liberalization.

425. At the regional level, more arrangements have emerged with a wider geographic dispersion in Latin America, Asia, South America and the Caribbean. The most prominent examples are presented below.

426. ***Andean Pact.*** The “Andean Group” was founded by five South American States in 1969 under the Cartagena Agreement (more often called “Andean Pact”).<sup>93</sup> The objectives of the Group in the aviation field

were the privatization of State-owned national airlines which had a significant impetus on the liberalization progress and the adoption of Decision 297, “Integration of Air Transport in the Andean sub region”, which established an “open skies” air transport policy on a subregional basis.

427. **Caribbean Community.** The Multilateral Agreement Concerning the Operation of Air Services within the Caribbean Community was concluded on 6 July 1996 among 14 Caribbean States.<sup>94</sup> The Agreement entered into force 11 December 1998.

428. **MERCOSUR.** The Fortaleza Agreement, signed on 17 December 1996, is the first agreement on air services negotiated by MERCOSUR countries, namely, Argentina, Brazil, Paraguay and Uruguay, and its associate members, Bolivia and Chile. The Agreement established freedom of the air for subregional airlines for traffic on routes not served by existing bilateral agreements.

429. **Southeast Asia.** The CLMV (an abbreviation taken from the first letter of the parties) Agreement was concluded 14 January 1998 by Cambodia, Lao People’s Democratic Republic, Myanmar and Vietnam for subregional air transport cooperation.

430. **Trans-Tasman single aviation market** - In 1996, Australia and New Zealand signed the Single Aviation Market (SAM) arrangements, which allowed carriers to operate without restrictions trans-Tasman and domestic services (effectively, cabotage). In 2000, the two States concluded an “open skies” agreement, which was officially signed in 2002. This new agreement formalized the provisions of SAM arrangements, eliminated the limitation of beyond rights, and allowed 7th Freedom rights for all cargo services.

### 5.3.2 Open Skies bilateral developments

431. Following the first open skies agreement signed with the Netherlands in 1992, several other open skies or very liberal agreements were signed with European countries (Austria, Belgium, and Denmark, Finland, Luxembourg, Sweden, Norway, Switzerland, Iceland and Germany). In 1995, a bilateral US-Canada agreement was signed, foreseeing the significant liberalization of trans-border air traffic within three years.

432. Since then, many bilateral agreements have been renegotiated to make their provisions more flexible and liberal. Though there are many different degrees to which this has been done, typically the new elements make more flexible (or abolish) State control over frequencies, capacity and prices (which are to some degree left to be determined by the market) and increase or do not limit the number of designated carriers. This re-orientation of bilateral air service agreements is underscored by many of the same factors that led to domestic liberalization (quest for greater efficiency and competition, lower prices, etc.).

433. According to a report of ICAO, in December 2000, nearly 80<sup>95</sup> “open skies” bilateral agreements had been concluded involving some 60 countries, with more than half of these agreements between developed and developing countries and 11 with developing countries as both partners, including 12 African countries, starting in 1999 with Tanzania, Cape Verde, Uganda, Senegal, Benin, Rwanda, Morocco, Nigeria, Gambia, Ghana, Burkina Faso and Namibia. It is also understood that Kenya and Ethiopia have finished negotiations with the US, although the agreement has not been signed as yet.

434. In 1997, the Central American States (Panama, Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) separately concluded “open skies” agreements with the United States. The agreements were virtually identical and provided for full market access without restrictions on designations, route rights, capacity, frequen-

cies, code sharing and tariffs. Four of the six agreements also granted Seventh Freedom rights for all-cargo services, and further agreement granted Seventh Freedom rights for charter all-cargo services. A number of African countries also signed or initialled Open Skies agreements with the US.

435. A plurilateral “open skies” agreement was concluded by the United States, New Zealand, Chile, Brunei and Singapore, all members of the Asia Pacific Economic Cooperation (APEC) in May 2001. This agreement is open to other states of the Asia Pacific Cooperation forum.<sup>96</sup>

436. From the above indicative analysis, it is evident that practically every region of the world is moving towards a more open and liberal regime on a bilateral or regional basis. The initiatives described above indicate the preference of the majority of States for the regionalization of air transport liberalization, mostly undertaken as part of the construction of common markets, free trade areas or other economic integration processes which imply close economic integration between member countries.

437. A global multilateral approach is still far away from air transport although there are enormous pressures to include air transport in the General Agreement on Trade-in-Services (GATS).

## 5.4 Restructuring of the industry and alliances

438. The airline industry itself has undergone major transformation in an increasingly competitive environment, including changes in corporate structures and business models, alliances, code sharing arrangements, cross equity investment continue to proliferate.

439. Economic liberalization and globalization have brought about fundamental changes in the commercial environment of air transport, including changes in corporate structures and business models. Second, carriers have organized systems to combine traffic from converging routes at a central Hub. This phenomenon began in the United States as a consequence of the domestic liberalization that took place in the late 1970s. Internationally, the “hub-and-spoke” system has played an important role in the evolution of competition among carriers since it has required carriers to develop an international (or internationalized) strategy to connect hubs and spokes within and beyond national borders.

440. The pressure for the creation of truly global networks through hubs and spokes has been a recent characteristic of aviation relations. The move towards globalisation in all spheres of the world economy is probably most pronounced in the air transport industry as evidenced in the aggressive move that is being made by the big carriers. These measures have shaped a more competitive international aviation environment whose major characteristics are the globalization of the industry, the emergence of mega carriers and the strong marketing and operational alliances among operators, all under less government control. Globalization has been strengthened by the disappearance of the East/West blocks – free movement of investment across borders.

441. Africa is also witnessing the strategic positioning of European carriers in the African market through privatization, code share and other forms of alliance. Hence, African carriers are not only competing with each other but are also facing direct and indirect competitions from European mega carriers.

442. Some of these forms are:

- (a) Merger: where two or more airlines agree to have one identity and form one company;
- (b) Equity swaps: where two or more airlines agree to exchange part of their equity thus forming a strong alliance;
- (c) Purchase of shares: where an airline buys another airline to complement its route network and/or expand its markets;
- (d) Code-sharing: where two or more airlines agree to share their operational codes;
- (e) Computer hook-ups: where two or more airlines agree to interconnect their reservation/distribution systems to maximize sales on each other.

443. The privatization and commercialization of airlines are part of the broader trends associated with globalization and liberalization across all economic sectors as Governments reduce or withdraw from the ownership and management of many State entities. Since 1985, about 130 governments announced privatization plans or expressed their intentions of privatization for approximately 180 State-owned airlines. During this period, 86 of these targeted carriers have achieved their privatization goals.<sup>97</sup>

444. In the development of global networks, different carriers have dealt with market pressures to develop global networks in different ways. Only a very few have gone it alone, attempting to develop their own systems. Others have resorted to marketing alliances, sometimes involving cross-ownership arrangements, which allow them to link hubs through practices such as code-sharing. Estimates from the OECD indicate that to date nearly 200 airlines have been involved in establishing over 500 alliances. Most of these have involved code-sharing arrangements where carriers can appropriate network benefits without actually investing in the expansion of their networks. The popularity of code-sharing derives also from the fact that it constitutes a powerful instrument for carriers to maximize the use of traffic rights, especially when these are granted in the form of serving any point within and beyond a bilateral partner. Criticism about code-sharing has focused on its effects on competition and consumer satisfaction.

445. Alliances in general, and code-sharing in particular, have put great competitive pressure on airlines by introducing a pragmatic way to facilitate business in spite of existing regulatory limitations. Privatization trend has resulted in 75 per cent of airlines being privately owned and 85 per cent of RPK provided by private sector airlines.

446. These global alliances blur the lines between one carrier and the other as code share makes air travel seamless from one airline to the other. As a result airlines around the world are losing their national identities.

447. Furthermore, the advance of information technology has had a profound impact on the way the airlines conduct their business. In addition to the widespread use of computer reservation systems (CRS), the use of the Internet and electronic ticketing are rising rapidly. All these developments have regulatory implications, some affecting market access, ownership and control, competition, safety, security or liability.

448. The effect of these global airlines is to put pressure on the bilateral regime, seeking a more liberal regime that would allow them to operate wherever they want without restrictions, hence the current move to free market access including cabotage rights, change in ownership and control, the right of establishment etc.

## 5.5 Key elements of future regulatory framework

449. Against this background, there has been growing pressure, by both Governments and the airline industry, for regulatory reform to move forward beyond the existing regulatory regime.

450. As a result, two international conferences were organized by the International Civil Aviation Organization (ICAO) in 1994 and again in 2003. The first special world conference was convened in Montreal from 23 November to 6 December 1994, almost exactly 50 years from the signing of the Convention. Almost 10 years later, another conference was convened by ICAO.

451. In light of the changing attitudes towards various forms of regulation, both conferences had identical objectives of considering some new internationally established regulatory arrangements. No radical decisions were reached at the first conference.

452. However, the second conference, which was held in March 2003, advanced the consensus a step further. The 5<sup>th</sup> ICAO Conference was able to reach a broad consensus on a framework for the progressive liberalization of international air transport, building on the results of the first and the experience of countries since 1994. The Conference examined a host of key regulatory issues and policy options in light of the experience of liberalization during the past decade and recent international developments.

453. The following is a summary of the major issues that have to be taken into account when considering both the process of liberalization within Africa and its relations with the rest of the world.

### 5.5.1 Market access and liberalization

454. As noted in the preceding paragraphs, there has been considerable progress since the 1990s in the liberalization of market access, particularly at the bilateral, subregional and regional 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.

455. The discussion today is how to extend traffic rights by going beyond the traditional five freedoms of the air to encompass other rights, including 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> freedoms of the air,<sup>98</sup> routing and operational flexibility, capacity/frequency; airport access and slot allocation; airline alliances, code sharing and franchising; leasing; specific aspects relating to air cargo and express services and to inter-modal transport.

456. All cargo operations as opposed to passenger operations are 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. The options for liberalization of all cargo services are either using: i) unilateral liberalization of market access without bilateral reciprocity or negotiation; or ii) liberalizing all cargo services through bilateral agreements and negotiations to ensure reciprocity; or iii) using a regional approach for the liberalization of all cargo services.

### **5.5.2 Ownership and control**

457. The original rationale for national ownership and effective control criterion,<sup>99</sup> which was in use since the 1940s, is increasingly at variance with the changed global business environment in which the airlines must operate. The development of alliances, code sharing, joint ventures and franchise operations, and transnational investment and the privatization of formerly State-owned air carriers have put pressure on the need for a change in approach and the application of broadened criteria beyond national ownership and control for the use of market access.

458. There are clear benefits for African airlines in liberalizing air carrier ownership and control. For example, it could provide African carriers with wider access to capital markets, and reduce their reliance on government support. It could permit airlines to build more extensive networks through mergers and acquisitions or alliances. It could also help improve economic efficiency of the industry by enabling more competitive carriers and greater variety of services in the market, which in turn could feed through into consumer benefits.

459. At the same time, liberalization also carries certain risks that may be causes of concern, such as: the potential emergence of “flags of convenience” in the absence of effective regulatory measures to prevent them and potential deterioration of safety and security standards. Secondly, there could be impacts on national emergency requirements and assurance of service. Finally, and in the long run there may also be potential implications on airline competition as a consequence of possible industry concentration (i.e. the air transport system being dominated by a few mega-carriers through mergers or acquisitions), a reality that exists in most other service sectors. However, this may be addressed through the parallel development of regulatory measures against anti-competitive practices. In considering liberalization, African states need to take into account all these benefits and risks when making its choice.

### **5.5.3 Competition and safeguards**

460. An important point to note is that, unlike in Africa, many countries have developed competition rules to protect their national airlines from competition and unfair business practices. The regulatory treatment competition revolve around the following key issues: (i) safeguards against anti-competitive practices (such as in pricing, capacity provision, sales and marketing); (ii) application of competition laws/policies (including implications for multilateral cooperative arrangements amongst air carriers); (iii) sustainability of air carriers and assurance of service (including provision of State aid); (iv) preferential measures for, and effective participation of, developing countries.

461. 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.

462. 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. Harmonization of different competition regimes continues to be a major challenge.



463. 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.

#### **5.5.4 Consumer protection**

464. Consumer protection is receiving growing attention by governments.<sup>100</sup> As a result of the continuing liberalization of air transport, the protection and improvement of airline passenger rights has attracted greater importance, particularly but not exclusively in major markets.

465. Consumer interests cover many issues ranging from airline business practices (such as code sharing, availability of fares, and ticket refund), contracts (such as conditions of carriage, denied boarding, liability provisions, misplaced baggage, and special passenger needs) to operational performance disclosure (such as on-time performance and complaints).

466. For African airlines operating to and from major markets, the treatment of consumer interests has longer term consequences for their competitive viability. Many States are looking to a wide range of measures to address consumer interests, including new regulations and voluntary commitments (i.e. non-legally binding self-regulation) by airlines<sup>101</sup>.

467. A more coordinated approach to this issue may be a multilateral approach through ICAO, including the development of a “global code of conduct” on consumer interests for use by States for their air carriers and service providers. The harmonization of minimum requirements for consumer protection (including the contract regime) that can be applied globally would be in the nature of a minimum floor and could serve to preserve the uniformity of the current international air transport system and to avoid the risk of potential extraterritorial friction.

#### **5.5.5 Aircraft leasing**

468. Leasing both wet lease of an aircraft (with crew) and dry lease of an aircraft (without crew) offers considerable benefits to African Airlines rather than outright purchase; it 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 in a situation where the leased aircraft is registered in a State other than that of the operator using it in international commercial service.

469. Consequently, African States need to give an increasing attention to the regulatory treatment of leased aircraft, particularly in the context of the use of market access, from both a safety and an economic perspective.<sup>102</sup>

470. African 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 83bis of the Convention on International Civil Aviation (Circular 295, 2003) may be used.

471. The Template Air Services Agreements (TASA) developed by ICAO 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. African States should be encouraged to use the TASA in their bilateral, regional or plurilateral relationships

### **5.5.6 Conclusion**

472. *Global trends in liberalization* – Air transport worldwide has been characterized by an ever increasing trend toward liberalization. The air transport industry has seen an increase in the negotiation of more liberal bilateral agreements. There have been many national and regional open skies pacts, in the US, Central America, Europe and Latin America etc. All of these examples show the trend towards a more liberal market in which competition can drive innovation, lower cost and better service. The leader in this movement has been the US. Under their leadership air transport liberalization has accelerated significantly.

473. Secondly, the results of the ICAO 5<sup>th</sup> Air Transport Conference indicate the emergence of a broad consensus on some of the key air transport regulatory issues. The debate over why Governments should continue to control market entry, the capacity supplied by each airline and the fares and rates charged appear to have been settled. Today the focus of attention has shifted to deregulation and liberalization, privatization; to the emergence of global carriers in a transnational industry and to the problems. The question today is no longer on “whether to” but rather “how to” liberalize.

474. The changes and transformation of the international air transport environment is irreversible and it seems impossible that the world will be at a stand still to allow Africa to catch up. This is more so when one considers that even to-day African countries are using a system that is old and outdated which has been abandoned by the European countries with which Africa has more than 75 per cent of its traffic. In fact Europe has modified its legislation and is regrouping within a wider and bigger air transport market

475. For African policy makers and stakeholders, there are many important questions raised by the new international civil aviation order taking shape, the major characteristics of which are a liberal environment and freedom in the provision and pricing of airline products and the emergence of mega-carriers which enjoy enormous economies of scale and a near monopoly of marketing through expanded CRS. The industry is also moving away from one dominated by “flag carriers” owned or supported by governments to one in which privatized airlines pursue commercial objectives. This aspect of the problem will be the subject of Chapter 6.

# 6 Africa's Participation: Realism or Idealism

## 6.1 Introduction

476. Predicting the future is always a hazardous business, especially so in an industry in the process of deep transformation. Nonetheless, what is certain at the international stage is that liberalization and the building of alliances will quite rapidly result in the emergence of some truly global airlines.<sup>103</sup>

477. Secondly, what is also certain is that the system of traffic rights presently negotiated in terms of freedoms of the air are changing, or at least evolving to accommodate transnational airlines operating under the flags of several different nations at the same time. As noted in the preceding Chapter, the debate over why Governments should control market entry, the capacity supplied by each airline and the fares and rates charged appear to have been settled. Today the focus of attention has shifted to liberalization, privatization; to the emergence of global carriers in a transnational industry and to the problems faced by an increase in concentration and by capacity limitation at airports.

478. Against the backdrop of the evolving worldwide transformation of the industry, what is much harder to visualize, in the African context, is how the regime established by the Yamoussoukro Decision will evolve on a fast implementation track to permanently remove the barriers to the operations of African airlines. The deepening and geographical dispersion of liberalization as briefly canvassed in Chapter 5, may entail the risk of the world being divided into the "liberalizing" and "non-liberalizing" regions. Africa risks being classified in the latter group.

479. The question for African policy makers is therefore on how to accelerate the intra-African liberalization so as to enable the continent to share in the economic and financial benefits<sup>104</sup> of air transport by ensuring its continued participation in international air transport and repositioning it to survive and accommodating the new realities and remain in the main stream of international air transport.

480. This is more so when one considers that even today African countries are attached to a system that is old and outdated which has been discarded by the European countries with which Africa has more than 75 per cent of its traffic. In fact Europe has modified its legislation and is regrouping within a wider and bigger air transport market.

481. The challenge for African countries is to reconcile a number of apparently conflicting objectives such as the still lingering desire of protecting national carriers and easing traffic restrictions to achieve greater competition and lower prices. Such conflicts generally derive from the fact that air transport plays a dual role for African countries: it ensures external links to the major trading centres while at the same time providing for economic and social development, whether through its contribution to other economic sectors or through the provision of social services, for example to remote areas and communities, in particular in the land locked countries.

482. A central policy issue involves trade-offs between the pro- and anti-competitive effects of weighing the positive efficiency enhancing effects of liberalization against any adverse effects flowing from increases in market power.

483. From the overall African policy perspective, two sets or groups of aero-political issues will shape the future of African air transport and determine the ability of African air transport to participate in air transport both regionally and internationally. These issues relate to the manner in which:

- (a) Effective implementation and completion of the intra-African liberalization will be accomplished within the shortest possible time frame to create a unified aviation market, initially at the subregional level and gradually expanding to cover the whole continent; and
- (b) A common response on the key air transport regulatory issues and definition of joint positions on relations with the outside world in a manner that ensure to be proactive rather than being reactive.

## 6.2 Completion of intra-African liberalization

484. The completion of the intra-African liberalization process through the effective implementation of the Yamoussoukro Decision and creation of a unified aviation market, initially at the subregional level and gradually expanding to cover the whole continent, will be of paramount importance and a condition *sine quo non* for Africa to be at par with other regions of the world and remain in the main stream of international air transport, initially at the subregional level and gradually expanding to cover the whole continent.

485. Although, still in its formative stage, the Yamoussoukro Decision establishes a regional regulatory framework for liberalization in Africa. Constructing a liberalized African air transport market of necessity is a difficult task and an evolutionary process, especially so when one considers the socio-political context of Africa – 53 countries with 53 splintered air transport markets.

486. With the growing commitment articulated by individual and groups of countries with the support of donors, the effective implementation of the Decision may have, perhaps, received a major breakthrough.<sup>105</sup> The example of the CEMAC subregion described in the preceding Chapter is illuminating not only in respect to what has been achieved at the subregional level but also with other African countries within the context of the Decision.

487. A wide spectrum of opinion regards the Yamoussoukro Decision as an important framework for liberalization and reform of the air transport sector in Africa. The implementation of the Decision will dramatically change the air transport scene through:

- (a) The improvement of intra-African air transport, the reduction of tariffs as a result of competition;
- (b) The development of trade and tourism;
- (c) To exchange traffic rights on a regional level; and

(d) More importantly to serve as a stepping stone for better global cooperation with respect to the commercial aspects of air transport.

488. However, many areas of the Decision are required to be critically examined in the second and subsequent phases. A study commissioned by ECA entitled *Clarification of Issues and Articles of the Yamoussoukro Decision* published in January 2002<sup>106</sup> has exhaustively analysed the legal and regulatory issues that need to be clarified to advance the implementation process of the Yamoussoukro Decision and identified the areas of improvement that need to be considered during the second phase.

489. This study is anchored around four clusters of issues: (a) legal issues raised by existing provisions of the Yamoussoukro Decision that require clarification to reach an acceptable level of convergence of views in their interpretation and application of the Decision region; (b) recommendations on methodology to bring about harmonization of views on these issues; (c) synopsis of some elements of competition rules and related regulatory arrangements that could be relevant in defining future policy options and identification of areas of focus for further study; and (d) general thoughts on possible future institutional and dispute resolution mechanisms to lay the groundwork for future study and consideration.

490. In order to achieve the objectives of effective implementation of the Yamoussoukro Decision, it is necessary to take the following associated measures.

### **6.2.1 Empowerment of the Yamoussoukro Decision**

491. An important element for the effective implementation of the Yamoussoukro Decision is the level of recognition given, in law or in practice, to the Decision by each State as a legally binding instrument creating right and obligations vis-à-vis all other parties to the Decision in conformity with Article 2 of the Decision.

492. This recognition is usually expressed by concrete legal, administrative or other measures taken at the level of each State with the aim of exteriorising the political commitment of each State party to the Decision to respect and be bound by the Decision. The first element of this recognition is the acknowledgment of the primacy of the Decision and its precedence over all national laws, rules and regulations, bilateral agreements etc. Such acknowledgement usually requires the internalization of the Decision through its incorporation in the national legal and policy framework of each country.

493. The second element of the recognition relates to the removal of all provisions in domestic legislation, air services agreements and other arrangements to the extent that they are in conflict with the provisions of the Decision.

494. The experience of CEMAC and UEMOA subregions is encouraging not only in respect of what has been achieved at the subregional level but also with other African countries within the context of the Decision. In order to achieve the objectives of implementation of the Decision, the two subregions have established priority actions that include: (i) institutionalize a regional committee for coordination, follow-up and control; and (ii) adopt a community legal framework for air transport.

495. The example of Gabon which has adopted a Presidential Decree to incorporate the Decision in its national legal framework is an encouraging development which should be emulated as a model for other African countries. The Government of Gabon has translated good political intentions into concrete actions. In ad-

dition, the actions taken by Gabon in effect translate its commitments through positive legislative action to effectively apply the Decision at the level of the national civil aviation authority.

496. In addition to Gabon, Cameroon has likewise taken at the national level similar legislative measures, Congo and RCA have not taken identical measures. Nonetheless, as a general policy, these two countries recognize in practice the Decision as having precedence over national laws and bilateral agreements and also implement the Decision with other Yamoussoukro State parties.

### **6.2.2 Enforceability of the Decision**

497. A related and important issue is the enforceability of the Decision in all Yamoussoukro Countries. The Decision does not provide for an effective enforcement mechanism in the event of the failure of a party to observe and perform its obligations arising under the Decision. The efforts at implementation of the Decision by some countries may be frustrated by a lack of reciprocity of other countries that in the end dilutes the overall effective implementation of the Decision on a wider basis. It emerges from various sources (for example, the experience of CEMAC countries) that some countries do not respect the legally-binding nature of the Decision and are reluctant to accept the principles of liberalization introduced by the Decision. The type of difficulties facing vary from the granting of traffic rights even on routes which are not operated, frequencies and often the desire to protect their national airlines from competition. These countries seek often to impose restrictions on market access. 5th freedom is squarely refused; request for increase of frequencies is rejected for reasons of insufficient traffic on a specific sector.

498. These difficulties have as a consequence the non-operation of some routes or simply the protection of the route in question from competition by refusing an increase in frequency. As a result national airlines have been unable to operate new routes or increase capacity to improve air transport services for the benefit of users of air transport going to these destinations.

499. These difficulties are a result of the lack of an appropriate enforcement mechanism together with measures to compel non-compliant States with the Yamoussoukro Decision. This aspect of the problem should be addressed urgently by establishing the Monitoring Body contemplated in the Decision.

### **6.2.3 Legal harmonization and convergence**

500. Regulatory harmonization, generally, involves the removal of the diversity of domestic rules and regulations (such as national civil aviation codes and implementing regulations), alignment of bilateral and multilateral arrangements with the subject matter covered by the Decision in respect to market access (capacity, frequency, tariff), right of establishment and designation, competition, the improvement of security and safety etc.

501. ***Diversity of national regulations*** - National Civil Aviation Codes and national civil aviation regulations have not been revised, harmonized and adapted to liberal market conditions, in particular, in respect of the oversight of safety and national regulations governing licensing and authorization of carriers.

502. The diversity of national aeronautical laws and regulations do not take into account the imperatives of harmonisation and coordination at the level of the subregions and at the continental level. In this context, the

implementation of common projects regarding the economic regulation of air transport and safety oversight within a collaborative effort will have the greatest importance.

503. **Market access** - The facilitation of market access would require the removal of certain impediments, such as entry points, procedures for granting operation permits and authorization. Certain subregional arrangements may contain restrictions on one or more aspects of market access. Some may require prior approval of tariffs (Banjul Accord, COMESA); others may restrict capacity (BANJU) or harmonization of schedules (CEMAC). These provisions are essentially protectionist and should be eliminated in a true “open skies” framework.

504. **Cabotage<sup>107</sup>** - The various subregional arrangements treat this issue differently. The Banjul Accord does not address this subject. The other arrangements adopt the concept but limit its application. It would be clearly more beneficial to allow consecutive cabotage.

505. **Right of establishment** - The right of establishment of a designated airline in the territory of the recipient country is a condition precedent for the exercise of the rights granted. Bureaucratic delay may frustrate the commencement and continuation of operation of the agreed services. The right of establishment is generally expressed in terms of designation, eligibility and the procedures of authorization and the granting of the appropriate authority to the designated airline.

506. While most of the regional air transport agreements appear to replicate generally the principles of the Decision stated in Article 6.9 (designation and eligibility criteria), there is a lack of clarity in respect to designation and authorization, the procedure needed to process the request for authorization. While restrictions on designation have been removed, most countries seem to favour dual designation. The world wide trend in this area has been to move away from restrictions and toward multiple designations of airlines. This approach will be in harmony with the goal of “open skies” in Africa.

507. **Ownership and eligibility criteria** - The subregional arrangements, for the most part, restrict ownership of an airline to the State or national of the State. Other provisions require that the headquarters of the Airline be located in the State (Banjul, COMESA,) as one element of ownership and/or that the majority of the personnel be nationals as one possible element of ownership. CEMAC requires that the headquarters and significant operations be in the designating country and others may require that the airline be majority owned and controlled by one or more States and their nationals. In view of the limited capital available to establish and operate a commercial airline, it is not in the best interest of the parties to restrict ownership. Although for political reasons, a State may wish that its nationals own an airline, ownership per se is not the relevant factor. The main issue is control. Nationals may own an airline but it may in fact be controlled by a third party or by an outside operator. It is recommended that that control be used as a criteria and the language of the Decision regarding control should be adopted in the subregional arrangements.

508. **Competition rules** - The provisions of the Yamoussoukro Decision relating to competition rules are considered inadequate, because ineffective to prohibit malpractices by airlines. CEMAC and UEMOA have developed competition rules defining in particular the criteria applying to air transport with regard to such concepts as dominant position, anti-competitive behaviour etc.

509. **Dispute resolution** - Like any commercial activity, the liberalisation process will lead to dispute between the government and airlines that need to be settled. The development of an appropriate dispute resolution mechanism may be necessary.

510. ***Institutional arrangement*** - Effective institutional arrangements with a clear mandate and financial resources to manage the liberalization process should be established, strengthened and empowered at the subregional and continental level. These bodies will provide a common framework for the oversight of the liberalization process and coordination of the activities related to air transport liberalization. Some subregions have gone beyond the requirements of the Decision by establishing a structured mechanism for dispute settlement, for the management, follow-up and control of the liberalization process under the overall oversight of the appropriate community organ.

511. ***Protection of consumers*** - The Decision is silent on the protection of the interests of users. It will thus be necessary to develop a code of conduct on the protection of the rights of users of air transport. In general African passengers do not know and are not properly informed of their rights. Often, African passengers and shippers of cargo are usually lost in the dialogue on aviation policy in Africa. This disparate and unorganized group had very little impact in the past on the development of African aviation policy. The rationale for liberalization is for greater competition that will promote efficiency, better services and offer competitive prices.

512. The quality of service offered by African airlines has not always met consumers' expectations. Growing passenger dissatisfaction with the service of African airlines, such as inadequate handling in case of flight delays and cancellations and insufficient information on an airline's commercial and operational conditions, has not generated any pressure on airlines to provide a more comprehensive set of rights for their customers.

513. Consumer interests cover many issues range from airline business practices (such as code sharing, availability of fares, and ticket refund), contracts (such as conditions of carriage, denied boarding, liability provisions, misplaced baggage, and special passenger needs) to operational performance disclosure (such as on-time performance and complaints).

514. ***Harmonization of subregional initiatives to establish synergy*** - One of the important tasks or issues for African air transport liberalization is the question of how to manage the various subregional initiatives in a manner that would avoid duplication of efforts. A major priority of those responsible for the liberalisation process is to achieve synergy among these groupings. A coordinated and harmonized programme of action capturing the activities of all stakeholders relating to the implementation of the liberalization process needs to be developed and disseminated.

515. ***Procedure for harmonization*** - A major issues in legal harmonization is the procedure to be followed to effect such harmonization efficiently and in a cost effective manner. The revision of bilateral agreements will be lengthy and time consuming as all bilateral agreements have to be revised with no guarantee of success. It has been suggested that the best approach is the establishment of a common aviation area or the development of standard air services agreements needed to be developed for use by the Yamoussoukro countries to define relationship with other non-Yamoussoukro countries and establish the commitment expected from the countries in respect to negotiation, continuation and/or cancellation of bilateral agreements with non-Yamoussoukro Decision countries.

## 6.3 Common and unified approach

516. The second cluster of issues focus on how Africa will position itself to be able to effectively respond to the external aviation environment, namely whether such response would be on an individual state to state basis (the Stand Alone approach) or whether a group approach should be adopted in their aviation relationship



with the rest of the world (the Group Approach), given the formation of economic blocks around the world, including the type of institutional arrangement that should be put in place for air transport.

517. Relationship with Europe is a critical issue, since Europe is a major market for African countries. However, there exists a major disparity between the two sides in their market size, carriers' competitiveness and travel propensity. African countries may learn from the experience of the countries of Central America, which, before liberalizing their air services agreements with the United States, first considered it necessary to integrate the small airlines, in order to increase their competitiveness through the exploitation of economies of scale and scope.<sup>108</sup>

518. The main objective of African countries is to present to the international aeronautical community their position regarding each of the subjects involved in the review of the key regulatory aspects of liberalization, based on the studies to be carried out by AFCAC and ECA and regional economic communities. Within this framework, the complexities of the civil aviation activity require coordination of Africa's position on the key international regulatory issues and to adopt a consolidated but flexible approach in a manner that ensures to be proactive rather than being reactive.

### 6.3.1 Position on key regulatory issues

519. The key regulatory issues have been briefly described in Chapter 5. It is not within the scope of this Compendium to discuss in detail these issues but rather to present schematically possible areas of focus that will facilitate the definition of a joint position in respect to each aspect of the regulatory issues.

- (a) ***Air carrier ownership and control:*** developing alternative criteria for designation and authorization; inward (foreign) investment; right of establishment etc.
- (b) ***Market access:*** determining the degree to which market access will be liberalized, including traffic rights (primarily beyond 3rd and 4th freedoms, routing and operational flexibility; capacity, frequency; airport access and slot allocation; airline alliances, code sharing and franchising; leasing; specific aspects relating to air cargo and express services and to inter-modal transport. In terms of market access, there are still important outstanding issues in African air transport, namely: (i) the continuation and preservation of the International Air Transport Association (IATA) multilateral inter-airline system; (ii) the prompt and non-discriminatory allotment of slots, which are increasingly scarce in major international airports and may adversely affect African etc..
- (c) ***Fair competition and safeguards:*** A more competitive regime in international air transport is likely to lead to increased market concentration. When control over market entry and pricing are relaxed, it still seem very important that greater attention should be given to competition policy issues. The extraterritorial application of national competition laws is not always appropriate when dealing with international competition that takes place at the level of the network. If the airlines are to become global, the competition authorities should be global too. This might suggest an additional role for ICAO or perhaps to the WTO. An equally important point for African airlines is the issue of the continued availability and immunity to allow African airlines and their partners to engage in cooperative arrangements, such as tariff coordination and related issues; joint negotiation of goods and services; joint technical agreements and cooperation; joint products, i.e. pooling, joint operations, joint planning and coordination of schedules, joint purchases etc.

- (d) **Consumer interests:** Consumer interests are receiving increasing attention. Along with the continuing liberalization of air transport regulation, the protection and improvement of airline passenger rights has assumed greater importance. For African airlines operating to and from major markets (such as Europe), the treatment of consumer interests has longer term consequences for their competitive viability. Many States are looking to a wide range of measures to address consumer interests, including new regulations and voluntary commitments (i.e. non-legally binding self-regulation) by airlines.
- (e) **Product distribution:** These issues will involve commercial presence; electronic business to customer (B2C) commerce (including computer reservation systems and the Internet). Special attention should also be paid to computer reservation systems, a marketing tool that affects the degree and efficacy of market access. Although they facilitate passenger service, they may become a structural hindrance that might lead to unlawful competition practices. The use of the ICAO code of conduct, and model clause on Computer Reservation Systems (CRS) in bilateral and multilateral air transport agreements, may minimize discrimination .
- (f) **Aircraft leasing** - There has been increasing attention given by States to the regulatory treatment of leased aircraft, particularly in the context of the use of market access, from both a safety and an economic perspective.<sup>109</sup> Leasing (both wet and dry) offers considerable benefits to African airlines, enables them to expand and provide more flexible air services and opportunities for the establishment of new carriers. However, it also raises economic and safety regulatory issues which need to be addressed. African 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.
- (g) **Standard air services agreements** - Standard air services agreements may be needed to be developed for use by the Yamoussoukro countries to define relationship with other non-Yamoussoukro countries and establish the commitment expected from the countries in respect to negotiation, continuation and/or cancellation of bilateral agreements with non-Yamoussoukro Decision countries.

### 6.3.2 External relations

520. While the Yamoussoukro Decision contains agreed concepts and principles for liberalization of intra-African air services, it deals only with intra-African air transport and relations with third countries will continue to be governed by intergovernmental bilateral air services agreements negotiated with such third countries. However, in the next stage, there may be a distinct need to develop common positions to define relationships with other countries.

521. The second cluster of issues of importance is whether it will be practical and feasible to explore the possibilities of the modalities for defining aero-political relationship with third countries. Given the small size and fragmentation of the African air transport market, it appears logical that an African air transport policy should assume a regional dimension going beyond national borders.<sup>110</sup>

522. However, whether group negotiations will take place cannot be answered because a difficult issue fraught with many problems. On the other hand, it is likely that multilateral negotiations may take place on an

intra-regional basis. But the emergence of global airlines and inter-airline marketing agreements and alliances are less likely to be drawn up between airlines within a particular regional block. These airlines will be seeking to maximize their global reach in the belief that those that will be in the best position to compete in the future will be those that can offer the most global services.

523. To be a totally global airline, a carrier needs to have substantial presence in as many of the worlds most important air transport markets, namely Europe, Middle East, Australia, Africa, North America, Asia, Latin America and the Caribbean.

524. The ambitions of the airlines to become global firms will in the end lead to the complete removal of controls over international route entry, if not across the entire world, then at least among groups of like-minded states (with group membership not limited to states within a particular regional group). This concept has been termed “pluralateralism” and it seems to have more potential as a step in the direction of open skies than either bilateralism or multilateralism.

## 6.4 Prospects of African air transport

525. The growth of African air transport is dependent upon income levels and the performance of the economy in general. According to the African Development Bank Report 2002, the African economy showed a moderate growth rate of 3.4 per cent (GDP growth in real terms) in 2001, as against 3.2 per cent in 2000.

526. An ICAO forecast estimates that the prospects for economic growth during the next 10 years are promising. Total (international and domestic) traffic is expected to grow at an average annual rate of 4.3 per cent. International traffic is projected to experience higher growth rate of 4.9 per cent. The route group between Europe and Africa is anticipated to grow at an annual rate of some 4.5 per cent. Overall, domestic traffic is projected to grow at a much lower average growth rate of 3.9 per cent per annum.

**Table 5.1**

*Passenger traffic forecast in Africa to the year 2020*

Route Group	Passenger-kilometres Performed (billions)		Average Annual Growth Rate (per cent)
	Actual 2000	Forecast 2020	2000-2020
Between Europe and Africa	99.6	240.2	4.5
Intra- Africa	8.3	19.6	4.4
Total International	1 778.6	4 605.3	4.9
Domestic Africa	9.4	20.2	3.9
Total Domestic	1 239.3	2 445.0	
Global (International + Domestic)	3 017.9	7 050.3	4.3

Source ICAO - *ATConf/5-WP/23*.

527. In order to be able to cope with this growth and to ensure a proportional share of the growing mar-

ket, African Governments and airlines will need to take action to position their airlines to be beneficiaries of this growth. In the long run, African airlines must be able to perform more and more long-haul international services and improve their market share. Protection of jobs and revenue as well as avoidance of heavy reliance on foreign carriers, will be key factors of the interest of both African countries and their airlines. Those airlines that will be able to improve their overall competitiveness through higher service standard, better frequency and convenient scheduling, better yield and revenue management and competitive fare structure will increase their chances of remaining in the business.

528. The US Department of Transportation concluded in a report issued in 2001 that “*International airline alliances have improved service in historically underserved regions of the world and, as a result, have stimulated additional demand for air transportation in those markets.*”<sup>111</sup> The report focuses on Africa, the Middle East, and the Far East the basis of combined detailed information for the Northwest/KLM alliance and the alliance between Delta and its partners, via their respective European network gateways.

529. The report underlines the tremendous benefits gained by more distant areas served across the Atlantic which had very limited service by the U.S. carriers’ alliance partners before the formation of their alliances. Improved, more complete service to longer distance, generally lower density markets is a fundamental and primary benefit of developing broad-based multinational alliances. No other operating system can effectively serve such markets, yet multiple alliances can each do so, resulting in not only better service but competitive benefits as well.

530. Passengers Flowing Over Alliance Gateways of Delta Partners and Northwest-KLM showed that between 1992 and 1999 the traffic from the US to Africa grew from 12,000<sup>112</sup> passengers to 200,000.

531. The greatly improved service by the European alliance partners from their domestic hubs to cities in Africa, the Middle East, and the Far East is significantly attributable to the traffic flows from the U.S. as a consequence of their alliances. The resulting traffic gains are, by any measure, quite remarkable. And again, as shown in the table below, remarkable price reductions occur simultaneously with the large traffic gains.

**Alliance Gateways, Delta Partners and Northwest-KLM, 1992 vs. 1999**

	Far East	Middle East	Africa
92 Yield - cents	15.88	15.56	14.62
99 Yield - cents	10.32	11.08	9.96
Percentage Change	-35	-29	-32

Part II:

# Air Transport Related Documents



# 7 AFCAC Model Air Transport Agreements

The AFCAC model multilateral agreements were developed as reference documents which African states could use in the exchange of traffic rights. The model agreements adopted were:

- Model Multilateral Agreement among African Countries, which is a group agreement;
- Model Air Transport Agreement between Two Groups of States, which is a group to group agreement; and
- Model Air Transport Agreement between a Group of States and One State.

The three agreements cover practically the same issues and the last two are identical and contain the same number of articles.

## 7.1 AFCAC Model Multilateral Air Transport Agreement among African States

### **Preamble**

1. The undersigned Governments, being members of the Organization of African Unity (OAU) and/or the African Civil Aviation Organization (AFCAC) and being parties to the Convention on International Civil Aviation;
2. DESIROUS of establishing and developing air transport services between their respective territories and strengthen as much as possible their cooperation in this regard;
3. ANXIOUS of applying to the said transport the principles and provisions of the Convention on International Civil Aviation;
4. Have agreed as follows:

## Section I: General Provisions

### Article 1

#### Definitions

For purposes of this agreement and its annexes, unless otherwise stated, the terms below shall have the following meaning:

- a) the term *Convention* means the Convention on International Civil Aviation open for signature on 7<sup>th</sup> day of December 1944 and includes any annex adopted under Article 90 of the Convention and any amendments of the annexes to the Convention under Article 90 and 94 thereof, provided that such annexes and amendments have been approved by the two contracting parties;
- b) the term *Territory, Air Services, international Air services, Airline and stop for non-traffic purpose* have the meanings respectively assigned to them in Article 2 and 96 of the Convention.
- c) The term *Aeronautical Authority* means:  
  
In the case of .....the .....and any person or body authorized to perform functions at present exercised by the said ..... or similar functions, and in the case of the ..... and any person or body authorized to perform functions at present exercised by the said ..... or similar functions.
- d) The term *Designated Airline* means an airline designated by the aeronautical authorities of on contracting party as being the instrument chosen by the said authority to operate the agreed services provided for in this Agreement and which shall be approved by the other contracting party in accordance with the provisions of Articles 11 and 12 of this Agreement.
- e) The term *Specified Routes* means routes established or to be established in the Annex to this Agreement
- f) The term *Tariff* means the prices to be charged for international carriage of passengers, baggage or cargo (excluding mail) and comprises:
  - i) Any through tariff or amount to be charged for international carriage, marketed and sold as such, including through tariffs constructed using other tariffs or add-ons for carriage over international sectors or domestic sectors forming part of the international sector;
  - ii) The commission to be paid on the sales of tickets for the carriage passengers and their baggage, or on the corresponding transaction for the carriage of cargo
  - iii) The conditions that govern the applicability of their tariff or the prices for carriage or the payment of commission.

It also includes:

- any significant benefits provided in association with the carriage;
- Any tariff for carriage on a domestic sector which is sold as an adjunct to international carriage,

which is not available for purely domestic travel and which is not made available on equal terms to all international carriers and users of their services.

## ***Article 2***

### ***Applicability of national laws and regulations***

1. The laws and regulations of one contracting party relating to the admission of flights within or departure from its territory of aircraft of its designated airline engaged in international air navigation or its operation and navigation of such aircraft while within its territory shall likewise apply to the aircraft to the designated airline of the other contracting party and shall be complied with by such aircraft upon entering or departing from or within the territory of that contracting party.
2. The laws and regulations of one contracting party relating to the admission to or stay in or departure from its territory of passengers, crew or cargo including mail, such as regulations relating to entry, exit, immigration, passports as well as customs and sanitary measures shall be complied with by such passengers or crew either personally or through a third party acting on their behalf and with respect to the cargo carried by the designated airline of any contracting party, these laws and regulations shall also apply to the admission to or stay in or departure from territory of the contracting party first mentioned.
3. Subject to the provisions of this Agreement, any contracting party may designate the route to be operated within its territory by any international air services and the airports that may be used by such services.

## ***Article 3***

### ***Recognition of certificates and licenses***

Certificates of airworthiness, certificate of competency and license issued or rendered valid by the contracting party in the territory of which the aircraft is registered shall be recognized as valid by the other contracting party for the purpose of operating the routes and services provided for in this Agreement, provided that the requirements under which such certificates or licenses were issued or rendered valid are equal to or above the minimum standards which are or may be established pursuant to the Convention.

## ***Article 4***

### ***Airports and air navigation facility charges***

Each contracting State may, subject to the provisions of this Agreement, establish or authorize that fair and reasonable charges be imposed on any service for the use of airports and air navigation facilities; these charges shall not be higher than those usually imposed on aircraft having the nationality of the concerned state and using the same airport and air navigation facilities when engaged in similar international services

## ***Article 5***

### ***Aviation Security***

- a. Consistent with their rights and obligations under international law, the contracting parties reaffirm that their obligations to each other to protect the security of civil aviation against acts of unlawful



interference forms an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the states of the contracting parties shall in particular act in conformity with the provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on September 14, 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on December 16, 1970 and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on September 23, 1971.

*Note: the provisions of the second sentence would be applicable only if the States concerned are parties to those conventions.*

- b) The States of the contracting parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, their passengers and crew, airports and air navigation facilities, and any other threat to the security of civil air navigation.
- c) The parties shall, in their mutual relations, act in conformity with the aviation security provisions established by the International Civil Aviation Organization and designated as Annexes to the Convention to the extent that such security provisions are applicable to the Parties; they shall require that operators of aircraft of their registry or operators of aircraft who have their principal place of business or permanent residence in their territory and the operators of airports in their territory act in conformity with such aviation security provisions.
  - 1. Each State of the contracting Parties agrees that such operators of aircraft may be required to observe the security provisions referred to in paragraph c) above required by the other State of the contracting party for entry into, departure from, or while within the territory of that State. Each contracting party shall ensure that adequate measures are effectively applied within its territory to protect aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores, prior to and during boarding or loading, Each contracting party shall also give sympathetic consideration to any request from any State of the other contracting party for reasonable special security measures to meet a particular.
  - 2. When an incident or threat of an incident of unlawful seizure of aircraft or other unlawful acts against the safety of such aircraft, their passengers and crew, airport or air navigation facilities occurs, the contracting parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat.

## **Article 6**

### ***Exemption from Customs duties, inspection fees and other similar charges***

- 1. Aircraft operated in international air services by the designated airline of either contracting party as well as their regular equipment, supply of fuel and lubricants, and aircraft stores (including food, beverages and tobacco) on board such aircraft shall be exempt from customs duties, inspection fee and other similar charges on arriving in the territory of the other contracting party, provided such equipment and supplies remain on board the aircraft up to such time as they are re-exported or are used on the journey performed over that territory.

2. There shall also be exempt from the same duties, fees and charges with the exception of charges corresponding to the service provided:
  - a. aircraft stores taken on board, within limits fixed by the customs authorities of the said territory and for use on board the outbound aircraft of the other contracting party engaged in international air services;
  - b. spare parts introduced into the territory of either contracting party for the maintenance, or repair of aircraft used on international air services by the designated airline of the other contracting party;
  - c. fuel and lubricants supplied to an aircraft of the designated airline of the other contracting party, even in the case where such supplies shall be used on the journey performed over the territory of the contracting party where they were loaded.
3. Materials referred to in subparagraph a), b), and c) above may be required to be kept under customs supervision or control.
4. The regular airborne equipment as well as the material and supplies retained on board the aircraft of either the contracting party may be unloaded in the territory of the other contracting party only with the approval of customs authorities of that territory. In such cases, they may be placed under the supervision of the said authorities up to such time they are re-exported or otherwise disposed of in accordance with current customs regulations.

## **Section II: Agreed Services**

### *Article 7*

#### *Granting of Rights*

Each contracting State shall grant to the other contracting State the following rights with respect to its scheduled international air services:

- (1) the privilege of flying across its territory without landing;
- (2) the privilege of making stops in its territory for non-traffic purpose;
- (3) the privilege of unloading passengers, mail and cargo taken on board in the territory of the State of the nationality of the aircraft;
- (4) the privilege of taking on board passengers, mail and cargo taken on board in the territory of the State of the nationality of the aircraft;
- (5) the privilege of taking on board passengers, mail and cargo destined for the territory of any other contracting party and the privilege to unload passengers, mail and cargo originating from that territory.

With regard to the privileges referred to in paragraphs 3, 4, and 5 of this section, each contracting State's commitment shall relate only to services operated on a route being a reasonable direct line from and to the territory of the State that designated the airline concerned.

Privileges granted under this section shall not apply to airports used exclusively for military purposes, unless the State concerned has given a special clearance in this respect. In areas of active hostilities or military occupation and at war, the exercise of such privilege on routes to such areas shall be subject to the approval of the relevant authorities.

#### ***Article 8***

##### ***Applicability of the Chicago Convention***

The aforementioned privileges shall be exercised in accordance with the provisions of the Convention.

#### ***Article 9***

##### ***Concluding commercial arrangements***

- a) The exercise of rights referred to in Article 7, paragraph 3 and 4 relating to more than ... weekly services by the designated airline of one of the contracting States may be governed by commercial arrangements to be concluded between the designated airlines concerned;
- b) The rights referred to in Article 7, paragraph 5 may be exercised under commercial arrangements concluded between the designated airlines concerned;
- c) The commercial agreements referred to in paragraph a0 and c0 above shall be submitted for the approval of the aeronautical authorities of the contracting States concerned.

#### ***Article 10***

##### ***Cabotage***

Each contracting State shall have the right to refuse to grant to aircraft of other contracting States the permission to take on board, in its territory passengers, baggage, cargo, or mail carried for compensation and destined for another point within its territory.

#### ***Article 11***

##### ***Designation of Airlines***

1. Each contracting party shall have the right to designate in writing to the other contracting party an airline (or airlines) for the purpose of operating the agreed services.
2. Upon receipt of such a designation(s), the other contracting party shall without delay, subject to the provisions of paragraph of this Article and those of Article 12 of this Agreement, grant to the airline(s) designated the appropriate authorizations.
3. Each contracting State may require the airline(s) designated to satisfy that it is qualified to fulfil the conditions prescribed under the laws and regulations normally applied to the operation of international air transportation by the Party considering the application or applications.
4. Each contracting State may a joint air transport operating organization established under Articles 77 and 79 of the Convention and this joint organization shall be accepted by the other contracting States.

## ***Article 12***

### ***Revocation or suspension of operating authorization***

- 1 Each contracting State shall have the right to refuse to grant an operating authorization or to impose any condition as deemed appropriate concerning the exercise by the designated airline(s) of rights referred to in Article 7 of this Agreement whenever this contracting State is not satisfied that substantial ownership and effective control of that airline are vested in the contracting State(s) designated the airline or in its national.
- 2 Each contracting State shall have the right to suspend or revoke a corticated or an operating authorization granted to an airline of another State when it is not satisfied that substantial ownership and effective control of that airline are vested in the contracting State(s) designating the airline or its nationals or when such an airline does not comply with the laws of the State where the services are operated, or does not meet its obligations under this Agreement.

## ***Article 13***

### ***Capacity determination***

1. On each of the routes specified in the annex to this Agreement, the main objective of the agreed services shall be the implementation at a load factor considered to be reasonable, of capacity adapted to normal and reasonable foreseeable requirements for international traffic to and from the territory of the contracting party designating the airline operating such services.
2. The airline designated by each contracting party may within the limit of the overall capacity provided for in paragraph 1 of this Article. Meet traffic requirements between the territories of third States situated on routes as specified in the attached annex and the territory of another contracting party, consideration being given to local and regional services.
3. In order to meet with the requirements of unforeseen and temporary traffic demand on these same routes, the designated the airlines shall agree on appropriate measures to cope with this temporary increase in traffic. They shall inform the aeronautical authorities of their respective countries of the situation, which may decide to hold consultations if they deem it relevant.
4. In the event that an airline designated by one of the contracting parties does not wish to use one or several routes, either in part or in whole transport capacity that it should offer by virtue of its rights, it shall agree with the airline designated by the other contracting party on how to transfer to this airline, for an agreed fixed period, the whole transport capacity or part of it. The designated airline which has transferred the totality or part of its rights may take such rights back at the ed of the fixed period
5. In order to meet seasonal fluctuations or unexpected traffic demand of a temporary character, the designated the airlines of the two group contracting states shall agree between themselves on suitable measures to meet this temporary increase in traffic. Any Agreement concluded between the airlines and any amendment thereto shall be submitted for approval to the aeronautical authorities of the two group contracting parties.
6. In the event that an airline of one group contracting party does not wish to use on any one or more of the specified routes, part or all of the capacity allocated to it, may consult the designated airline of the other group contracting party with a view to transferring to the later for a fixed period and

on terms to be mutually agreed, the whole or part of the capacity at its disposal within the agreed limits.. The designated airline that has all or part of its capacity may recover the same at the end of the agreed period. Any Agreement concluded between the airlines and any amendment thereto shall be submitted for approval to the aeronautical authorities of the both group contracting parties.

7. Pursuant to the provisions of Article 19 of this Agreement, the aeronautical authorities shall from time to time agree on the manner in which provisions of the Article shall be implemented.

#### *Article 14*

##### *Tariffs*

1. The tariff to be charged by the airline of one group of contracting party for carriage of passengers and cargo to or from the territory of any of the States composing the other group contracting party shall be established at reasonable levels, taking into account all relevant factors, particularly the operational costs, types of services, reasonable profit as well as the tariffs of other airlines operating similar routes.
2. The tariff to be enforced by the airline of one group of contracting party for carriage of passengers and cargo to or from the territory of any other contracting party shall be established at reasonable levels, taking into account all relevant factors, particularly the operational costs, types of services, reasonable profit as well as the tariffs of other airlines operating similar routes. Whenever possible these tariffs shall be agreed by the designated airlines of the contracting states and such agreement shall be reached by resorting as much as possible to the machinery of the African Air Tariff Conference.
3. The tariff so agreed shall be submitted for approval to the aeronautical authorities of the two contracting parties at least ninety (90) days before the proposed date for their introduction.
4. The approval referred to in paragraph 3 of this Article may be given expressly. If either of the aeronautical authority concerned has expressed no disapproval within forty (45) days from the date of submission in accordance with paragraph 3 of this Article, these tariffs shall be considered as approved.
5. If a tariff cannot be agreed in accordance with paragraph 7 of this Article or if, during the period applicable in accordance with paragraph 4 of this Article, the aeronautical authorities of the other group expresses notice of its disapproval of a tariff agreed in accordance with the provision of paragraph 2 of this Article, the aeronautical authorities of the two groups contracting parties shall endeavour to determine the tariff by mutual agreement.
6. If the aeronautical authorities of the two group contracting parties cannot agree on any tariff submitted to them in accordance with paragraph 3 of this Article, the dispute shall be settled in accordance with Article 17 of this Agreement.
7. A tariff established in accordance with the provisions of this Article shall remain in force until a new tariff has been established.
8. Each contracting party shall ensure that all carriers operating to and from the territory of any state comprising the group shall comply with the tariff agreed upon and approved in accordance with the provisions of this Article

## ***Article 15***

### ***Programme Approval and Statistical data***

1. The designated airline shall indicate to the aeronautical authorities of the contracting party ..... days or at the latest prior to the commencement of operations agreed services the nature of transport, the type of aircraft to be used and the contemplated flight schedules. This shall likewise apply to later changes.
2. The aeronautical authorities of one of the contracting parties shall supply to the other aeronautical authorities of the other contracting party on request with periodic statistics or other similar information relating to the traffic carried under the agreed services by the respective designated airlines.

## ***Article 16***

### ***Operating coordination***

The concerned contracting parties shall agree to meet whenever necessary for the purpose of coordinating their respective services.

## ***Article 17***

### ***Through Services operations***

Each State shall undertake within the framework of the establishment and operation of through services, that due consideration be given to the other contracting States' interests as not to hamper the development of the said services.

## ***Article 18***

### ***Airline representation***

The designated airline of one contracting party shall be authorized:

- 1) subject to the laws and regulations relating to entry, residence, and employment, to bring in and maintain in the territory of the other contracting party those of their own managerial, technical, operational and other specialist staff who are required for the provision of air services
- 2) open offices in the territory of the other contracting party in order to for promote air transport and ticket sale in accordance with the laws and regulations of the aforementioned contracting party.

## ***Article 19***

### ***Transfer of earnings***

1. Each contracting party shall grant to the designated airline of the other contracting party the right transfer freely, at the exchange rate fixed by the competent authorities of the contracting party concerned, the excess of receipts over expenditure earned in its territory by the designated airline in connection with the carriage of passengers, baggage, cargo and mail. The transfer referred to in this Article shall be effected in accordance with existing exchange control regulations.
2. When ever payments between the contracting parties are governed by a special agreement, such agreements shall apply.

## **Section III: Final Provisions**

### *Article 20*

#### *Abrogation of incompatible agreements*

The contracting States agree that this Agreement shall abrogate all obligations and understandings reached between them which are incompatible with its terms and provisions and undertake not to enter into such obligations or understandings. A contracting State which has entered into any understanding which is incompatible with the provisions of this Agreement shall take immediate steps to free itself of such obligations.

If an airline of a contracting State has entered into any incompatible obligations, the state which owns the airline shall do every thing possible to terminate such obligations; in any event it shall ensure that such an obligation is terminated as soon as relevant procedure can be initiated legally after the entry into force of this Agreement.

### *Article 21*

#### *Concluding new agreements*

Subject to the provisions of Article 20, any contracting State may enter into agreements relating to the operation of international air services, compatible with the provisions of the Agreement.

### *Article 22*

#### *Consultation*

Any contracting State, which considers that an action by another contracting State is detrimental to its interests, may, request the African Civil Aviation Commission (AFCAC) to examine the situation. AFCAC shall then consider the case and shall invite the concerned States to hold consultations. If such consultations do not make it possible to iron out difficulties, the African Civil Aviation Commission may make recommendations or draw relevant conclusions for the concerned contracting States.

### *Article 23*

#### *Settlement of Dispute*

1. If any dispute arises between the two contracting parties relating to the interpretation or application of the provisions of this Agreement and cannot be resolved through mutual negotiations, the concerned State shall resort to the consultation machinery of AFCAC for the settlement of that dispute.
2. If the contracting parties fail to reach an agreement through negotiation, the dispute shall, at the request of either contracting party, be submitted for decision to a tribunal of three African arbitrators, one to be nominated by each contracting party and the third one to be appointed by the two arbitrators so nominated. The decision of the arbitral tribunal shall be final and binding on all the parties.

### *Article 24*

#### *Signature of agreement*

This agreement shall be open for signature by any State member of the Organisation of African Unity (OAU) and/or the African civil Aviation Commission (AFCAC).

## ***Article 25***

### ***Ratification and approval***

1. This agreement shall be ratified or approved by the States signatories to the agreement.
2. The relevant ratification shall be deposited with the African Civil Aviation Commission and approval notifications despatched to AFCAC.

## ***Article 26***

### ***Entry into force***

1. This Agreement shall enter into force on the 30th day after the deposit of their ratification instruments or notification of approval by three (3) States members of the Organization of African Unity and/or African civil Aviation Commission (AFCAC).
2. It shall enter into force for each State which has ratified or approved it on the 30th day after the deposit of its ratification instruments or notification of approval.

## ***Article 27***

### ***Accession***

1. After its entry into force, this Agreement shall be open for accession by any State member of the Organization of African Unity and/or African civil Aviation Commission (AFCAC).
2. The accession by any State shall be achieved through the deposit of its instruments of accession with the African civil Aviation Commission (AFCAC) and shall take effect from the 30th day after the deposit date.

## ***Article 28***

### ***Reservation***

Any contracting State may, by making reservations under this Agreement at the time of signature or its accession, choose not to benefit from its rights and obligations under Article 7, paragraph 5 and may, at any time after its accession, subject to a six-month notice served to all contracting States and the African Civil Aviation Commission assume or resolve to assume such rights and obligations as the case may be. No contracting State shall be forced to grant any rights under the said paragraph to a contracting State which is not bound by the said paragraph.

## ***Article 29***

### ***Amendments***

Any amendment proposal to this Agreement shall be approved by two-thirds of States party to the agreement; it shall enter into force with respect to states which ratified this amendment, after ratification by a number of contracting states which shall not be less than two-thirds of the total number of contracting States.



### **Article 30**

#### **Denunciation**

This agreement may be denounced by any party through notification to the African Civil Aviation Commission (AFCAC). The denunciation shall be effective one year after the date of receipt of such denunciation.

### **Article 31**

#### **Registration of Agreement**

1. Upon entry into force of this Agreement, it shall be registered with the secretariat of the African Civil Aviation Commission (AFCAC).
2. The African Civil aviation Commission shall forward one certified true copy of this Agreement to all State members of the organization of African Unity and the Secretary General of the International Civil aviation Organization (ICAO).
3. The African Civil aviation Commission shall inform all State members of the organization of African Unity and the Secretary General of the International Civil aviation Organization (ICAO)
  - (a) Any signature registered under this Agreement;
  - (b) the deposit date of any ratification and approval instrument or any accession instruments;
  - (c) any notification for denunciation of this Agreement;
  - (d) any reservation made in accordance with Article 28 and any withdrawals of reservations
  - (e) the immediate entry into force of any amendment

IN WITNESS WHEREOF, the undersigned duly authorized by their respective Governments have signed this Agreement

Done at ... this day of .....19 ... in ..... Language (s), both being equally authentic

## **7.2 AFCAC Model Multilateral Air transport Agreement between Group of States and another group of States**

The Governments of .....constituting a group of States parties to (*cite the constituent instrument for the establishment of the multinational airline concerned and its date, if any*) on the one hand

### **AND**

The Governments of ..... And of ..... constituting a group of States parties to (*cite the constituent instrument for the establishment of the multinational airline concerned and its date, if any*) on the other for the purpose of operating international air services, members of the Organization of African Unity (OAU)

and/or of the African Civil Aviation Commission (AFCAC). Being Parties to the Convention on International Civil Aviation open for signature at Chicago on December 7, 1944.

CONSCIOUS of their commitment under their respective constituent instruments;

RESOLVED to provide safe, adequate and efficient international air services in order to meet present and future requirements of the users and ensure the continued development of international trade;

DESIROUS of concluding an Agreement supplementing the Convention with a view to establishing air services among them and beyond their respective territories and

DESIROUS of applying to this Agreement the principles and provisions of the said Convention have agreed as follows:

## **Section I: General Provisions**

### *Article 1*

#### *Definitions*

1. For the purposes of this Agreement, unless otherwise stated, the term below shall have the following meaning:
  - (a) the term *Convention* means the Convention on International Civil Aviation open for signature on 7<sup>th</sup> day of December 1944 and includes any annex adopted under Article 90 of the Convention and any amendments of the annexes to the Convention under Article 90 and 94 thereof, provide d that such annexes and amendments have been approved by the contracting parties;
  - (b) The term *Aeronautical Authority* means: in the case of each group contracting party the aeronautical authorities of the States members of the said group of States or any community or entity established by these States in order to exercise jointly on their behalf and in their name any function at present exercised by the aeronautical authorities of these States;
  - (c) The term *Designated Airline* means a joint air transport operating organization constituted by one group contracting parties and designated by that party to ensue the operation of the agreed services provided for in accordance with the provisions of Article 9 of this Agreement.
  - (d) The term *Air Services, international Air services, Airline and Stop for non-traffic purpose* have the meanings respectively assigned to them in Article 96 of the Convention.
  - (e) The term *Specified Routes* means routes established or to be established in the Annex to this Agreement
  - (f) The term *Territory* has a meaning assigned to it in Article 2 of the Convention with respect to each State belonging to both group contacting parties;
  - (g) The term *Group Contracting Party* means the States constituting a group of states parties to this Agreement;

(h) In the following paragraphs, the term *Tariff* means the prices to be charged for international carriage of passengers, baggage or cargo (excluding mail) and comprises:

- Any through tariff or amount to be charged for international carriage, marketed and sold as such, including through tariffs constructed using other tariffs or add-ons for carriage over international sectors or domestic sectors forming part of the international sector;
- The conditions that govern the applicability of their tariff or the prices for carriage or the payment of commission.
- It also includes:

any significant benefits provided in association with the carriage;

Any tariff for carriage on a domestic sector which is sold as an adjunct to international carriage, which is not available for purely domestic travel and which is not made available on equal terms to all international carriers and users of their services.

- (i) The term *All-cargo air services* mean the international air services performed by civil aircraft on which cargo or mail “with accessory attendants” are carried , separately or in combination, but on which revenue passengers are not carried.

## ***Article 2***

### ***Applicability of the Chicago Convention***

The rights referred to in Article 9 of this Agreement shall be exercised in accordance with the provisions of the Convention.

## ***Article 3***

### ***Applicability of national laws and regulations***

4. The laws and regulations of any State belonging to one group contracting party relating to the admission of flights within or departure from its territory of aircraft of its designated airline engaged in international air navigation or its operation and navigation of such aircraft while within its territory shall likewise apply to the aircraft to the designated airline of the other group contracting party and shall be complied with by such aircraft upon entering or departing from or within the territory of that contracting party.
5. The laws and regulations of any State belonging to one group contracting party relating to the admission to, stay in or departure from its territory of passengers, crew or cargo including mail, such as regulations relating to entry, exit, immigration, passports as well as customs and sanitary measures shall be complied with by such passengers, crew or cargo, including mail carried by a designated airline by the other group contracting party with respect to entry, departure or stay in the said State.

#### ***Article 4***

##### ***Recognition of certificates and licenses***

Certificates of airworthiness, certificate of competency and license issued or rendered valid by the contracting party in the territory of which the aircraft is registered shall be recognized as valid by the other contracting party for the purpose of operating the routes and services provided for in this Agreement, provided that the requirements under which such certificates or licenses were issued or rendered valid are equal to or above the minimum standards which are or may be established pursuant to the Convention.

#### ***Article 5***

##### ***Airports and air navigation facility charges***

The charges imposed in the territory of a State of either group contracting party for the use of the airport or the other air navigation facilities by the aircraft of the airline designated by other group contracting party shall not be higher than those usually imposed on aircraft of the airline designated by the other group contracting party to which the concerned state belongs when engaged in similar international services

#### ***Article 6***

##### ***Exemption from Customs duties, inspection fees and other similar charges***

1. Aircraft operated in international air services by the designated airline of either contracting party as well as their regular equipment, supply of fuel and lubricants, and aircraft stores (including food, beverages and tobacco) on board such aircraft shall be exempt from customs duties, inspection fee and other similar charges on arriving in the territory of the other contracting party, provided such equipment and supplies remain on board the aircraft up to such time as they are re-exported or are used on the journey performed over the territory.
2. There shall also be exempt from the same duties, fees and charges with the exception of charges corresponding to the service provided:
  - a. aircraft stores taken on board, within limits fixed by the customs authorities of the said territory and for use on board the outbound aircraft of the other contracting party engaged in international air services;
  - a. spare parts introduced into the territory of either contracting party for the maintenance, or repair of aircraft used on international air services by the designated airline of the other contracting party;
  - c. fuel and lubricants supplied to an aircraft of the designated airline of the other contracting party, even in the case where such supplies shall be used on the journey performed over the territory of the contracting party where they were loaded.
3. Materials referred to in subparagraph a), b), and c) above may be required to be kept under customs supervision or control.
4. The regular airborne equipment as well as the material and supplies retained on board the aircraft of either the contracting party may be unloaded in the territory of the other contracting party only with the approval of customs authorities of that territory. In such cases, they may be placed under the

supervision of the said authorities up to such time they are re-exported or otherwise disposed of in accordance with current customs regulations

## *Article 7*

### *Aviation Security*

- a) Consistent with their rights and obligations under international law, the contracting parties reaffirm that their obligations to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the states of the contracting parties shall in particular act in conformity with the provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on September 14, 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on December 16, 1970 and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on September 23, 1971.

*Note: the provisions of the second sentence would be applicable only if the States concerned are parties to those conventions.*

- b) The States of the contracting parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, their passengers and crew, airports and air navigation facilities, and any other threat to the security of civil air navigation.
- c) The parties shall, in their mutual relations, act in conformity with the aviation security provisions established by the International Civil Aviation Organization and designated as Annexes to the Convention to the extent that such security provisions are applicable to the Parties; they shall require that operators of aircraft of their registry or operators of aircraft who have their principal place of business or permanent residence in their territory and the operators of airports in their territory act in conformity with such aviation security provisions.
1. Each State of the contracting Parties agrees that such operators of aircraft may be required to observe the security provisions referred to in paragraph c) above required by the other State of the contracting party for entry into, departure from, or while within the territory of that State. Each contracting party shall ensure that adequate measures are effectively applied within its territory to protect aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores, prior to and during boarding or loading. Each contracting party shall also give sympathetic consideration to any request from any State of the other contracting party for reasonable special security measures to meet a particular.
  2. When an incident or threat of an incident of unlawful seizure of aircraft or other unlawful acts against the safety of such aircraft, their passengers and crew, airport or air navigation facilities occurs, the contracting parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat.

## *Article 8*

### *Harmonization of Laws and Regulations*

The States members of one group contracting party shall ensure to the other group contracting party that their laws, regulations and procedures in so far as they relate to aircraft operated by the airline designated by the group concerned and the related personnel shall be harmonized and consistent with the obligations stemming from the convention and its Annexes.

## **Section II: Agreed Services**

### *Article 9*

#### *Granting of Rights*

- 1 Each group contracting party shall grant to the other group contracting party the following rights with respect to its scheduled international air services:
  - a) the right to fly across the territory of the states members of the concerned group without landing;
  - b) the right to make stops in their territories for non-traffic purpose;
  - c) the right to make stops in the territories of the States constituting the other group contracting party at specified points on the route mentioned in the Annex to this Agreement with a view to unloading or taking on board passengers, cargo or mail originating or destined for the territories of the States constituting the other group contracting party or a third state.

### *Article 10*

#### *Cabotage*

No provision under this Article shall be deemed to confer on the airline designated by group contracting party the privilege to take on board, in the territory of one of the States of the other group contracting party passengers and cargo, including mail carried for remuneration or hire destined for another point in the territory of the same State.

### *Article 11*

#### *Designation of Airlines*

1. Each contracting party may designate a joint air transport operating organization established under Articles 77 and 79 of the Convention
2. Upon receipt of such a designation the aeronautical authorities of the other group contracting party shall grant the necessary operating authorization to the air transport organization designated under paragraph 1 of this Article.

3. The aeronautical authorities of one of the two group contracting parties may require the airline designated by the other group contracting party to satisfy that it is qualified to fulfil the conditions prescribed under the laws and regulations normally applied to the operation of international air services.
4. Each group contracting party shall have the right to refuse to grant the operating authorization referred to in paragraph 2 of this Article or to impose such conditions as may be necessary on the exercise by a designated airline of the rights specified in Article 9 of this Agreement, in case where the said contracting party is not satisfied that substantial ownership and effective control of that airline are vested in the contracting part designating the airline or its nationals.
5. When an airline has been designated and authorized, it may operate the agreed services for which it has been designated provided that a tariff established in accordance with the provisions of Article 13 of this Agreement is enforced with respect to those services.

### *Article 12*

#### *Revocation or suspension of operating authorization*

1. Each group contracting party shall have the right to revoke an operating or to suspend the exercise of the rights granted under this Agreement by the other group contracting party, or to impose such conditions as it may deem necessary on the exercise of these rights
  - a) in case where it is not satisfied that substantial ownership and effective control of that airline are vested in the group contracting party designating the airline or its nationals or;
  - b) in the case of the failure by that airline to comply with the laws and regulations in force in the territories of the States comprising the group contracting party granting this rights; or;
  - c) in the case the airline otherwise fails to operate in accordance with the conditions prescribed by this Agreement.
2. Unless immediate revocation, suspension or imposition of the conditions mentioned in paragraph 1 of this Article is essential to prevent further infringements of the laws or regulations or the provisions of this Agreement, such right of revocation or suspension shall be exercised only after consultation with the aeronautical authorities of the other group contracting parties.

### *Article 13*

#### *Principles governing the operations of the agreed services*

1. The designated airline of the two contracting parties shall be afforded fair and equal treatment so that they enjoy an equal opportunity in the operation of the agreed services. In operating the agreed services, they shall take into account their mutual interests so as to unduly affect their respective services.
2. In operating the agreed services, the airlines designated by either group contracting party shall have as primary objective the provision of an adequate capacity for current and reasonably anticipated traffic requirements at a reasonable load factor for carriage from or to the territories of the States belonging to the group contracting party which designated the airline concerned.

- 3 The designated airline of one group contracting party shall take into account the interests of the other group contracting party's designated airline so as not to unduly affect the services operated by the latter on the whole or part of the same route.
- 4 The right to take on board or disembark international traffic in their respective territories originating from or destined for third countries under Article 9 of this agreement shall be exercised in accordance with the principles normally accepted by both group contracting parties; this capacity shall be connected with:
- a) the requirements for an economic cooperation on the routes concerned.
  - b) The traffic requirement between the country of origin and the countries of destination of this traffic;
  - c) Through airline operations.
- 5 The total capacity offered on each of the specified routes shall be agreed between the aeronautical authorities of both group contracting parties bearing in mind the current and reasonable anticipated traffic. If no agreement is reached, the provisions of Article 20 shall apply.

**OR**

***Article 13***

- 1 The designated airline of the two group contracting parties shall be afforded fair and equal treatment so that they may enjoy an equal opportunity in the operation of the agreed services. In operating the agreed services, airlines of each group of contracting party shall take into account the interests of the airline of the other group contracting party so as not to unduly affect the services which the other party provides along the whole or part of the specified route.
- 2 The operation of the agreed services between the territories of both group contracting parties in both directions along the specified routes constitutes a basic and primary right for the two groups contracting parties.
- 3 The primary objective of the two group contracting party shall be the provision of an adequate capacity for current and reasonably anticipated traffic requirements for the carriage, at a reasonable load factor, of passenger and cargo, including mail, from the territories of one group contracting party and destined for the territories of one group contracting party for the operation of the agreed services:
- a) the total capacity provided on each of the specified routes shall be determined by the aeronautical authorities having regard to the actual and reasonably anticipated traffic requirements.
  - b) The capacity referred to in subparagraph 3 (a) shall be divided equally between the designated airlines of the two group contracting parties;
  - c) Provisions may also be made by the two group contracting parties for the carriage of passengers and cargo including mail taken on board or disembarked at points on the specified routes in the territories of States other than those of the two group contracting parties. In doing so, the following factors shall be taken into account (among others):



- g) requirements between such points and the territories of the group contracting party whose designated airline desires to operate a service on that route;
  - ii) Traffic requirements of the area through which the agreed services passes after taking into account of the other transport services established by airlines of the States comprising the area;
  - iii) The requirements of tough airline operations, if any
- 4 If either group contracting party considers that the operation of its designated airline on third and fourth freedoms traffic rights between it and the states other than those comprising the group contracting parties on common sectors are affected by the operations of the designated airline of the other group contracting party, it may request consultation in accordance with Article 19 of this Agreement aimed at reaching a mutual agreement intended to rectify the situation,. Pending such an arrangement, the existing arrangements shall continue to apply.

#### *Article 14*

##### *Tariffs*

1. The tariff to be charged by the airline of one group of contracting party for carriage of passengers and cargo to or from the territory of any of the States composing the other group contracting party shall be established at reasonable levels, taking into account all relevant factors, particularly the operational costs, types of services, reasonable profit as well as the tariffs of other airlines operating similar routes.
2. The tariff to be enforced by the airline of one group of contracting party for carriage of passengers and cargo to or from the territory of any other contracting party shall be established at reasonable levels, taking into account all relevant factors, particularly the operational costs, types of services, reasonable profit as well as the tariffs of other airlines operating similar routes. Whenever possible these tariffs shall be agreed by the designated airlines of the contracting states and such agreement shall be reached by resorting as much as possible to the machinery of the African Air Tariff Conference.
3. The tariff so agreed shall be submitted for approval to the aeronautical authorities of the two contracting parties at least ninety (90) days before the proposed date for their introduction.
4. The approval referred to in paragraph 3 of this Article may be given expressly. If either of the aeronautical authority concerned has expressed no disapproval within fort (45) days from the date of submission in accordance with paragraph 3 of this Article, these tariffs shall be considered as approved.
5. If a tariff cannot be agreed in accordance with paragraph 7 of this Article or if, during the period applicable in accordance with paragraph 4 of this Article, the aeronautical authorities of the other group expresses notice of its disapproval of a tariff agreed in accordance with the provision of paragraph 2 of this Article, the aeronautical authorities of the two groups contracting parties shall endeavour to determine the tariff by mutual agreement.
6. If the aeronautical authorities of the two group contracting parties cannot agree on any tariff submitted to them in accordance with paragraph 3 of this Article, the dispute shall be settled in accordance with Article 17 of this Agreement.

7. A tariff established in accordance with the provisions of this Article shall remain in force until a new tariff has been established.
8. Each contracting party shall ensure that all carriers operating to and from the territory of any state comprising the group shall comply with the tariff agreed upon and approved in accordance with the provisions of this Article.

### ***Article 15***

#### ***Approval of Schedules***

The designated airline of each group contracting party shall submit for approval to the aeronautical authorities of the other group contracting party not later than 30 days prior to commencement of services on the specified routes, the flight schedule including the type of aircraft to be used. This shall likewise apply to later changes. In special case, this time limit may be reduced subject to consent of the said authorities.

### ***Article 16***

#### ***Provision of Statistics***

The aeronautical authorities of one of the contracting parties shall supply to the other aeronautical authorities of the other contracting party on request with periodic statistics or other similar information relating to the traffic carried under the agreed services by the respective designated airlines.

### ***Article 17***

#### ***Airline representation***

The designated airline of one contracting party shall be authorized:

- 1) subject to the laws and regulations relating to entry, residence, and employment in the territory of the other contracting party concerned, to bring in and maintain in the territory of that State those of their own managerial, technical, operational and other specialist staff who are required for the provision of air services
- 2) to open offices in the territory of the contracting party concerned for the promotion of air transport and ticket sale in accordance with the laws and regulations of the later contracting party.

### ***Article 18***

#### ***Transfer of earnings***

1. Each contracting party shall grant to the designated airline of the other contracting party the right transfer freely, at the exchange rate fixed by the competent authorities of the contracting party concerned, the excess of receipts over expenditure earned in its territory by the designated airline in connection with the carriage of passengers, baggage, cargo and mail.

The transfer referred to in this Article shall be effected in accordance with existing exchange control regulations.

2. Whenever payments between the contracting parties are governed by a special agreement, such agreements shall apply.

*OR*

1. Each contracting party shall grant to the airline designated by the other contracting party the right of free transfer of the excess of receipts over expenditure earned by each designated airline in the territory of the other contracting party.

### **Section III: Final Provisions**

#### *Article 19*

##### *Consultation*

In the spirit of close cooperation the aeronautical authorities of the contracting parties shall consult each other from time to time with a view to ensuring the implementation of and satisfactory compliance with the provisions of this Agreement and the Annex thereto and shall consult when necessary to make any modifications thereof.

Each contracting party may request consultation which shall be in writing. Such consultation shall begin within a period of sixty (60) days from the date of the request, unless both contracting parties agree to extend such a period.

#### *Article 20*

##### *Settlement of Dispute*

1. If any dispute arises between the two contracting parties relating to the interpretation or application of the provisions of this Agreement, the contracting parties shall strive to settle through negotiations as a first step.
2. If the contracting parties cannot reach an agreement through negotiation, they may decide to resort to the consultation machinery of AFCAC, if this fails, the dispute shall, at the request of either contracting party, be submitted for decision to a tribunal of three African arbitrators, one to be nominated by each contracting party and the third one to be appointed by the two arbitrators so nominated. The decision of the arbitral tribunal shall be final and binding on all the parties.

#### *Article 21*

##### *Modifications*

3. If either contracting party considers it desirable to modify any provisions of this Agreement other than the Annex, it may request consultation with the other contracting parties in accordance with Article 19 of this Agreement. Any modification agreed between the contracting parties shall apply provisionally from the date of signature and shall enter into force on the date when the contracting parties have notified each other through diplomatic channels that their respective constitutional requirements have been completed.
4. If either contracting party deems it relevant to amend the annex to this Agreement, such amendment agreed between the contracting parties shall enter into force once it has been confirmed through exchange of notes.

**Article 22**

***Amendments to the Agreements to comply with Multilateral Treaties***

This Agreement shall be amended so as to comply with the provisions of any multilateral agreements between two contracting parties

**Article 23**

***Registration of the Agreement and related amendments***

This agreement and any subsequent amendments thereto shall be registered with the International Civil Aviation Organization (ICAO) and notified to the African Civil Aviation Commission (AFCAC).

**Article 24**

***Denunciation***

Either group contracting party may, at any time, serve to the other group contracting parties a denunciation notice under this Agreement. Such notice shall be communicated to the International Civil Aviation Organization (ICAO) and notified simultaneously to the African Civil Aviation Commission (AFCAC) In such a case this agreement shall be terminated twelve (12) months after the date of receipt of the notice by the other group contracting, unless such notice has been withdrawn by mutual consent before the expiry of the above deadline. If the other group contracting party fails to acknowledge receipt, such notice shall be deemed as having been received fourteen (14) days after its receipt by the International Civil Aviation Organization.

**Article 25**

***Entry into Force***

This Agreement shall enter into force on the date when the States of either group contracting party have notified each other through diplomatic channels that their respective constitutional requirements have been completed..

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 19- , in ..... the language(s), both texts being equally authentic.

For the Government of .....

For the Government of .....

For the Government of .....

For the Government of .....

## 7.3 Model Air Transport Agreement Between one State and a Group of State

The Governments of ..... and ..... on the one hand and the government for ..... on the other hand,

BEING parties to the Convention on International Civil Aviation open for signature at Chicago on 7 December 1944, and;

DESIROUS of concluding an agreement supplementing the said Convention for the purpose of establishing and developing air transport services between their respective territories and beyond their territories;

Have agreed as follows:

### *Article 1*

#### *Definitions*

For purposes of this agreement and its annexes, unless otherwise stated, the terms below shall have the following meaning<sup>113</sup>:

- a) the term *Convention* means the Convention on International Civil Aviation open for signature on 7<sup>th</sup> day of December 1944 and includes any annex adopted under Article 90 of the Convention and any amendments of the annexes to the Convention under Article 90 and 94 thereof, provided that such annexes and amendments have been approved by the two contracting parties;
- b) The term *Aeronautical Authority* means:
  - a. In the case of ..... the ..... and any person or body authorized to perform functions exercised by the said ..... or similar functions at present exercised by the said .... , and in the case of the..... and any person or body authorized to perform any functions at present exercised by the said ..... or similar functions.
  - c) The term *Contracting Party* means the partner states acting jointly in order to implement the provisions of this Agreement on the one hand and ..... On the other hand.
  - d) The term *Contracting Parties or their nationals* means
  - e) The term *Partner States* means the Republic of ... and the Republic of ...
  - f) The term *Designated Airline* means an airline designated by the aeronautical authorities of on contracting party as being the instrument chosen by the said authority to operate the agreed services provided for in this Agreement and which shall be approved by the other contracting party in accordance with the provisions of Articles 11 and 12 of this Agreement.
  - g) The term *Specified Routes* means routes established or to be established in the Annex to this Agreement

- h) In the following paragraphs, the term *Tariff* means the prices to be charged for international carriage of passengers, baggage or cargo (excluding mail) and comprises:
- i. Any through tariff or amount to be charged for international carriage, marketed and sold as such, including through tariffs constructed using other tariffs or add-ons for carriage over international sectors or domestic sectors forming part of the international sector;
  - ii. The commission to be paid on the sales of tickets for the carriage passengers and their baggage, or on the corresponding transaction for the carriage of cargo
  - iii. The conditions that govern the applicability of their tariff or the prices for carriage or the payment of commission.
  - iv. It also includes:
    - (a) any significant benefits provided in association with the carriage;
    - (b) Any tariff for carriage on a domestic sector which is sold as an adjunct to international carriage, which is not available for purely domestic travel and which is not made available on equal terms to all international carriers and users of their services. The term *Territory, Air Services, international Air services, Airline and stop for non-traffic purpose* have the meanings respectively assigned to them in Article 2 and 96 of the Convention.

## *Article 2*

### *Applicability of the Chicago Convention*

The rights referred to in Article 8 of this Agreement shall be exercised in accordance with the provisions of the Convention

## *Article 3*

1. The laws and regulations of one contracting party relating to the admission of flights within or departure from its territory of aircraft of its designated airline engaged in international air navigation or its operation and navigation of such aircraft while within its territory shall likewise apply to the aircraft to the designated airline of the other contracting party and shall be complied with by such aircraft upon entering or departing from or within the territory of that contracting party.
2. The laws and regulations of one contracting party relating to the admission to or stay in or departure from its territory of passengers, crew or cargo including mail, such as regulations relating to entry, exit, immigration, passports as well as customs and sanitary measures shall be complied with by such passengers or crew either personally or through a third party acting on their behalf and with respect to the cargo carried by the designated airline of any contracting party, these laws and regulations shall also apply to the admission to or stay in or departure from territory of the contracting party first mentioned.
3. Subject to the provisions of this Agreement, any contracting party may designate the route to be operated within its territory by any international air services and the airports that may be used by such services.

#### ***Article 4***

##### ***Recognition of certificates and licenses***

Certificates of airworthiness, certificate of competency and license issued or rendered valid by the contracting party in the territory of which the aircraft is registered shall be recognized as valid by the other contracting party for the purpose of operating the routes and services provided for in this Agreement, provided that the requirements under which such certificates or licenses were issued or rendered valid are equal to or above the minimum standards which are or may be established pursuant to the Convention.

#### ***Article 5***

##### ***Airports and air navigation facility charges***

Each contracting State may, subject to the provisions of this Agreement, establish or authorize that fair and reasonable charges be imposed on any service for the use of airports and air navigation facilities; these charges shall not be higher than those usually imposed on aircraft having the nationality of the concerned state and using the same airport and air navigation facilities when engaged in similar international services

#### ***Article 6***

##### ***Exemption from Customs duties, inspection fees and other similar charges***

1. Aircraft operated in international air services by the designated airline of either contracting party as well as their regular equipment, supply of fuel and lubricants, and aircraft stores (including food, beverages and tobacco) on board such aircraft shall be exempt from customs duties, inspection fee and other similar charges on arriving in the territory of the other contracting party, provided such equipment and supplies remain on board the aircraft up to such time as they are re-exported or are used on the journey performed over that territory.
2. There shall also be exempt from the same duties, fees and charges with the exception of charges corresponding to the service provided:
  - a. aircraft stores taken on board, within limits fixed by the customs authorities of the said territory and for use on board the outbound aircraft of the other contracting party engaged in international air services;
  - b. spare parts introduced into the territory of either contracting party for the maintenance, or repair of aircraft used on international air services by the designated airline of the other contracting party;
  - c. fuel and lubricants supplied to an aircraft of the designated airline of the other contracting party, even in the case where such supplies shall be used on the journey performed over the territory of the contracting party where they were loaded.
3. Materials referred to in subparagraph a), b), and c) above may be required to be kept under customs supervision or control.
4. The regular airborne equipment as well as the material and supplies retained on board the aircraft of either the contracting party may be unloaded in the territory of the other contracting party only with the approval of customs authorities of that territory. In such cases, they may be placed under the

supervision of the said authorities up to such time they are re-exported or otherwise disposed of in accordance with current customs regulations

### *Article 7*

#### *Aviation Security*

- a) Consistent with their rights and obligations under international law, the contracting parties reaffirm that their obligations to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the states of the contracting parties shall in particular act in conformity with the provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on September 14, 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on December 16, 1970 and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on September 23, 1971.
- b) The States of both contracting parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, their passengers and crew, airports and air navigation facilities, and any other threat to the security of civil air navigation.
- c) The parties shall, in their mutual relations, act in conformity with the aviation security provisions established by the International Civil Aviation Organization and designated as Annexes to the Convention to the extent that such security provisions are applicable to the Parties; they shall require that operators of aircraft of their registry or operators of aircraft who have their principal place of business or permanent residence in their territory and the operators of airports in their territory act in conformity with such aviation security provisions.
- d) Each State of the contracting Parties agrees that such operators of aircraft may be required to observe the security provisions referred to in paragraph c) above required by the other State of the contracting party for entry into, departure from, or while within the territory of that State. Each contracting party shall ensure that adequate measures are effectively applied within its territory to protect aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores, prior to and during boarding or loading. Each contracting party shall also give sympathetic consideration to any request from any State of the other contracting party for reasonable special security measures to meet a particular.
- e) When an incident or threat of an incident of unlawful seizure of aircraft or other unlawful acts against the safety of such aircraft, their passengers and crew, airport or air navigation facilities occurs, the contracting parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat.

### *Article 8*

#### *Granting of Rights*

1. Each contracting party shall grant to the other contracting party the rights as specified in this Agreement for the purpose of establishing international schedule air services on the routes specified in the relevant part of the Annex to this Agreement. These services and routes are hereafter designated as the *Agreed Services and Specified Routes*.



2. Each contracting party shall grant to the other contracting party the following rights with respect to its scheduled international air services:
  - a) the right to fly across its territory without landing;
  - b) the right to make stops in its territory for non-traffic purpose;
  - c) the right to make stops in the territories of the other contracting party at specified points on the route referred to this Agreement for the purpose of unloading or taking on board passengers, cargo or mail originating<sup>114</sup> or destined for the territories of the States constituting the other group contracting party or *a third state*.
3. No provision under this Article shall be considered as granting to the designated airline of any contracting party the privilege of taking on board, in the territory of the other group contracting party passengers and cargo, including mail for remuneration or hire destined for another point in the territory of the same State.

### *Article 9*

#### *Designation of Airlines*

1. Each contracting party shall have the right to designate in writing to the other contracting parties an airline for the purpose of operating the agreed.
2. Each contracting party may designate a joint air transport operating organization established under Article 77 and 79 of the Convention and this joint organization shall be accepted by the other contracting party.
3. Upon receipt of such a designation, the aeronautical authorities of the other contracting party shall, without delay, subject to the provisions of paragraph 3 of this Article and those of Article 12 of this Agreement, grant to the airline(s) designated the appropriate operating authorizations.
4. The aeronautical authorities of each contracting party may require the airline by the contracting party to satisfy that it is qualified to fulfil the conditions prescribed under the laws and regulations normally applied to the said authorization to the operation of international air services.
5. Each contracting party shall have the right to refuse to grant the operating authorization referred to in paragraph 3 of this Article or to impose such conditions as may be necessary on the exercise by a designated airline of the rights specified in Article 3 of this Agreement, in any case where the said contracting party is not satisfied that substantial ownership and effective control of that airline are vested in the contracting party designating the airline or in its nationals.
6. when an airline has been designated and authorized, it may operate the agreed services for which it has been designated provided that tariff established in accordance with the provisions of Article 13 of this Agreement is enforced with respect to those services,

## ***Article 10***

### ***Revocation or suspension of operating authorization***

1. Each contracting party shall have the right to revoke an operating authorization or to suspend the exercise of the rights granted under this Agreement by any airline designated by the other contracting party, or to impose such conditions as it may deem necessary on the exercise of these rights.
  - a. in any case where it is not satisfied that substantial ownership and effective control of that airline are not vested in the contracting party designating the airline or its nationals;
  - b. in the case of failure by that airline to comply with the laws and regulations in force in the territory of the contracting party granting these rights; or
  - c. in the case the airline otherwise fails to operate in accordance with the conditions prescribed under his Agreement.
2. Unless immediate revocation, suspension or imposition of the conditions mentioned in paragraph 1 of this Article is essential to prevent further infringement of the laws or regulations of the provisions of this Agreement, such rights of revocation or suspension shall be exercised only after consultation with the aeronautical authorities of the contracting parties, as the case may be..

## ***Article 11***

### ***Principles governing the operation of agreed services***

1. The designated airline of the two contracting parties shall be afforded a fair and equitable treatment so that they may have an equal opportunity in the operation of the agreed services. They shall take into account their mutual interests so as not to unduly affect their respective services
2. The operation of the agreed services between the territories of partner States and the territory of ... in both directions shall constitute a basic and essential right for the contracting parties.

## ***Article 12***

### ***Capacity Determination***

1. For the purpose of operating the agreed services:
  - (a) the total capacity shall be equally divided between the airlines designated by the partner States on the one hand the airline designated by ... on the other hand;
  - (b) the total capacity offered on each route shall be adapted to reasonably foreseeable capacity requirements.
2. In order to cope with seasonal fluctuation and meet temporary traffic demand, the airlines designated by the two contracting parties shall agree on appropriate measures to handle this temporary increase in traffic. Any agreement reached between the airlines and any amendment thereto shall be submitted to the relevant aeronautical authorities of the two contracting parties for approval.

3. In the event that an airline of a contracting party does not wish to use one or several routes either in part or in whole transport capacity that it should offer by virtue of its rights, it shall agree with the airline designated by the other contracting party on how to transfer to this airline, for an agreed fixed period, the whole transport capacity or part of it. The designated airline which has transferred the totality or part of its rights may take such rights back at the end of the fixed period.
4. The total capacity offered on each of the specified routes shall be agreed between the aeronautical authorities of the two contracting parties bearing in mind the actual and reasonably foreseeable traffic demand. If an agreement is not reached, the provisions of Article 19 shall apply.

### ***Article 13***

#### ***Tariffs***

1. The tariff to be charged by the airline of one contracting State for carriage of passengers and cargo to or from the territory of any of other contracting States shall be established at reasonable levels, taking into account all relevant factors, particularly the operational costs, types of services, reasonable profit as well as the tariffs of other airlines operating similar routes. These tariffs, if possible, shall be agreed by the designated airlines of the contracting States and such agreement shall, whenever possible, be reached by the use of the procedures of the machinery of the African Air Tariff Conference. The tariff so agreed shall be submitted for approval to the aeronautical authorities concerned..

### ***Article 14***

#### ***Approval of Schedules***

The designated airline of each contracting party shall submit for approval to the aeronautical authorities of the other group contracting party not later than thirty (30) days prior to commencement of services on the specified routes, the flight schedule including the type of aircraft to be used. This shall likewise apply to later changes. In special case, this time limit may be reduced subject to consent of the said authorities.

### ***Article 15***

#### ***Provision of Statistics***

The aeronautical authorities of one of the contracting parties shall supply to the other aeronautical authorities of the other contracting party on request with periodic statistics or other similar information relating to the traffic carried under the agreed services by the respective designated airlines.

### ***Article 16***

#### ***Airline representation***

The designated airline of one contracting party shall be authorized:

- 1) Subject to the laws and regulations relating to entry, residence, and employment in the territory of the other contracting party concerned, to bring in and maintain in the territory of that State those of their own managerial, technical, operational and other specialist staff who are required for the provision of air services
- 2) to open offices in the territory of the contracting party concerned for the promotion of air transport and ticket sale in accordance with the laws and regulations of the later contracting party.

## ***Article 17***

### ***Transfer of earnings***

1. Each contracting party shall grant to the designated airline of the other contracting party the right transfer freely, at the exchange rate fixed by the competent authorities of the contracting party concerned, the excess of receipts over expenditure earned in its territory by the designated airline in connection with the carriage of passengers, baggage, cargo and mail.

The transfer referred to in this Article shall be effected in accordance with existing exchange control regulations.

2. Whenever payments between the contracting parties are governed by a special agreement, such agreements shall apply.

## ***OR***

1. Each contracting party shall grant to the airline designated by the other contracting party the right of free transfer of the excess of receipts over expenditure earned by each designated airline in the territory of the other contracting party. Such transfer shall be effected on the basis of the official exchange rate for current payments, or where there are no official exchange rates, at the prevailing foreign exchange market rates for current payments.

## ***Article 18***

### ***Double Taxation***

The receipts that an airline designated by one contracting party derives from the operation of the international traffic shall be taxed only in the State where the Head office of such an airline is actually located. Contracting parties shall enter into a tax convention for that purpose.

## ***Article 19***

### ***Consultation***

1. In the spirit of close cooperation the aeronautical authorities of the contracting parties shall consult each other from time to time with a view to ensuring the implementation of and satisfactory compliance with the provisions of this Agreement and the Annex thereto and shall consult when necessary to make any modifications thereof.
2. Each contracting party may request consultation which shall be in writing. Such consultation shall begin within a period of sixty (60) days from the date of the request, unless both contracting parties agree to extend such a period.

## ***Article 20***

### ***Settlement of Dispute***

1. If any dispute arises between the two contracting parties relating to the interpretation or application of the provisions of this Agreement, the contracting parties shall strive to settle through negotiations as a first step.
2. If the contracting parties cannot reach an agreement through negotiation, they may decide to resort to the consultation machinery of AFCAC, if this fails, the dispute shall, at the request of

either contracting party, be submitted for decision to a tribunal of three African arbitrators, one to be nominated by each contracting party and the third one to be appointed by the two arbitrators so nominated. The decision of the arbitral tribunal shall be final and binding on all the parties.

### ***Article 21***

#### ***Modifications***

1. If either contracting party considers it desirable to modify any provisions of this Agreement other than the Annex, it may request consultation with the other contracting parties in accordance with Article 19 of this Agreement. Any modification agreed between the contracting parties shall apply provisionally from the date of signature and shall enter into force on the date when the contracting parties have notified each other through diplomatic channels that their respective constitutional requirements have been completed.
2. If either contracting party deems it relevant to amend the annex to this Agreement, such amendment agreed between the contracting parties shall enter into force once it has been confirmed through exchange of notes.

### ***Article 22***

#### ***Amendments to the Agreements to comply with Multilateral Treaties***

This Agreement shall be amended so as to comply with the provisions of any multilateral agreements between two contracting parties

### ***Article 23***

#### ***Registration of the Agreement and related amendments***

This agreement and any subsequent amendments thereto shall be registered with the International Civil Aviation Organization (ICAO) and notified to the African Civil Aviation Commission (AFCAC).

### ***Article 24***

#### ***Denunciation***

One of the contracting parties may, at any time, serve to the other contracting party a denunciation notice under this Agreement. Such notice shall be communicated to the International Civil Aviation Organization (ICAO) and notified simultaneously to the African Civil Aviation Commission (AFCAC) In such a case this agreement shall be terminated twelve (12) months after the date of receipt of the notice by the other contracting party, unless such a termination notice has been withdrawn by mutual consent before the expiry of the above deadline. If the other contracting party fails to acknowledge receipt, the notice shall be deemed as having been received fourteen (14) days after its receipt by the International Civil Aviation Organization.

### ***Article 25***

#### ***Entry into Force***

This Agreement shall enter into force on the date when the States of either group contracting party have notified each other through diplomatic channels that their respective constitutional requirements have been completed..

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 19- , in ..... the language(s), both texts being equally authentic.

For the Government of .....

# 8 Declaration of Yamoussoukro on a New African Air Transport Policy

We, African Ministers in charge of civil aviation meeting in Yamoussoukro, Republic of Côte d'Ivoire from 6 to 7 October 1988;

**Considering** the Lagos Plan of Action and Final Act of Lagos adopted in April, 1980 by the heads of States and Governments of the Organization of African Unity;

**Considering** the Declaration of general in the field of civil aviation endorsed by the Assembly of Heads of State and Government of the Organization of African Unity in Resolution CM/Res.804 (XXXV) of June 1980;

**Considering** the Resolutions adopted by the Conference of African Ministers of Transport, Communications and Planning on Air Transport matters and endorsed by ECA Conference of Ministers, in particular ECA/UNTACDA/RES.79/6 of May 1979 on the exchange of traffic rights, ECA/UNTACDA/RES.83/34 of March 1983 on the freedoms of the air, ECA/UNTACDA/RES.79/7 OF May 1979 on the establishment of an African Mechanism for traffic fixing and ECA/UNTACDA/RES.86/50 of March 1986 on the Joint Utilisation of Aircraft Maintenance Centres;

**CONVINCED** that air transport is an important tool for the promotion of social and economic development in Africa and in the World;

**AWARE** of the effect of deregulation in the United States and of the consequences it may have on policies of other countries for the regulation of their air transport industry;

**GRAVELY CONCERNED** about the potential adverse effects on the African Airlines of the European Air Transport Liberalisation Policies, especially the application by the ECC of the Treaty of Rome to air transport services and the creation of a single internal market by 1993;

**BEARING IN MIND** the fact that many aircraft owned by African airlines are obsolete and thus in need of replacement at great cost;

**CONSCIOUS** of the urgent need for African Airlines to renew their fleet, and in particular to comply with chapters 2 and 3 of Annex 16 to the Chicago Convention of 1994, concerning aircraft noise;

**CONSIDERING** the need for African countries to exchange traffic rights in a liberal manner in order to develop air services among themselves;

**NOTING** the urgent need for all Africans Airlines to market their product competitively through unbiased computerised reservation system;

**AWARE** that most African airlines operate at a loss and that they consume a lot of their countries' meagre foreign exchange resources;

**RECOGNISING** the fragility of the present Air Transport industry in Africa and the smallness of its market;

**RECOGNISING** the urgent need for African Airlines to improve their management and to cooperate among themselves;

**GUIDED** by the will to fight against under-development under the framework of a new and just international economic order;

**STRONGLY RESOLVED** to considerably restructure African Air Transport in order to make it contribute significantly to the national development of African States and to the continents social and economic integration;

**AGREE TO COMMIT** ourselves, individually and collectively, to promote a climate of cooperation and solidarity which is necessary for the safeguarding and development of international air transport activities in Africa and agree by this Declaration to adopt a new Air Transport Policy based on the following:

## Cooperation in Air Transport

### **A. Integration of African Airlines**

We commit ourselves, individually and collectively, to make all necessary efforts to achieve the integration of our airlines within a period of eight years. This integration should be done through the strengthening of existing cooperative structures and the creation of new entities either on a subregional basis, on the basis of economic grouping or on the basis of affinity. To this end, studies and consultations will be carried out immediately. The process towards the total integration of our airlines could be carried out in phases as indicated hereunder, it being understood that in certain cases it may not be necessary to go through all the phases.

Our Government agree:

#### *During Phase I*

- a) to exchange information on the value and type of each African Airlines, including aircraft capacity, aircraft type, training and maintenance facilities;
- b) to initiate action for maximum use of any available capacity and in this connection investigate the possibility of designating gateway airports from which other airlines could feed traffic with a view to improving profitability;
- c) to promote cooperation between their national airlines with a view to amalgamating them into larger, more efficient and competitive entities.



### ***During Phase II***

To commit their airlines to the joint operation of compatible and international routes and to carry out jointly certain aspects of airline operations particularly in the following areas:

- a) Joint Insurance;
- b) Computerised Reservation System;
- c) Joint Purchase of spare parts;
- d) Joint or common designation of aircraft;
- e) Common access to the market and granting of traffic rights;
- f) Consolidation of sales outlets and station handling activities including mutual representation in sales offices;
- g) Joint Promotion and sale of the joint services;
- h) Revenue and cost sharing;
- i) Harmonization of existing individual networks;
- j) Training facilities;
- k) Maintenance and overhauling of equipment.

### ***And during phase III***

To achieve the complete integration of airlines especially according to the three schemes below:

- a) CONSORTIUM: this is a close collaboration of the members creating a separate legal personality;
- b) JOINTLY OWNED AIRLINES: a partner to manage the affairs of the partners. Under this arrangement the partners merge their operations while maintaining their individuality;
- c) MERGERS: the partner airlines combine to form a single entity replacing the separate airlines that existed before the merger.

African governments shall strive to undertake actions necessary to reach Phase II as quickly as possible as stated in the following time-scale:

Phase I – 2 years

Phase II – 3 years

Phase III - 3 years

## **B. Traffic Rights**

During the implementation of the programme for the integration of our airlines, the need to exchange traffic rights will gradually fall away. During the period of transition, it is necessary to show more flexibility in the granting of the 5<sup>th</sup> freedom to African Airlines.

Grouping of countries cooperating in the establishment of joint multilateral airlines will exchange traffic rights among themselves without restriction and shall formulate a common policy for the granting of traffic rights to carriers outside Africa.

## **C. Costs and Tariffs**

Recognising the relationship between tariff and airline operating costs, African Civil Aviation Administrations and airlines undertake to increase their technical cooperation, especially in the fields of maintenance and overhaul of aircraft, fleet planning and joint purchase activities, the use of ground equipment and collective insurance so as to minimize operating costs and thereby reduce tariffs.

Immediate concern shall be taken by African States that have not yet done so to ratify the Convention on the African Air Tariff Conference (AFRATC), a forum for African Airlines to study, discuss and agree on air tariffs to, from and within Africa.

### *Improvement of Management*

The ultimate integration of our airlines should be based on the improvement of their financial situation. We undertake to improve the management of existing national airlines through a programme of intensive training so as to make available qualified and competent manpower in this area, since competence should be the sole criteria for the appointment of all staff, and to remunerate them adequately having regard to international standards so as to retain trained personnel.

We shall further intensify our efforts to accord priority to the use of existing training facilities within Africa.

### *Financing of Air Transport*

Within the framework of the concentration of our airlines into larger units, we shall seek to purchase equipment jointly in order to enhance our ability to acquire modern aircraft.

We shall also work towards the establishment of an African aircraft leasing company so as to facilitate the acquisition of equipment by African airlines.

To this end, we call on African financing institutions, in particular ADB, and other multilateral financing institutions, to give high priority to the activities for the implementation of the objectives set out in the Declaration. We also encourage African private capital to get involved in the financing of air transport activities.

### ***Product Distribution System***

We commit ourselves to combating the invasion of our national markets by non-African distribution systems and, to that end; we shall as a matter of urgency:

- a) initiates studies leading to the establishment of an African joint computerised reservation system;
- b) undertake the measures necessary to protect our local market by requiring travel agents to use the computerised reservation system used by our national carriers;
- c) pending the creation of an African joint reservation system, cooperate in selecting a system offering the best terms and conditions for our airlines and shall negotiate collectively for its use;
- d) support the current efforts of the ICAO which aim at the adoption, at the international level, of a code of conduct for the unbiased use of computerised reservation system taking into account the specific interests of our airlines.

### ***Aircraft Noise***

We agree to work out a common position regarding the adoption and application and application of measures concerning aircraft noise restrictions in accordance with our economic situation.

We reaffirm our determination to take all the necessary steps to prevent the introduction into our countries of aircraft that are no longer in use elsewhere because of noise restrictions.

We also agree not to impose on aircraft presently registered in Africa that do not comply with current noise standards.

### ***Mechanism for Implementation and Follow-up***

We hereby decide to entrust the task of coordinating the implementation of the objectives set out in this Declaration to the Economic Commission for Africa. In this regard, we request the Economic Commission for Africa to liaise with the Organization of African Unity, the African Civil Aviation Commission, the African Airlines Association and other international organizations concerned.

Finally, we agree to meet as often as possible during each phase of the implementation of the decisions we have taken in order to assess the progress made.

# 9 Mauritius Guidelines

## Solutions for Achieving the Implementation of the Yamoussoukro Declaration

### I. INTRODUCTION

1. What can be seen from the analysis of the implementation exercise is that low progress, impediments and other problems have been in the way. It has become necessary to take remedial actions to articulate what needs to be done more precisely and to review the mechanism and time frame for carrying out the various phases of implementation.

### II. SOLUTIONS FOR ACTIVATING THE IMPLEMENTATION EXERCISE

2. Based on the analysis and bottleneck identified, the following solutions for activating the implementation of the Declaration have been adopted.

#### **2.1 The Yamoussoukro Declaration as a basis of an African Air Transport policy**

3. In the broader perspective of the implementation process, one of the first actions to be taken within the regulatory framework as stipulated in the Declaration will be its adoption by African governments as a basis of their national air transport policy. The incorporation of the Declaration ( as reviewed at Mauritius) into national policy will move it forward from the current stage of indicative and general planning and measures to the point where it becomes an official statement of principles. In this regard African countries will have one year to finalize this procedure and inform ECA accordingly.
4. The incorporation should be provisionally effective immediately after the Mauritius meeting while a legal framework is being prepared in the form of an international agreement to be ratified by governments.
5. ECA working in cooperation with sub regional, regional and international organizations is entrusted with the responsibility for following up this activity.

#### **2.2 Traffic Rights**

6. African states collaborating in the establishment of multinational airlines should agree the exchange of traffic rights. Meanwhile, they should exchange traffic rights in accordance with the following policy framework.

(a) *Within the African subregions*

7. The exchange of traffic rights should be liberalized over a period of two years as follows:

- exchange 1<sup>st</sup> and 2<sup>nd</sup> freedoms freely without limitation;
- exchange 3<sup>rd</sup> and 4<sup>th</sup> freedoms without restrictions
- exchange of 5<sup>th</sup> freedom traffic rights by granting these rights without restriction on sectors where there are no third and fourth freedom operations;
- where 3<sup>rd</sup> and 4<sup>th</sup> freedoms operations exist, grant up to 20 per cent of total traffic (based on total traffic of the previous year) or number of seats offered on the route, should be granted to fifth freedom operations provided however that 80 per cent of the total traffic on the route or number of seats offered is reserved for 3<sup>rd</sup> and 4<sup>th</sup> freedom operations;
- not impose restrictions on aircraft type used by the designated carriers on the route on which traffic rights have been granted subject only to the requirement that the aircraft type operated meets national and international safety, security and environmental regulations; permitting combination of points on scheduled services except that the exercise of traffic rights shall be in accordance with policy guidelines contained in this document; and
- granting full and unrestricted traffic rights for all cargo operations except that where there is a designated airline operating on the requested route, the effect of such policy should be carefully evaluated before applying it on the route.

(b) *Relations among subregions*

8. In respect to relations with other African States outside a particular subregion, the following framework will apply:

- (i) 1<sup>st</sup> and 2<sup>nd</sup> freedoms should be freely granted without limitation;
- (ii) Regarding 3<sup>rd</sup> and 4<sup>th</sup> freedoms the ultimate objective to be pursued will be to ensure that, within a period of 10 years. Daily flights can be operated between two intra-African city pairs with each country being authorized to operate four weekly frequencies as follows:
  - Third and fourth freedom traffic rights of at least two frequencies between city pairs of the sub regions should immediately be exchanged freely. If the volume of traffic so warrants, such frequencies will be raised;
  - within a minimum period of ten years, the exchange of third and fourth freedoms should facilitate the introduction of daily flights with each airline operating four frequencies or more if the traffic so warrants;
  - In the event that one country is unable to operate its share of services, the other party should be allowed to operate that part's share of services under a commercial agreement. The party operating such service should be required to reduce its services to a level that allows the other party to enter the market when it so decides.

- (iii) flexible exchange of 5<sup>th</sup> freedom traffic rights up to a specified percentage would be granted without any conditions in order to enhance the African transport network, it being understood that 80 per cent of the traffic on any given route or number of seats offered will, at all times, be reserved for the 3<sup>rd</sup> and 4<sup>th</sup> freedom operators. Where there is no service, unrestricted fifth freedom right will be granted between two points without any conditions.
  - (iv) permitting combination of points on scheduled services except that the exercise of traffic rights shall be in accordance with policy guidelines contained in this document; and
  - (v) granting full and unrestricted traffic rights for all cargo operations except that where there is a designated airline operating on the requested route, the effect of such policy should be carefully evaluated before applying it on the route.
9. The coordination machinery set up in 2.5 below to follow the implementation of the Declaration will be responsible for monitoring and implementation of the traffic rights policy adopted.

### **2.3 Cooperation in Air transport**

10. African governments and airlines should continue their efforts to set up or activate multinational airlines following the framework described in the Yamoussoukro Declaration. This will in the long run eliminate the necessity for exchanging traffic rights within Africa.

### **2.4 Role of Governments and airlines**

11. The pursuit of commercial objectives set forth in the Declaration will depend on the support and commitment of African governments and airline authorities. Over the past five years, African governments have failed to include subregional cooperation and integration in their airline restructuring policies.
12. For the commercial and technical cooperation objectives to be attained, African governments should urge airlines to institute cooperation and integration programmes for the period 1995 - 2000.
13. Furthermore, African governments should revitalize the airlines and get them to improve their productivity and efficiency by making sure that their operations are managed commercially and encouraging the injection of adequate capital.
14. With regard to skilled manpower which is very difficult to find, everything should be done to ensure continued training and retain such staff for example, where necessary by encouraging participation of staff in the capital share within the airline with a view to creating a stable management environment and ensuring a policy continuity.
15. Subregional economic groupings with the support of African governments will be responsible for monitoring the activities described above.

## 2.5 Coordination Mechanism

16. It is necessary to set up a regional coordination with similar machinery operating at the sun regional and national level. As the coordinating agency, ECA should assist the subregional coordinating ministers in instituting and organizing all these coordinating mechanisms. In this regard, ECA should work in cooperation with OAU, AFCAC, AFRAA and the African subregional organizations. The composition of the coordinating machinery will be as follows:

### (a) *Regional mechanism*

- the designated subregional coordinating minister;
- the President and Secretary General of AFCAC;
- the President and Secretary General of AFRAA;
- the director in charge of Transport and communications at ECA;
- a representative of OAU;
- Representatives of existing sun regional groupings.

17. The regional machinery should meet each year under the chairmanship of the coordinating authority designated at each meeting to assess progress made and to take remedial action.

### (b) *Subregional level*

- the current coordinating minister (Chairman);
- Directors of civil aviation;
- Chairmen and or manager of airlines;
- representatives of sub regional organizations;
- representatives of airport authorities.

18. The coordinating minister will bear responsibility to organizing subregional activities. In this regard, he should set up appropriate structures for monitoring the subregional implementation of the Declaration. He should also organize periodic meetings and maintain permanent contact with other ministers of the sub region in order to solve problems brought to his attention by the countries and/or ECA and other African subregional organizations.

### (c) *National level*

- the Minister responsible for civil aviation;
- Director of civil aviation;

- representatives of national and private airlines operating in the country;
- Representative of airport authorities representative of the tourism department and chamber of commerce.

19. The minister in charge of civil aviation shall be responsible for organizing the activities of the national mechanism.

## **2.6 Time frame for implementation**

20. African governments and airlines should take the necessary measures for implementing the various phases of the Declaration. The completion of Phase III should be considered as an objective to be attained by the year 2000.

## **2.7 Convention establishing the African Air Tariffs Conference**

21. For failure to secure the 25 instruments of ratification required, the Convention establishing the African Air Tariffs Conference adopted in 1980 in Addis Ababa is not yet in force.

22. This issue will be considered by AFCAC working together with AFRAA and fresh proposals submitted to African states.

## **2.8 Consideration of aspects relating to civil aviation and airports authorities**

23. African governments should give civil aviation and airport authorities the required autonomy and independence of management of operations under their responsibilities including financial management and investment planning.

24. It is also noted that the airlines, the civil aviation and airport authorities experience difficulties in recruiting and retaining skilled, qualified and experienced manpower. Therefore, everything should be done to train and retain such staff and provide them with conducive working environment with a view to promoting stable and effective management.

## **2.9 Consideration of aspects relating to airlines management**

25. African governments should give African airlines the required autonomy and independence of management of operations with particular reference to financial management and investment planning.

## **2.10 Additional measures**

26. The additional measures listed below will be necessary for creating an environment that promotes the expansion of African and international air transport.



**(a) *Rationalization of the Use of African air space***

27. African governments shall take collective action for purposes of rationalizing the use of African air space either on a regional or a sub regional basis and for the harmonization of the operation of the air space control organizations to enhance safety in the air and for the facilitation of the implementation of the CN/ATM systems and any other recognized communications system with a view to introducing cost effective operations and new technologies.

**(b) *Service charges***

28. When preparing national legislation on service charges, African governments should adhere to the various ICAO policies relating to service charges for international air transport.

**(c) *Facilitation***

29. The improvement of infrastructure and facilitation are closely linked to the enhancement of air transport operations in Africa. Both help to ensure that the main advantage of air transport (its speed is not negated by the bureaucracy and loss of time resulting from formalities and other procedures. African governments should recognize the need for:

- Simplifying border-crossing formalities for aircraft, passengers and freight, and
- Pursuing the ICAO facilitation programmes in accordance with the Standards and Recommended Practices contained in /annex 9 pf the Chicago Convention and inform ICAO of any difference between annex 9 and their national laws.

**(d) *Safety***

30. African governments should follow ICAO Standards and Recommended Practices regarding air safety in order to guarantee the security and reliability of air transport.

**(e) *Transfer of Revenues Surpluses***

31. African states should facilitate the transfer of the revenue surpluses generated by the airlines.

**(f) *Designation of airlines***

32. The designation of carriers should be conditional to the approval by the states concerned of broadened criteria whereby an African state would be free to designate a carrier belonging to its economic grouping or community of interest particularly with a view to the integration of African airline.

33. The broadened criteria accepted by states should in Africa consider the most rational use of resources, particularly African human and financial resources, the ownership and registration of aircraft in order to avoid flag of convenience.

**(g) *Establishment of multilateral mechanism***

34. The African sub regional organizations together with ECA, OAU, AFRAA and AFCAC should col-

laborate to facilitate the establishment of multinational airlines and multinational negotiating authorities corresponding to the African regional and sub regional groupings.

35. ECA, AFCAC, and AFRAA should take the necessary steps to draft model agreement to assist concerned African states in the creation of multinational airlines.

**(b) Legal framework**

34. ECA in consultation with OAU, AFCAC and AFRAA and the coordinating mechanisms should develop the necessary legal framework to be used for enduring the effective implementation of the Mauritius decisions in order to achieve the implementation of the Yamoussoukro Declaration.

**Summary table of Activities and Programming**

Actions	Responsibility	Monitoring Agency	Programming
Reflections of the spirit of the Yamoussoukro Declaration in national air transport policies and preparation of the legal instruments	African Governments should inform ECA and the subregional organizations of activities undertaken	ECA, ECOWAS, ECCAS, SATCC, PTA, and AMU	(a) immediate implementation – January 1995 to December 1995 (b) Preparation and adoption of legal framework – January 1996 – December 1997
Gradual liberalization of traffic rights	African Governments	Regional and subregional coordinating machinery operating under the coordinating ministers of each sub region and the current president of the regional mechanism	January 1995 to December 1996
Establishment of cooperation and integration programmes among African airlines and revitalization of airlines	African Governments and airlines	Governments and subregional economic organizations	January 1995 to December 1996
Institution of regional and subregional and national coordinating machinery	ECA in cooperation with OAU, AFCAC, AFRAA, African subregional economic organizations and Governments	ECA, ECOWAS, ECCAS, SATCC, PTA, and subregional economic organizations	January 1995 to December 1996
Setting up and functioning of regional, subregional and national coordinating machinery	Chairman of the regional mechanism, Coordinating ministers of each subregion and ministers responsible for civil aviation in each country	ECA, ECOWAS, ECCAS, SATCC, PTA, and subregional economic organizations	January 1995 to December 1996
Convention Establishing AFRATC	African Governments and AFRAA		
Accompanying measures	African Governments	ECA, ECOWAS, ECCAS, SATCC, PTA, and subregional economic organizations	January 1995 to December 1996

**Notes - in the implementation of the activities related to the Yamoussoukro Declaration, ECA will collaborate with regional, subregional and international organizations interested in the development of air transport in Africa.**

# 10 Yamoussoukro Decision

Relating to the Implementation of the Yamoussoukro Declaration Concerning the Liberalization of Access to Air Transport Markets in Africa

*We, African Ministers in charge of civil aviation meeting in Yamoussoukro, Côte d'Ivoire on 13 and 14 November 1999*

**Considering** the Treaty Establishing the African Economic Community, (hereinafter referred to as the Abuja Treaty), in particular Article 61 relating to the integration of air transport and Article 10 relating to the authority of the Assembly of Heads of State and Government to adopt decisions;

**Considering also** the general policy statement on civil aviation made by the Conference of Heads of State and Government of the Organization of African Unity under Resolution CM/Res.804 (XXXV) of June 1980;

**Recognizing the relevance** of the objective of the Yamoussoukro Declaration on a new African civil aviation policy adopted on 7 October 1988 whose primary purpose was to create a conducive environment for the development of intra- African and international air services;

**Recalling** the decisions of African Ministers Responsible for Civil Aviation adopted in Mauritius in September 1994 with a view to accelerating the implementation of the Yamoussoukro Declaration, especially those relating to the granting of traffic rights, regional cooperation in air transport and the role of Governments;

**Considering** the need to harmonize air transport policies in order to eliminate non-physical barriers that hamper the sustainable development of air transport services in Africa;

**Having regard to** the recommendation of the 11th Conference of African Ministers responsible for Transport and Communications held in Cairo from 25 to 27 November 1997 calling for the organization of a regional meeting of African Ministers Responsible for Civil Aviation to review and find ways and means of implementing the Yamoussoukro Declaration;

**Mindful** of the guiding principles set by the International Civil Aviation Organization (ICAO) for the development of safe, regular and orderly air transport services on the basis of equality;

**Further mindful** of the globalization of the world economy and the need to create a conducive environment for the development and provision of safe, reliable and affordable air transport services necessary for the free movement of persons, goods and services in Africa;

**Recognizing** the necessity to adopt measures with the aim of progressively establishing a liberalized intra-African aviation market concerning, among other things, traffic rights, capacity, frequency and pricing;

**Considering** the importance of enhancing cooperation among African airlines in order to stimulate the development of inter-African air transport and the need to improve the quality of service to the consumers; and

**Convinced that**, given the different levels of air transport development in Africa it is necessary to adopt for special and transitional provisions in order to achieve full liberalization of air transport in Africa; and

**Recognizing** the efforts undertaken in the various subregions to merge, privatize and liberalize air transport services;

**HEREBY ADOPT THIS DECISION:**

### *Article 1*

#### *Definitions*

For the purposes of this Decision, the following expressions shall mean:

**“Abuja Treaty”** the Treaty Establishing the African Economic Community adopted at Abuja, Nigeria on the 3<sup>rd</sup> day of June, 1991 and which entered into force on 12 May 1994.

**“Aeronautical Authority”** any governmental authority, body corporate or organ duly authorised to perform any function to which this Decision relates.

**“Air Services” and “Airlines”** have the meaning respectively assigned to them in Article 96 of the Chicago Convention on International Civil Aviation dated 7<sup>th</sup> December 1944.

**“Eligible Airline”** any African air transport company fulfilling the requirements set forth in Article 6, subparagraph 6.9 below.

**Jointly-owned and jointly operated airline:** any airline created by virtue of Article 77 of the Chicago Convention on International Civil Aviation;

**Effective control:** a relationship constituted by rights, contracts or any other means which, either separately or jointly confer the possibility of a State Party or Group of State Parties or their nationals to directly or indirectly exercise a decisive influence on the running of the business of the airline or the right to use all or a substantive part of the assets of the air carriers.

**Designated airline:** Eligible Airline designated by a State Party to exercise its traffic rights under this Decision.

**“Capacity”:** as defined by ICAO

**“Capacity share”** the share of an Eligible Airline of a State Party expressed as a percentage of the total capacity in a bilateral relationship with another State Party.

**“Country of Origin”** the territory of a State Party where air transport starts.

**“Decision”** text of this Decision including the Appendices and amendments.

**“Depository”** the Organization of African Unity.

**“State Party”** each African State signatory to the Abuja Treaty and such other African country which, though not a party to the said Treaty, has declared in writing its intention to be bound by this Decision.

**“Tariffs”** the prices to be paid for the carriage of passengers, baggage or cargo (excluding mail) on scheduled air services and the conditions, under which these prices apply, including remuneration and conditions offered to travel agencies and other auxiliary services.

**“3<sup>rd</sup> freedom traffic right”** the right of an Eligible Airline of one State Party to put down, in the territory of another State Party, passengers, freight and mail taken up in the State Party in which it is licensed.

**“4<sup>th</sup> freedom traffic right”** the right of an Eligible Airline of one State Party to take on, in the territory of another State Party, passengers, freight and mail for off-loading in the State Party in which it is licensed.

**“5<sup>th</sup> freedom traffic right”**: the right of an Eligible Airline of one State Party to carry passengers, freight and mail between two State Parties other than the State Party in which it is licensed.

**Scheduled and Unscheduled air services:** as defined in Chicago Convention and ICAO Council resolutions.

## *Article 2*

### *Scope of Application*

This Decision establishes the arrangement among State Parties for the gradual liberalization of scheduled and non-scheduled intra-Africa air transport services. This Decision has precedence over any multilateral or bilateral agreements on air services between State Parties which are incompatible with this Decision. The provisions which are included in these agreements and which are not incompatible with this Decision remain valid and are supplementary to the Decision.

## *Article 3*

### *Granting of Rights*

3. State Parties grant to each other the free exercise of the rights of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> freedoms of the air on scheduled and non-scheduled passenger, cargo and/or mail flights performed by an eligible Airline to/from their respective territories. Notwithstanding the provisions of paragraph 3.1 of this Article, a State Party may in accordance with the provision of paragraph 10.1 of Article 10 below, limit its commitment in respect to 5<sup>th</sup> freedom rights for a period no longer than two (2) years to the following:
  - (a) grant and receive unrestricted fifth freedom on sectors where, for economic reasons, there are no 3<sup>rd</sup> and 4<sup>th</sup> freedom operators; and
  - (b) grant and receive a minimum of 20 per cent of the capacity offered on the route concerned during any given period of time in respect to any sector where third and fourth freedom operators exist.

## ***Article 4***

### ***Tariffs***

- 4.1 In case of tariff increase, there shall be no approval required by the aeronautical authorities of State Parties concerned for tariff to be charged by the designated airlines of State Parties for the carriage of passenger, cargo and mail. The airlines shall in this case file such tariffs before competent authorities 30 working days before they enter into effect.
- 4.2 This provision is not applicable in the case of lowering tariff which takes immediate effect according to the will of the airline.

## ***Article 5***

### ***Capacity and Frequency***

- 5.1 Subject to the provisions of Article 3, there shall be no limit on the number of frequencies and capacity offered on air services linking any city pair combination between State Parties concerned. Each Designated Airline will be allowed to mount and operate such capacity and frequency as such airline deems appropriate. Consistent with this right, no State Party shall unilaterally limit the volume of traffic, the type of aircraft to be operated or the number of flights per week, except for environmental, safety, technical or other special consideration.
- 5.2 Without prejudice to the provisions of paragraph 5.1 above, a State Party concerned may refuse to authorise an increase in capacity if such additional capacity is not in compliance with the provisions of Article 7 relating to the rules of fair competition.

## ***Article 6***

### ***Designation and Authorization***

- 6.1 Each State Party shall have the right to designate in writing at least one airline to operate the intra-Africa air transport services in accordance with this Decision. Such designation shall be notified to the other State Party in writing through diplomatic channels.
- 6.2 A State Party may also designate an eligible airline from another State Party to operate air services on its behalf.
- 6.3 A State Party shall have the right to designate an eligible African multinational airline in which it is a stakeholder and this airline shall be accepted by the other State Parties.
- 6.4 On receipt of the notification of such designation, the other State Party shall, in accordance with its national laws, speed up the process of authorization and licensing of the airline designated by the other State Party to operate the services. While such authorization should be granted within 30 days, the proposed schedule of flights should be submitted to the appropriate authorities for approval.
- 6.5 Should a State Party be convinced that a designated airline does not meet the criteria in subparagraph 6.9 below, it may refuse the authorization. The State that has designated the airline may request consultations in accordance with Article 11 paragraph 4 of this Decision relating to Miscellaneous Provisions.

- 6.6 Each State Party has the right to withdraw the designation of an eligible airline and to designate another eligible airline or airlines in writing through diplomatic channels within 30 days except when prevented from doing so for security reasons.
- 6.7 Authorizations for the performance of non-scheduled air transport services by eligible airlines of the State Parties shall be granted by the respective competent authorities, provided that an application has been submitted for approval to the appropriate authority, accompanied by the operating certificates of the airline's country of nationality and the corresponding insurance policies.
- 6.8 In order to ensure continued scheduled air services on a particular route sector where scheduled airlines have an obligation to operate during low and high traffic seasons, the scheduled airlines will be given preference over the non-scheduled airlines on the same sector.
- 6.9 Eligibility criteria

To be eligible, an airline should:

- (a) be legally established in accordance with the regulations applicable in a State Party to this Decision;
  - (b) have its headquarters, central administration and principal place of business physically located in the State concerned;
  - (c) be duly licensed by a State Party as defined in annex 6 of the Chicago Convention;
  - (d) fully own or have a long-term lease exceeding six months on an aircraft and have its technical supervision;
  - (e) be adequately insured with regard to passengers, cargo, mail, baggage and third parties in an amount at least equal to the provisions of the International Conventions in force;
  - (f) be capable of demonstrating its ability to maintain standards at least equal to those set by ICAO and to respond to any query from any State to which it provides air services;
  - (g) be effectively controlled by a State Party.
- 6.10 Revocation of authorization

A State Party may revoke, suspend or limit the operating authorization of a designated airline of the other State Party when the airline fails to meet the criteria of eligibility.

In case of revocation the State Party shall inform the airline at least thirty (30) days before the measure enters into force.

6.11 Documents

Each State Party shall recognize as valid the Air Operating Certificate, Certificate of Airworthiness, Certificate of Competency and the licenses issued or validated by the other State Party and still in

force provided that the requirements for such certificate of license are at least equal to the minimum standards set by ICAO.

#### 6.12 Safety and security

- (a) The State Parties re-affirm their obligations to each other to protect the security of civil aviation against acts of unlawful interference. The State Parties will conform to the provisions of the various conventions on air safety in accordance with ICAO provisions and especially with Annex 17 of the Chicago Convention on International Civil Aviation.
- (b) Each State Party shall give consideration to any request from the other State Party for special security measures to meet a particular threat.
- (c) The State Parties reaffirm their obligation to comply with the civil aviation safety standards and practices recommended by ICAO.

### ***Article 7***

#### ***Competition Rules***

- 7.1 State Parties shall ensure fair opportunity on non-discriminatory basis for the designated African airline, to effectively compete in providing air transport services within their respective territory.

### ***Article 8***

#### ***Settlement of Disputes***

- 8.1 If any dispute arises between States Parties relating to the interpretation or application of this Decision, the States Parties concerned shall in the first place endeavour to settle the dispute by negotiation.
- 8.2 If the State Parties concerned fail to reach a settlement of the dispute by negotiation within 21 days, either party may submit the dispute for arbitration in accordance with the arbitration procedures set forth in Appendix 2 hereof.

### ***Article 9***

#### ***Monitoring Body***

- 9.1 Pursuant to paragraph 4 of Article 25 of the Abuja Treaty, a Sub-Committee on Air Transport of the Committee on Transport, Communications and Tourism is hereby established which shall be responsible, *inter alia*, for the overall supervision, follow-up and implementation of this Decision.
- 9.2 A Monitoring Body composed of representatives of ECA, OAU, AFCAC and AFRAA which shall be assisted, as the case may be, by representatives of subregional organizations, is hereby established to assist the Sub-Committee on Air Transport composed of African Ministers Responsible for Civil Aviation in the follow-up of the implementation of this Decision
- 9.3 The duties and responsibilities of the Monitoring Body are set forth in Annex 3 hereof. Secretariat services required by the Monitoring Body shall be provided by ECA.



- 9.4 To ensure successful implementation of the Decision, an African Air Transport Executing Agency will be established as soon as possible. The principal responsibility will include *inter alia* the supervision and management of Africa's liberalized air transport industry.
- 9.5 The Executing Agency shall have sufficient powers to formulate and enforce appropriate rules and regulations that give fair and equal opportunities to all players and promote healthy competition.
- 9.6 The Executing Agency will also ensure that consumer rights are protected.

## ***Article 10***

### ***Transitional measures***

- 10.1 By a formal declaration made in writing to the Depository or the secretariat of the Monitoring Body, as the case may be, through diplomatic channel at the time of adoption of the Decision by the Assembly of Heads of State and Government or any time thereafter, a State Party shall have the option not to grant and receive the rights and obligations provided for in Articles 3 and 4 for a transitional period not exceeding two (2) years.
- 10.2 Each State Party may, on six (6) months prior notice given to the Depository or the Secretariat of the Decision Monitoring Body, assume or resume such rights and obligations.
- 10.3 The exemption of a State Party from the application of this Decision terminates on the date provided for in the Declaration made under paragraph 10.1 above. During the transitional period, no State Party shall be obliged to grant any rights hereunder to any State Party not bound thereby to the same extent.
- 10.4 With regard to any measures covered by the Decision, the State Parties shall not discriminate between designated airlines of State Parties that have assumed similar commitments.
- 10.5 State Parties undertake not to enter into any obligations that would be more restrictive than this Decision. However, State Parties shall not be precluded from maintaining or developing on a bilateral basis or amongst themselves, arrangements more flexible than those contained herein.
- 10.6 This Decision shall not be deemed to impose obligations on a State Party to grant cabotage privileges.

## ***Article 11***

### ***Miscellaneous Provisions***

- 11.1 Commercial Opportunities
- 11.1.1 The designated airline of each State Party shall have the right to establish offices in the territory of the other State Party for the promotion and sale of air transport services.
- 11.1.2 Upon request and in accordance with applicable foreign exchange regulations, each designated airline will be granted the right to convert and remit to the country of its choice, all local revenues from the sale of air transport services and associated activities directly linked to air transport in excess of sums locally disbursed, with conversion and remittance permitted

promptly without restriction, discrimination taxation in respect thereof in accordance with the applicable foreign exchange regulations.

11.1.3 The designated airline may be permitted to pay for its local expenses such as handling and purchases of fuel in local currency, as provided for in the exchange control regulations.

11.1.4 The designated airline of each State Party shall be entitled, in accordance with the laws and regulations of the other State Party relating to entry, residence and employment, to bring into the territories employees who perform managerial, commercial, technical, operational and other specialist duties which are required for the provision of air transport services.

11.1.5 The aforementioned measures are designed to facilitate the establishment and operation of airlines and the transfer of their excess earnings shall be taken by State Parties on the basis of reciprocity.

## 11.2 Operational Flexibility

In operating scheduled and unscheduled services, each designated airline may, on any or all flights and at its option:

- (a) operate flights in either or both directions;
- (b) be permitted by the State Parties concerned to combine air services and use the same flight number.
- (c) serve intermediate, and beyond points and points in the territories of the State Parties in Africa on the routes in any combination and in any order, and
- (d) omit stops at any point or points, provided that the service commences at a point in the territory of the State Party designating the airline.

## 11.3 Cooperative Arrangements

In operating the authorized services on the agreed routes, a designated airline of one State Party may enter into cooperative marketing arrangements such as blocked-space, code sharing, franchising or leasing arrangement, with an airline or airlines of the other State Party.

## 11.4 Consultation

A State Party may, at any time, request consultation with other State Party (ies) in respect to the interpretation or application of this Decision. Such consultation shall begin at the earliest possible date but not later than 30 days from the date the other Party receives the request.

## 11.5 Review

The Air Transport Sub-Committee shall review this Decision every two years or earlier if requested by two-thirds of the State Parties. In such reviews, the Monitoring Body shall propose measures to eliminate existing restrictions gradually.

## 11.6 Registration

This Decision shall be registered by the Depository and/or Monitoring Body with the International Civil Aviation Organization (ICAO).

### *Article 12* *Final Provisions*

## 12.1 Entry into Force

12.1.1 In accordance with Article 10 of the Abuja Treaty, this Decision shall automatically enter into force thirty (30) days after the date of its signature by the Chairman of the Assembly of Heads of State and Government at which this Decision was adopted.

12.1.2 In respect of African States that are not parties to the Abuja Treaty, this Decision shall enter into force 30 days after the date on which such State has communicated its declaration of intention to be bound by this Decision in the form of Appendix 1(a), 1(b) and 1(c) to the Monitoring Body which shall in turn transmit the declaration to the Depository.

12.1.3 The Depository shall inform all State Parties of:

- (a) each Declaration made in accordance with the Decision;
- (b) date of the deposit and the date of effectiveness of this Decision in respect to that State;
- (c) the withdrawal of any Declaration;
- (d) the withdrawal from this Decision and the date on which it takes effect; and
- (e) the accession by and admission of new States.

## 12.2 Role of subregional and regional organizations

Subregional and regional organizations are encouraged to pursue and to intensify their efforts in the implementation of this Decision.

## 12.3 Withdrawal

12.3.1 A State Party may withdraw from this Decision by a formal notification in writing addressed to the Depository of its intention to do so or in the circumstances contemplated under Article 104 of the Abuja Treaty. The Depository shall within 30 days of receipt of the notification of withdrawal notify the other State Parties.

12.3.2 Notwithstanding the notice of withdrawal, this Decision shall apply to the State concerned for one year after the date of receipt of the notification by the Depository.

## 12.4 Annexes

Relevant annexes adopted by the competent organs of the African Economic Community shall form an integral part of this Decision.

Done in Yamoussoukro this 14<sup>th</sup> day of November 1999

# 11 The Banjul Accord

## For an Accelerated Implementation of the Yamoussoukro Declaration Banjul, 3 - 4 April 1997

### A. PREAMBLE

**WHEREAS** the deed has been established to accelerate the implementation of the Yamoussoukro Declaration within our group of States, comprising Cape Verde, Ghana, Guinea Bissau, Sierra Leone, and The Gambia.

**WHEREAS** we the following group of States here present at this first consultative meeting held in Banjul on 3<sup>rd</sup> and 4<sup>th</sup> April 1997, namely Ghana, Sierra Leone and The Gambia do hereby recommend the declaration et the entire territory of our member States to constitute a single geographical Commercial Air Transport operations zone, and in furtherance of this objective do hereby agree to:

1. Commit ourselves individually and collectively to promote and safeguard International Air Transport in our region.
2. Promote and encourage cooperation among our National Airlines with a view to amalgamating their operations into a larger, more efficient and competitive entity.
3. Commit our Airlines to operate compatible international routes and to carry out certain aspects of Airline Operations jointly.
4. Follow the guidelines within the Yamoussoukro Declaration on the group of countries for co-operation in the establishment of joint Multinational Airline and the exchange of traffic Rights among ourselves without restriction and the formulation of a common policy for the granting of Traffic Rights to states outside our zone
5. Cooperate in the following areas:
  - a. Provision and Management of Air Traffic Services.
  - b. Establishment and exercise of Safety Oversight Procedures.
  - c. Establishment of coordinated Multilateral approach to the negotiation of agreements with respect to the granting of Traffic Rights.

## B. GUIDELINES FOR AERONAUTICAL COOPERATION

### 1. *PERMANENT SECRETARIAT*

- 1.1 Establishment of a joint Secretariat to be located in a member state and responsible for the co-ordination of activities in the identified areas of cooperation.
- 1.2 The Joint Secretariat shall have a skeletal staff to be supplemented by experts to be coopted from member States as and when needed in the following specialised areas;
  - Air Traffic Services (ATS)
  - Safety Oversight
  - Air Transport Services Agreements.

### 2. *PROVISION AND MANAGEMENT OF AIR TRAFFIC SERVICES*

- 2.1 Joint Assessment of needs in the improvement, installation and management of Air Traffic Services covering communication, navigation and surveillance.
- 2.2 Exchange and pooling of human resources in the following Managerial and Technical areas;
  - a. Air Traffic Control;
  - b. Engineering/Maintenance;
  - c. Communications;
  - d. Aeronautical information services and;
  - e. Metrology.
- 2.3 Adopting a common approach in the sourcing of funds from both bilateral and multilateral sources for the implementation of Air Traffic Services in addition to member States' own contributions.

### 3. *SAFETY OVERSIGHT RESPONSIBILITIES*

- 3.1. Joint Assessment and development of plans for the implementation of Safety Oversight responsibilities of member States.
- 3.2 Harmonization of Regulations and Procedures governing flight safety, operations, licensing and certification in compliance with Annexes 1, 6 and 8 of the Chicago Convention.
- 3.3 Exchange and pooling of human resources in the exercise of Safety Oversight responsibilities such as Air Carrier initial certification, en-route flight inspections, Initial and proficiency checks, airworthiness surveys, aircraft Maintenance Facility approval inspections etc.

#### **4. ESTABLISHMENT OF AIR TRANSPORT SERVICES**

- 4.1 Whereas States may continue to negotiate bilaterally among themselves or with States outside the Group prior consultations with other members of the Group through the Secretariat must be made
- 4.2 Individual States must reflect and promote the broader group interest as may be formulated from time to time, in any Bilateral Air Services Agreement negotiations.
- 4.3 Individual States are to grant other members of the Group observer status during Bilateral Air. Service Agreement negotiations.

### **C. GUIDELINES FOR AIRLINE COOPERATION**

#### **1. COMMERCIAL CO-OPERATION**

To improve co-operation amongst themselves the airlines of member states, will engage in the following:

- Joint Operations
- Code Sharing
- Formation of Alliances and partnerships
- Harmonisation of schedules
- Co-ordination, of tariffs
- Use of common Computer Reservation System (CRS) and Departure Control System (DCS)

#### **2. TECHNICAL COOPERATION**

In the area of technical operations the airlines will adopt reciprocal ground handling as well as reciprocal Engineering maintenance, where applicable.

#### **3. JOINT ACQUISITION**

Realising the expensive nature of airline operations and the cost of equipment, Member States hereby do agree to adopt, where possible:

- Joint leasing of aircraft
- Joint purchasing of spare and rotables
- Joint fuelling arrangement (bulk)
- Joint acquisition of ground handling equipment.

#### **4. MANAGEMENT INFORMATION SYSTEM**

In order to improve the exchange of information among member States, we hereby agree to co-operate in the collation and dissemination of available data.

**5. *In the granting of traffic rights it is unanimously agreed that such rights shall be granted in accordance with the decision arrived at the Ministerial meeting in Yamoussoukro in December 1956, namely that :***

5.1 3<sup>rd</sup> and 4<sup>th</sup> Freedom rights shall be granted freely under the following conditions:

##### ***Ownership and Control of Designated airline***

The Headquarters and major operation activities of the designated airline should be located in the country concerned.

At least a minority right should remain with the designated country to enable the state to have the right of veto.

##### ***Number of Companies/Airlines***

Traffic rights must be granted to maximum of two (2) airlines from each State for passenger and cargo services.

##### ***Tariffs***

Tariffs must be fixed and based on Price Cap Policy taking into account primarily the operating costs of the designated airlines. The tariffs must be submitted for approval by the Authority of the country concerned.

##### ***Capacity/Aircraft Type***

No restriction on capacity or aircraft. Where there is great disparity in capacity and aircraft type, commercial arrangements between the designated airlines should be necessary.

##### ***Safety***

ICAO Standards and Recommended Practices (SARPs) should be applicable.

##### ***Frequency***

Five frequencies per week per airline. Days of operation must be open but airlines should co-ordinate and harmonise their schedules. In the case that a state has only one or no airlines, co-operation arrangements should be negotiated for the operations. In the case that a country has only one or no airline, co-operation arrangements should be negotiated for the operations.



### ***Destination points***

Two (2) destination points (where applicable) in each State.

### ***EFFECTIVE DATE FOR 3RD AND 4TH FREEDOM***

The effective date of application is 1st may 1997

## **5.2 FIFTH FREEDOM**

In addition to the provision regulating the 3<sup>rd</sup> and 4<sup>th</sup> freedoms, member States should grant 5<sup>th</sup> freedom based on the following:

- a. Without conditions on sectors where there are no Third and fourth Freedom Operations;
- b. Where 3rd and 4th Freedom Operations exist, up to 20 per cent of the traffic (based on the total of the previous year) or number of seats offered on the route, Should be granted to Fifth Freedom operations provided, however, that 80 per cent of the total traffic on route or number of seats offered is reserved for 3<sup>rd</sup> and 4<sup>th</sup> Freedom operations;
- c. Where there are 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> freedom Operations in the Subregion, the granting of fifty Freedom to Non-African Carriers should be done or reciprocity basis after consultation of Carriers concerned within the Subregion for the benefit of the ECOWAS Subregion.

### **EFFECTIVE DATE FOR 5<sup>TH</sup> FREEDOM**

The Effective date for the 5<sup>th</sup> Freedom is 1<sup>st</sup> November 1997.

### **PROCEDURES OF APPLICATION**

The requests for the 3<sup>rd</sup> and 4<sup>th</sup> Freedom and the 5<sup>th</sup> freedom should be done through the diplomatic channel - A state should react to the acceptance or objections, if any, within sixty (6) days of the date of receipt of application. If response is not received with 60 days, this means that the request is approved.

## **6. INCONSISTENCIES**

Any provision in the Banjul Accord which is inconsistent with the text of the Yamoussoukro Declaration of 1988 shall to the extent of the inconsistency be declared to be of no effect and the text in the Yamoussoukro Declaration shall prevail.

## **7. EFFECTIVE DATE**

It is hereby agreed and understood that this Accord shall come into effect within three months from the date hereto and upon signature by three (3) member States forming this group.

Done in Banjul this 4<sup>th</sup> day of April 1997.

# 12 COMESA Air Transport Liberalization

## 12.1 Legal Notice No. 2 of 1999

COMESA Council Regulations for the Implementation of the Liberalised Air Transport Industry

### *PREAMBLE*

HAVING REGARD to the COMESA vision for a future in which it will have become a fully integrated international competitive regional economic community within which there is free factor mobility with high standards of living for its people.

RECALLING the aims and objectives of COMESA, as defined in the Treaty and its Protocols, is to facilitate the removal of structural and institutional weaknesses of member States so that they are able to attain collective and sustained development.

CONSIDERING that COMESA member States have agreed on the need to create and maintain a full free trade area guaranteeing the free movement of goods and services produced within COMESA and the removal of all tariff and non-tariff barriers.

RECOGNISING that the air transport industry plays a big role in the attainment of the COMESA Free Trade Area.

NOW THEREFORE, in conformity with the COMESA Treaty, the Council of Ministers hereby makes the following Regulations:

### *Article 1*

#### *Definitions*

In these Regulations:

**Air carrier** means an air transport company with COMESA operating license

**Air operating certificate** meaning to be as provided in the International Civil Aviation Organisation (ICAO.) definitions

**Air service** means a flight or series of flights carrying passengers, cargo and or for remuneration and or hire

**Air service license** means license to carry out air services.

**Cabotage** means the right to operate an air service between two points in the member State

**Capacity** means the number of seats offered to the general public on a scheduled air service over a given period

**COMESA Air Service license** means an air services license issued by a COMESA Regulatory Authority

**Competent Authority** means the COMESA Air Transport Regulatory Board

**Substantial ownership and effective control means** to be controlled by COMESA States, a national of a COMESA States or a combination of COMESA States and/or their nationals through a simple majority share holding and through both the Board and executive management

**Traffic right** means the right of a carrier to carry passengers, cargo and or *mail* on an air service between two COMESA airports

## *Article 2*

### *Time Table for Implementation of the Liberalized Air Transport Industry*

The Council of Ministers has adopted the following time-table for implementation of the Liberalised air transport industry in COMESA:

(a) Phase 1

Phase 1: October 1999

- (i) Introduction of free movement of intra-COMESA air cargo and non-scheduled passenger services;
- (ii) Introduction of free movement of intra-COMESA scheduled passenger services with frequency limit of up to two daily frequencies between any city pairs. Beyond two daily frequencies bilateral air services agreements will apply and
- (iii) Adoption of multiple designation and elimination of capacity restrictions.

(b) Phase II

Phase II: October 2000

Free movement of intra-COMESA air transport services

## *Article 3*

### *Conditions for market access*

1. Any air carrier will be eligible provided it is substantially owned and effectively controlled by a COMESA Member State or a combination of COMESA member states and or their nationals.

2. The air carrier must be eligible for designation in the States/States of incorporation.
3. The air carrier must demonstrate financial, managerial and technical ability to perform the services for which the application is being made.
4. Restrictions relating to multiple designations, fifth freedom traffic rights and Cabotage (in Phase 11) will be abolished to stimulate the development of the COMESA air transport services for the benefit of the users.
5. In addition to (1), (2) and (3) above, the air carrier must have an air carrier license from the appropriate licensing authority of a COMESA State.

#### ***Article 4***

##### ***Licensing of COMESA Air carriers***

1. To ensure fruitful accomplishment of the objective of liberalising the air transport industry, it will be necessary to define and impose non-discriminatory requirements regarding aspects such as location and control of the air carrier applying for the license.
2. In order to protect the consumer and any other parties concerned, it is necessary that the air carrier demonstrate sufficient insurance in respect of liability risks.
3. To ensure dependable and adequate services, it will be necessary to ensure that the air carrier is at all times operating at sound economic and the required safety levels.
4. Air carriers will be permitted to use aircraft owned anywhere within the COMESA region. However, the licensing Member State shall remain responsible with respect to the technical fitness of the air carrier.
5. An air carrier may lease aircraft from outside the COMESA region In exceptional circumstances or provided that the aircraft will be registered in the COMESA region. However, article 83 *bis* of the Chicago convention should be taken into account.
6. In the event that an air carrier violates any of the common COMESA rules and regulations, the operating license will be rendered invalid. However, there shall be a review one-year after a new operating license has been granted and every three years thereafter.
7. If an air carrier ceases operations for six months or does not start the operations six months after being granted the license, the operating license shall be deemed to have expired unless it has a valid reason approved by appropriate authority.
8. An air carrier fulfilling all the COMESA rules and regulations shall be entitled to receive an operating license. However, in order to start operating, the air carrier shall apply for specific route rights from the appropriate National Civil Aviation Authority.

No air carrier established within the COMESA region shall be permitted to operate commercial services anywhere within COMESA without the COMESA license.

## ***Article 5***

### ***Capacity***

1. In Phase 1, each COMESA Member States shall:
  - a. introduce free movement of inter-COMESA air cargo and non-scheduled passenger services;
  - b. introduce free movement of intra-COMESA scheduled passenger services with frequency limit of up to two daily frequencies between any city pairs. Beyond the two daily frequencies bilateral air services agreements will apply; and
  - c. adopt multiple designation and elimination of capacity restrictions.
2. Fifth freedom traffic rights shall be granted to COMESA air carriers based on the following criteria:
  - (a) during Phase 1, fifth freedom traffic rights shall be limited to 30per cent of the carrier's capacity on routes where third and fourth freedom traffic rights services are provided;
  - (b) fifth freedom traffic rights shall be granted to carriers without any restrictions on routes where there are no third and fourth traffic freedom rights services; and
  - (c) during phase II fifth freedom traffic rights shall be granted without restrictions.

## ***Article 6***

### ***Alliances***

COMESA will as a policy encourage intra-COMESA airline alliances and commercial arrangements. However, any such alliances or commercial arrangements that undermine the COMESA rules and regulations of competition will not be permitted.

## ***Article 7***

### ***Equipment***

There will be no restrictions on the type and capacity of the aircraft to be used by a COMESA air carrier except as may be dictated by airport operating limitations and air-worthiness requirements.

## ***Article 8***

### ***Cabotage***

During Phase 1 of the liberalisation process of air transport, COMESA Member States will not be obliged to grant cabotage traffic rights.

## ***Article 9***

### ***Transnational Investment***

Intra-COMESA cross-border investment in air transport aspects such as airports, maintenance facilities, air carriers, ground handling services, will be permitted without restrictions and investors will be accorded national treatment.

## *Article 10*

### *Ownership and Control of Air Carriers*

For the exploitation of the commercial potentials resulting from the liberalisation of the COMESA air transport industry, the eligible air carriers shall be those substantially owned and effectively controlled by the Governments of the COMESA Member States and or their nationals.

## 12.2 Administrative Circular No. 1 of 1018199

On the Liberalization of the Air Transport Industry

### ***PREAMBLE***

This circular is being issued to clarify and simplify the administration of the Air Transport Services Regulations issued under Legal Notice No. 2 of 28/8/99.

### ***GENERAL PRINCIPLES***

- 1 The liberalisation of the Air Transport Industry in COMESA will be done in two phases
2. Phase 1 starts on 1st October 1999 and ends on 30th September, 2000

### ***GENERAL GUIDELINES AND REGULATIONS***

(a) Air Cargo Operations

There will be free movement of air cargo operation.

(b) Non Scheduled Operations Passenger Carriers

- (i) Non scheduled passenger carrier shall not operate on a regular time table or programme
- (ii) The non-scheduled passenger carriers shall be subject to the same conditions as the regular operators when applying for the operating licence

(c) Scheduled Passenger Operations

The intra-COMESA scheduled passenger operation will be limited to two daily frequencies between any city pairs.

(d) Designations

Multiple designations will apply.

(e) Capacity

There will be no capacity restrictions for Third and Fourth Freedom Traffic Operations.

Fifth Freedom Traffic

Fifth Freedom Traffic rights shall be granted to COMESA Air carriers based on the following criteria:

- (a) That Fifth Freedom traffic rights shall be limited to 30 per cent of the carrier's capacity, on routes where Third and Fourth Freedom Traffic Rights services are provided.
- (b) That Fifth Freedom Traffic Rights shall be granted to COMESA carriers without any restrictions, on routes where there is no Third or Fourth Freedom Traffic Rights service.

***APPROVAL/AUTHORIZATION OF COMESA AIR CARRIERS***

The following procedures shall apply during the application for approval of the intra-COMESA airlines to operate in the region.

***AIR SERVICE LICENSE OR OPERATING AUTHORIZATION***

Notes for clarification

- (i) This is essentially Third and Fourth Freedom Traffic
- (ii) The city pairs must not be in the same territory of a member State because this amounts to cabotage
- (iii) For example
  - (a) Kinshasa and Entebbe is one city pair
  - (b) Kisangani and Gulu is another city pair

Entebbe and Gulu is not a city pair since the two cities being connected fall within Uganda.

- (a) A COMESA air Carrier shall apply for air service licence to the competent authority of the destination country with a copy of application to the COMESA Secretary General.
- (b) The competent authority in the destination country shall within thirty days of receiving the application grant authorisation on a no objection basis after ensuring that the carrier has fulfilled safety and licensing requirements. A copy of the authorisation shall be sent to the Secretary General and the competent authority of the country where the carrier is resident or domiciled.
- (c) In the event of the competent authority declining to approve the application, the COMESA Secretary General shall advise the said competent authority, the reasons thereof shall be provided to both the Secretary General of COMESA and the competent authority of the country where the carrier is resident or domiciled. This shall be done within the stipulated thirty days period.

- (d) Upon receipt of the reasons for denials, the COMESA Secretary General shall evaluate the reasons thereof taking into account the COMESA Treaty provisions and regulations on the liberalised air transport. In cases where substantive facts prove that the competent authority has unduly exercised its right, the COMESA Secretary General shall advise the said competent authority and request a review of its decision and response within fifteen days. Should the competent authority, notwithstanding the Secretary General's advice, the later shall constitute a special committee to make a determination pending the establishment of the COMESA Air Transport Regulatory Authority. The decision of the special committee shall be binding to the parties concerned and shall be complied with by such parties within fifteen days of receiving the decision to deal with the matter

All communications relating to cases of denied authorisations shall be copied to all competent authorities of member States.

### ***FILING OF AIR SERVICES SCHEDULES AND ALLOCATION OF SLOTS***

- (a) Upon being granted an air services licence, the carrier shall file its schedule with the competent authority with a copy to the COMESA Secretary General.

The competent authority shall allocate airport slots to the air carrier.

### ***COMESA AIR TRANSPORT REGULATORY AUTHORITY***

- (a) Whereas the COMESA Council of Ministers has through its decision established the Air Transport Regulatory Authority, the institutional structure of the Board has not yet been designed. Consequently, until such a time that the COMESA Regulatory Authority is in place, the granting of operating authorisations shall be delegated to the Civil Aviation Authorities in the Member States
- (b) Pending the establishment of the COMESA Regulatory Authority, the Secretary General of COMESA shall be responsible for ensuring that the liberalised air transport and Council decisions are implemented.

LEGAL NOTICE NO. 2 OF 8/8/99.

This administration circular is to be read with Legal Notice No. 2 of 8/8/99.

### ***CIRCULATION***

This administrative circular is to be circulated to all:

- (a) Air carriers including those privately owned
- (b) Aeronautical Authorities



- (c) Directors of Civil Aviation
- (d) Chief Executives of International Airports within the COMESA region.

***EFFECTIVE DATE***

This circular is applicable to Phase 1 of the Liberalization of the Air Transport industry effective 1st October, 1999.

# 13 CEMAC Liberalization

## Multilateral Air Services Agreement

*[REGLEMENT N ° 6/99/CEMAC-003-CM-02  
portant adoption de l'Accord relatif au Transport Aérien entre les Etats membres  
de la CEMAC]*

### **LE CONSEIL DES MINISTRES**

**Vu** le Traité instituant la Communauté Economique et Monétaire de l'Afrique Centrale du 16 Mars 1994 et son Additif en date du date du 5 Juillet 1996 ;

**Vu** la Convention régissant l'Union Economique de l'Afrique Centrale (UEAC) ;

**Sur** proposition des Ministres en charge de l'Aviation Civile réunis en Comité Ad hoc à LIBREVILLE en Mars 1999 ;

En sa séance du 17 Août 1999 ;

### **ADOpte**

Le Règlement dont la teneur suit:

#### *Article 1:*

L'Accord relatif au Transport aérien entre les Etats membres de la CEMAC annexé au présent Règlement (ci dessous) est adopté.

#### *Article 2:*

Le présent Règlement, qui entre en vigueur à compter de la date de signature, sera publié au Bulletin Officiel de la Communauté.

BANGUI, le 18 Août 1999

LE PRÉSIDENT

**BICHARA CHERIF DAOUSSA**

## **Annex to Regulation**

### ***ACCORD RELATIF AU TRANSPORT AÉRIEN ENTRE LES ÉTATS MEMBRES DE LA CEMAC***

#### ***Préambule***

Les Etats membres de la Communauté Economique et Monétaire de l'Afrique Centrale,

Vu le Traité instituant la Communauté Economique et Monétaire de l'Afrique Centrale et son additif,

**Considérant** le processus de mondialisation de l'économie et du commerce, ainsi que la libéralisation des services de transport aérien,

**Considérant** l'importance des transports aériens dans l'accroissement du commerce intra-communautaire et son impact sur le développement économique et social des Etats de la Communauté,

**Conscients** de la nécessité de renforcer l'intégration économique sous-régionale par une coopération plus active des Administrations aéronautiques et des compagnies aériennes de l'Afrique Centrale,

**Désireux** de favoriser le développement d'un service de transport aérien sûr et ordonné entre les Etats membres de la Communauté et de renforcer la coopération aérienne dans toutes ses formes,

Convientent de ce qui suit :

#### ***CHAPITRE 1 : DISPOSITIONS GENERALES***

##### ***Article 1er : Définitions***

Pour l'application du présent Accord, on entend par :

**Etat membre** : tout Etat membre de la Communauté Economique et Monétaire de l'Afrique Centrale ;

**Espace Aérien Communautaire** : l'espace géographique exclusif, constitué par l'ensemble des territoires des Etats membres de la communauté.

**Cabotage**: exploitation des services aériens entre deux ou plusieurs points d'un Etat par une compagnie aérienne d'un autre Etat membre.

**Services agréés** : services aériens au sens de la Convention de Chicago sur des routes spécifiés ;

**Entreprise désignée**: toute entreprise de transport aérien désignée par un Etat membre de la Communauté conformément aux dispositions de l'article 4.

##### ***Article 2 : Objet***

Le présent Accord fixe les conditions et modalités d'exploitation des services aériens intra-communautaires aux fins de:

- permettre une meilleure desserte de la Communauté ;
- promouvoir les relations économiques et commerciales entre les Etats membres de la Communauté;
- prévenir les mesures susceptibles de porter préjudice au développement du transport aérien entre les Etats ;
- encourager la mise en œuvre des mesures préventives en matière de supervision de la sécurité des vols; et
- favoriser la coopération technique et commerciale entre les compagnies aériennes.

### ***Article 3: Champ d'application.***

Le présent Accord s'applique au transport aérien commercial; il ne concerne ni le transport militaire, ni les charters. Il s'impose aux Etats membres et à leurs entreprises désignées, dont la liste est tenue par le Secrétariat Exécutif de la Communauté. Il respecte la primauté des Conventions, des Traités et des Accords internationaux ou multilatéraux en matière d'aviation civile et de transports aériens.

Tout ce qui n'est pas explicitement réglementé par le présent accord reste régi par les lois et règlements nationaux.

## ***CHAPITRE II: ENGAGEMENTS DES ETATS***

### ***Section I: désignation des entreprises***

#### ***Article 4 : Procédure de désignation***

Les entreprises désignées obéissent au critère d'avoir l'implantation dans le pays concerné du siège et des activités principales d'exploitation de la compagnie aérienne désignée.

Chaque Etat membre désigne deux compagnies pour l'exploitation des services aériens agréés intra-communautaires.

Cette désignation est communiquée au Secrétariat Exécutif de la CEMAC et publiée au journal officiel de la Communauté après notification aux autres Etats membres. Dès réception de la notification de désignation, Chaque Etat membre délivre à l'entreprise désignée, l'autorisation d'exploitation nécessaire.

Tout Etat est libre de concéder à une entreprise désignée d'un autre Etat membre la desserte de son territoire.

#### ***Article 5: Égalité de traitement***

Les Etats membres accordent à toutes les entreprises désignées le même traitement que celui réservé aux compagnies nationales et à leurs aéronefs, dans l'utilisation des infrastructures, des équipements et des services des aéroports et les taux de redevances y afférents.

Pour les services agréés, toute entreprise désignée ne sera assujettie qu'aux impôts et taxes dûs dans le pays qui l'a désignée.

### ***Section II: Services agréés***

### ***Article 6: Informations sur les services agréés***

Les autorités aéronautiques des Etats membres communiquent au Secrétariat Exécutif de la CEMAC, pour le compte du Comité de Suivi et de Contrôle (CSC) prévu à l'article 21, à l'issue de chaque saison aéronautique, toutes informations nécessaires à l'accomplissement de sa mission .

Ces informations seront diffusées par le Comité à l'ensemble des autorités aéronautiques des Etats membres.

### ***Article 7: Etablissement et exploitation des services agréés***

Les Etats membres s'engagent à ce que dans l'établissement et l'exploitation des services agréés, il soit dûment tenu compte de leurs intérêts mutuels, de façon à ne pas entraver le développement de leurs services.

## ***Section III: Sécurité***

### ***Article 8 : Dispositions générales***

En application des dispositions de l'article 33 de la Convention de Chicago faisant obligation aux Etats de garantir la sécurité des vols, les Etats membres de la CEMAC s'accordent sur la nécessité de mettre en place un organe autonome communautaire chargé de la supervision de la sécurité des vols.

### ***Article 9 : Supervision de la sécurité***

- a) Les Etats membres s'engagent à interdire à tout équipage de piloter un aéronef si les membres dudit équipage ne sont pas détenteurs de permis et licences délivrés en conformité avec les normes applicables ; et s'engagent également à ne pas reconnaître la validité d'une licence étrangère si son détenteur ne satisfait pas aux exigences des normes nationales et internationales ainsi qu'aux qualifications requises ;
- b) Les Etats membres s'engagent à prendre toutes les mesures appropriées susceptibles d'empêcher un transporteur aérien immatriculé sur leur territoire d'exploiter un aéronef ne disposant pas de certificat de navigabilité en cours de validité et dont l'équipage ne détient pas de licence conforme à ses fonctions ;

Les Etats membres s'engagent à prendre toutes les mesures appropriées en vue de la formation et de la rétention des agents chargés de la sécurité des vols ;

### ***Article 10 : Supervision de la sécurité des vols***

- a) Les Etats membres s'engagent à interdire à toute personne de piloter un aéronef n'ayant pas ou ne disposant pas d'un certificat de navigabilité en cours de validité délivré conformément aux normes internationales et nationales ;
- b) Ils s'engagent à interdire l'immatriculation sur leur territoire d'un aéronef antérieurement immatriculé à l'étranger, sauf si celui-ci dispose d'un certificat de navigabilité délivré par le pays d'exploitation ou s'il répond à toutes les normes de navigabilité au moment de son importation et reste conforme par la suite aux normes nationales et internationales.

## ***Section IV: Conditions d'exploitation des droits de trafic, fréquences et capacités***

### ***Article 11: Première et deuxième Liberté***

Les Etats membres se concèdent les droits de première et deuxième Liberté de l'air sans condition.

### ***Article 12: Troisième et quatrième libertés***

Les Etats membres s'accordent le libre exercice des droits de troisième et quatrième liberté de l'air dans les vols réguliers de passagers, de marchandises, de courrier et les vols cargo qui peuvent être effectués à l'intérieur de la sous région CEMAC.

### ***Article 13: Cinquième liberté***

Sur les relations exploitées par des compagnies de troisième et quatrième liberté, les Etats membres octroient aux compagnies désignées opérant en cinquième liberté 40 per cent du trafic basé sur le trafic de l'année précédente, ou de la capacité offerte, étant entendu que 60 per cent du trafic total ou du nombre de sièges offerts sur ces relations, seront réservés aux exploitants de troisième et quatrième liberté pour une période de deux ans à compter de l'entrée en vigueur de l'Accord, au-delà, interviendra la libéralisation totale des droits de trafic.

### ***Article 14: Fréquences***

Les Etats membres s'accordent un maximum de fréquences adaptées au trafic. Les jours d'exploitation doivent être ouverts ; toutefois, les compagnies doivent coordonner et harmoniser leurs programmes. Article 15 Capacités

Aucune restriction n'est faite sur la capacité et le type d'aéronef ; en cas de grande disparité entre les capacités et le type d'aéronefs, des arrangements commerciaux entre les compagnies aériennes désignées sont nécessaires.

### ***Article 16: Cabotage***

En cas de nécessité, un Etat membre peut solliciter le concours d'une entreprise désignée d'un autre Etat membre pour la desserte de son territoire.

### ***Article 17: Vols non réguliers de fret***

Les Etats membres adoptent un régime de Liberté pour les vols non réguliers de fret que leurs entreprises désignées peuvent effectuer dans la sous région.

## ***CHAPITRE III: OBLIGATIONS DES ENTREPRISES DESIGNÉES***

### ***Article 18: Obligations commerciales et tarifaires***

Les entreprises prennent toutes dispositions pour assurer le transport aérien dans les meilleures conditions de sécurité et d'efficacité et de qualité de service.

Elles fixent librement leurs tarifs et s'emploient à pratiquer des tarifs raisonnables, par référence aux tarifs internationaux.

Elles communiquent ces tarifs aux Autorités aéronautiques 60 jours avant leur application.

Elles sont également tenues de respecter la réglementation communautaire en matière de concurrence.

### ***Article 19: Communication d'informations***

Les entreprises fournissent aux Autorités de l'Aviation civile, et au Secrétariat Exécutif toutes les informations requises, notamment leurs rapports d'activité, les statistiques, les tarifs, les programmes, toutes autres données nécessaires à l'analyse des performances de chaque entreprise et de l'ensemble du système sous-régional de transport aérien.

Les entreprises sont tenues de diffuser au public leurs tarifs, itinéraires et programmes de vols et de respecter la réglementation communautaire en matière de concurrence.

### ***Article 20 : Coopération inter-compagnies***

Pour une meilleure satisfaction des usagers, les entreprises désignées se concertent pour coordonner leur programme.

Elles concluent librement, entre elles, des accords de coopération et de partenariat ou tous autres arrangements susceptibles d'accroître leur productivité et leur compétitivité conformément à la Déclaration de YAMOUSSOUKRO. Ces accords concernent notamment les domaines commercial et technique.

## ***CHAPITRE IV: MÉCANISME DE GESTION, DE SUIVI ET DE CONTRÔLE***

### ***Article 21:***

La gestion, le suivi et le contrôle de l'application du présent accord sont assurés par le Conseil des Ministres en charge de l'aviation civile assisté par le Comité des experts ci-après dénommé Comité de suivi et de contrôle.

Les modalités de fonctionnement du mécanisme de gestion, de suivi et de contrôle sont précisées en Annexe du présent Accord.

## ***CHAPITRE V: DISPOSITIONS DIVERSES ET FINALES***

### ***Article 22 : Règlement des différends***

Pour tout différend entre les Etats et/ou les entreprises désignées, les parties s'engagent à rechercher un règlement à l'amiable. A la demande des parties, le Conseil des Ministres en charge de l'aviation civile peut arbitrer le conflit.

Au cas où la Décision ne serait pas acceptée par une ou les parties, le différend est porté devant la Cour de Justice Communautaire qui statue en dernier ressort.

### ***Article 23 : Infractions et sanctions***

Les infractions sont constatées par les Autorités de l'aviation civile, les compagnies aériennes et les membres du Comité de Suivi et de Contrôle.

Les modalités d'instruction et de répression sont fixées par un texte particulier élaboré par le Comité de Suivi et de Contrôle et approuvé par le Conseil des Ministres.

Les entreprises désignées qui contreviennent aux obligations qui leur incombent seront passibles des sanctions suivantes :

- i) sanctions pécuniaires ;
- ii) suspension temporaire ;
- iii) réduction de capacité;
- iv) suppression de droits de trafic (3ème et 4ème ou 5ème libertés)
- v) Interdiction de trafic sur certaines relations.

Les sanctions sont prononcées par le Conseil des Ministres des transports en charge de l'aviation civile de la Communauté, après avis du Comité de Suivi et de Contrôle ; elles sont levées par la même autorité lorsque le CSC atteste que l'entreprise a pris toutes les mesures pour se conformer à la réglementation et réparer le cas échéant le préjudice causé.

#### ***Article 24: Adhésion des Etats de l'Afrique Centrale non membres de la CEMAC***

Le présent Accord est ouvert à l'adhésion et à la signature de tout autre Etat de l'Afrique Centrale non membre de CEMAC.

Les instruments d'acceptation, d'approbation et d'adhésion seront déposés auprès du Secrétaire Exécutif de la Communauté Economique et Monétaire d'Afrique Centrale.

#### ***Article 25 : Révision et dénonciation***

Le présent Accord ne remet pas en cause les Accords bilatéraux existants entre chacun des Etats membres et les Etats tiers.

Toutefois, le cas échéant, ces accords ainsi que ceux conclus entre Etats membres seront révisés pour se conformer aux dispositions du présent Accord dans un délai ne dépassant pas un an après son entrée en vigueur.

Le présent Accord peut être révisé à la demande d'un Etat membre ou à l'initiative du Conseil des Ministres ; la demande de révision est instruite par le Comité de Suivi et de Contrôle.

Il peut également être dénoncé par tout Etat membre, après notification écrite adressée au Secrétaire Exécutif de la CEMAC. La dénonciation devient effective un an après l'enregistrement de la notification ; le secrétariat Exécutif en informe les Etats membres.

#### ***Article 26 : Entrée en vigueur***

Le présent Accord entre en vigueur, dès son adoption par le Conseil des Ministres de la CEMAC.

Fait à Libreville, le 04 Mars 1999.



# 14 UEMOA Air Transport Liberalization

## 14.1 Market Access

### **Regulation No. 24/2002/CM/UEMOA On Market Access**

#### *LE CONSEIL DES MINISTRES DE L'UEMOA*

**Vu** le Traité de l'UEMOA, notamment en ses articles 4, 6, 16, 20, 23, 24, 26, 42 à 46, 101 et 102 ;

**Vu** le Protocole Additionnel n° II relatif aux politiques sectorielles de l'UEMOA, notamment en ses articles 7 et 8 ;

**Vu** le Règlement n° 02/2002/CM/UEMOA du 23 mai 2002 relatif aux pratiques anticoncurrentielles à l'intérieur de l'UEMOA ;

**Vu** le Règlement n° 03/2002/CM/UEMOA du 23 mai 2002 relatif aux procédures applicables aux ententes et abus de position dominante à l'intérieur de l'UEMOA ;

**Vu** le Règlement n° 06/2002/CM/UEMOA, en date du 27 juin 2002 relatif à l'agrément de transporteur aérien au sein de l'UEMOA ;

**Vu** la Décision n° 08/2002/CM/UEMOA du 27 juin 2002 portant adoption du programme commun du transport aérien des Etats membres de l'UEMOA ;

**Considérant** la Convention relative à l'aviation civile internationale signée à Chicago le 07 décembre 1944 ;

**Considérant** la Décision en date du 14 novembre 1999 relative à la mise en œuvre de la Déclaration de Yamoussoukro concernant la libéralisation de l'accès aux marchés du transport aérien en Afrique, approuvée le 12 juillet 2000 par le Président en exercice de l'OUA ;

**Soucieux** de promouvoir le développement d'un transport aérien sûr, ordonné et efficace dans l'Union ;

**Vu** l'avis en date 08 novembre 2002 du Comité des experts statutaire ;

Sur proposition de la Commission de l'UEMOA;

**ADOpte LE REGLEMENT DONT LA TENEUR SUIT :**

#### *Article premier : Définitions*

Pour l'application du présent Règlement, les termes et expressions ci-après ont les significations suivantes :

**État membre** : État partie prenante au Traité de l'UEMOA tel que prévu par le préambule de celui-ci;

**Commission** : Commission de l'Union prévue à l'article 26 du Traité de l'UEMOA;

**Conseil** : Conseil des Ministres prévu à l'article 20 du Traité de l'UEMOA ;

**Union** : Union Économique et Monétaire Ouest Africaine ;

**Autorité Aéronautique Civile** : Autorité gouvernementale en charge de l'aviation civile, l'Autorité ou la personne morale ou l'organe habilité à exercer une telle fonction ;

**Transporteur aérien** : entreprise de transport aérien, possédant un agrément en cours de validité ;

**Transporteur aérien de l'Union**: transporteur aérien titulaire d'un agrément en cours de validité délivré par une Autorité Aéronautique Civile en vertu du Règlement relatif à l'agrément de transporteur aérien au sein de l'UEMOA ;

**Service aérien commercial** : vol ou une série de vols transportant, à titre onéreux, des passagers, du fret et/ou du courrier ;

**Service aérien régulier**: série de vols qui présente l'ensemble des caractéristiques suivantes:

- 1) il est effectué, à titre onéreux, au moyen d'aéronefs destinés à transporter des passagers, du fret et/ou du courrier, dans des conditions telles que, sur chaque vol, des sièges, vendus individuellement, sont mis à disposition du public soit directement par le transporteur aérien, soit par ses agents agréés;
- 2) il est organisé de façon à assurer la liaison entre les mêmes deux aéroports ou plus :
  - Soit selon un horaire publié;
  - Soit avec une régularité ou une fréquence telle qu'il fait partie d'une série systématique évidente

**Service aérien non-régulier** : service de transport aérien commercial effectué autrement que comme un service aérien régulier ;

**Vol** : cheminement aérien d'un aéronef au départ d'un aéroport déterminé vers un aéroport de destination déterminé ;

**Droit de trafic** : droit d'un transporteur aérien de transporter à titre onéreux des passagers, du fret et/ou du courrier sur une liaison aérienne desservant deux ou plusieurs aéroports de l'Union ;

**États membres concernés** : États membres entre lesquels ou l'État membre à l'intérieur duquel est exploitée une liaison aérienne ;

**États membres impliqués** : État membre concerné et/ou les États membres dans lesquels le ou les transporteurs aériens exploitant le service aérien sont titulaires d'un agrément ;

**Aéroport** : surface définie sur terre ou sur l'eau qui est utilisée pour l'arrivée, le départ et les évolutions de l'aéronef à la surface ;

**Capacité** : nombre de sièges offerts au public et/ou charge marchande en fret et poste sur un service aérien au cours d'une période déterminée ;

**Obligations de service public** : obligations imposées à un transporteur aérien en vue de prendre, à l'égard de toute liaison qu'il peut exploiter en vertu d'un agrément qui lui a été délivré par une Autorité Aéronautique Civile, toutes les mesures propres à assurer la prestation d'un service répondant à des normes fixes en matière de continuité, de régularité, de capacité et de prix, normes auxquelles le transporteur ne satisferait pas s'il ne devait considérer que son seul intérêt commercial.

### ***Article 2 : Objet***

Le présent Règlement fixe les conditions d'accès des transporteurs aériens de l'Union aux liaisons intracommunautaires pour les services aériens réguliers et non réguliers.

### ***Article 3 : Octroi des droits de trafic***

1. Sous réserve du respect des dispositions du présent Règlement, les transporteurs aériens de l'Union sont autorisés par le ou les États membres concernés à exploiter des droits de trafic sur des liaisons intracommunautaires.
2. Chaque État membre dispose d'un délai d'un an pour libéraliser l'accès aux liaisons domestiques pour les transporteurs pour lesquels, il a délivré des agréments

### ***Article 4 : Obligations de service public***

1. Un État membre peut, par décision motivée par des impératifs d'intérêt général et notamment par des nécessités d'aménagement du territoire, prévoir des obligations de service public sur une liaison aérienne donnée.
2. Deux ou plusieurs États membres peuvent, par décision motivée par des impératifs d'intérêt général et notamment par des nécessités d'aménagement du territoire, imposer des obligations de service public sur une ou plusieurs liaisons aériennes intracommunautaires données.
3. Les décisions visées aux points 1 ou 2 ci-dessus peuvent comporter des obligations concernant la durée d'exploitation des services et les conditions relatives aux tarifs, aux fréquences, à la capacité et à la prise en charge de catégories spécifiques de passagers ou de fret.
4. Elles sont notifiées à la Commission aux fins de publication au Bulletin Officiel de l'Union. La Commission, de sa propre initiative, ou agissant à la demande d'un Etat membre ou d'un transporteur aérien, peut organiser des concertations avec l'Etat ou les Etats membres concernés, sur la conformité des décisions aux dispositions du droit communautaire de l'union et le cas échéant sur la durée des restrictions déjà proposées.

La commission doit présenter un rapport au Conseil sur les conclusions des concertations susvisées.

5. Lorsque la décision imposant sur une liaison des obligations de service public est publiée au Bulletin

officiel de l'Union, mais qu'aucun transporteur aérien de l'Union n'a commencé, ou ne projette de commencer, des services aériens réguliers sur cette liaison, l'État membre concerné peut, lancer un appel d'offres pour sélectionner un transporteur aérien avec un cahier de charges.

#### ***Article 5 : Octroi de droits de trafic aux transporteurs aériens des États non Membres de l'Union***

En application d'accords internationaux en vigueur, les transporteurs aériens établis dans un Etat non membre de l'UEMOA peuvent être autorisés par un Etat membre à exploiter des droits de trafic, au départ de son territoire, sur des liaisons intracommunautaires pour autant que cet Etat tiers :

1. de jure et de facto accorde aux transporteurs aériens de l'Union un traitement comparable à celui qui est réservé par les Etats membres concernés aux transporteurs de cet Etat ;
2. de jure et de facto accorde aux transporteurs aériens de l'Union le traitement le plus favorable accordé aux transporteurs d'autres pays ;
3. leur a délivré un agrément de transporteur aérien sur la base des critères économiques et techniques équivalents à ceux définis dans le Règlement relatif à l'agrément de transporteur aérien au sein de l'Union.

#### ***Article 6 : Règles d'exploitation***

L'exercice des droits de trafic est soumis au droit de la concurrence tel qu'arrêté par l'UEMOA et aux règles d'exploitation communautaires, nationales, ou locales publiées concernant la sûreté, la sécurité, la protection de l'environnement et la répartition des créneaux horaires.

#### ***Article 7 : Demande d'informations***

Dans le cadre du suivi de l'application du présent Règlement, la Commission peut recueillir toutes les informations nécessaires auprès des États membres et auprès des transporteurs aériens de l'Union.

Lorsque les informations requises ne sont pas fournies dans le délai imparti par la Commission ou sont fournies de façon incomplète, la Commission les demande par voie de Décision. La Décision précise les informations demandées et fixe un délai approprié dans lequel elles doivent être fournies. Lorsque délibérément ou par négligence les entreprises de transport aérien ne fournissent pas les renseignements demandés ou fournissent des renseignements inexacts à une demande présentée par la Commission, celle-ci peut infliger des amendes de un à cinq millions de francs CFA. Si le transporteur aérien ne s'acquitte pas de l'amende infligée, la Commission peut demander à l'État qui a octroyé les droits de suspendre tout ou partie des droits dont il bénéficie en vertu du présent Règlement.

En cas d'absence de réaction de la part d'un État, la Commission prendra les dispositions nécessaires conformément au Traité.

#### ***Article 8 : Disposition transitoire***

Un État membre n'est pas tenu d'autoriser, jusqu'au 31 décembre 2005, l'exercice de droits de cabotage sur son territoire par des transporteurs aériens de l'Union titulaires d'un agrément délivré par un autre État membre.

### ***Article 9: Application du Règlement***

1. La Commission peut, par voie de Règlement d'exécution, prendre toute mesure nécessaire à l'application du présent Règlement.
2. La Commission soumet tous les deux ans au Conseil un rapport sur l'application du présent Règlement. Ledit rapport sera communiqué aux États et publié au Bulletin officiel de l'Union.

### ***Article 10: Coopération***

1. Les États membres et la Commission coopèrent pour l'application du présent Règlement.
2. Les informations confidentielles obtenues dans le cadre de l'application du présent Règlement sont couvertes par le secret professionnel.

### ***Article 11 : Entrée en vigueur***

Le présent Règlement, qui entre en vigueur à compter de sa date de signature, sera publié au Bulletin officiel de l'Union.

Fait à Ouagadougou, le 18 novembre 2002  
Pour le Conseil des Ministres,  
Le Président,  
Kossi ASSIMAIDOU

Source: Commission de l'UEMOA, Novembre 2002

## 14.2 Regulation on the Licensing of Air Carriers

### **Règlement N° 07/2002/CM/UEMOA relatif à l'agrément de transporteur aérien au sein de l'UEMOA**

Le Conseil des Ministres de l'Union Economique et Monétaire Ouest Africaine (UEMOA)

**Vu** le Traité de l'UEMOA, notamment en ses articles 4, 6, 16, 20, 23, 25, 26, 42 à 46, 101 et 102 ;

**Vu** le Protocole Additionnel n° II relatif aux politiques sectorielles de l'UEMOA, notamment en ses articles 7 et 8;

**Considérant** la Convention relative à l'aviation civile internationale signée à Chicago le 07 décembre 1944 ;

**Considérant** la Décision en date du 14 novembre 1999 relative à la mise en œuvre de la Déclaration de Yamoussoukro sur la libéralisation de l'accès aux marchés du transport aérien en Afrique approuvée le 12 juillet 2000 par le Président en exercice de l'OUA ;

**Soucieux** de promouvoir le développement d'un transport aérien sûr, ordonné et efficace dans l'Union ;

**Vu** l'avis en date du 19 juin 2002 du Comité des experts statutaire,

**Sur** proposition de la Commission de l'UEMOA

***EDICTE LE RÈGLEMENT DONT LA TENEUR SUIT:***

***Article premier : Définitions***

Pour l'application du présent Règlement et de ses annexes qui en font partie intégrante, les termes et expressions ci-après ont les significations suivantes :

**Agrément** : Autorisation administrative accordée à une entreprise par l'Autorité Aéronautique Civile pour effectuer, à titre onéreux le transport aérien de passagers, de fret et/ou de courrier ;

**Etat membre** : Etat partie prenante au Traité de l'UEMOA tel que prévu par le préambule de celui-ci ;

**Commission** : Commission de l'Union prévue à l'article 26 du Traité de l'UEMOA;

**Conseil** : Conseil des Ministres prévu à l'article 20 du Traité de l'UEMOA ;

**Union** : Union Economique et Monétaire Ouest Africaine ;

**Autorité aéronautique civile** : Autorité gouvernementale en charge de l'aviation civile, l'Autorité ou la personne morale ou l'organe habilité à exercer une telle fonction.

**Entreprise** : personne physique ou morale, poursuivant ou ne poursuivant pas de but lucratif ;

**Transporteur aérien** : entreprise de transport aérien possédant un agrément en cours de validité ;

**Travail aérien** : activité de vol au cours duquel l'aéronef est utilisé pour des services spécialisés tels que l'agriculture, la construction, la photographie, la topographie, l'observation et la surveillance, les recherches et le sauvetage, la publicité aérienne.

**Permis d'exploitation Aérienne (PEA/AOC)** : document délivré à une entreprise par l'Autorité Aéronautique Civile d'un État membre attestant que l'entreprise concernée possède les capacités professionnelles et organisationnelles pour assurer l'exploitation d'aéronefs en toute sécurité en vue des activités de transport aérien qui y sont mentionnées ;

**Plan d'entreprise** : description détaillée des activités commerciales prévues par l'entreprise durant la période concernée, notamment pour ce qui est de l'évolution du marché et des investissements qu'elle compte effectuer, ainsi que des incidences financières et économiques de ses activités ;

**Comptes de gestion** : description détaillée des recettes et des dépenses pour la période concernée, comprenant notamment une ventilation entre les activités aériennes et non aériennes ainsi qu'entre les éléments financiers et non financiers ;

**Contrôle effectif** : relation constituée par des droits, des contrats ou de tout autre moyen qui, soit séparément

soit conjointement et compte tenu des circonstances de droit et de fait du cas d'espèce, confèrent la possibilité d'exercer directement ou indirectement une influence déterminante sur une entreprise.

### ***Article 2 : Champ d'application***

Le présent Règlement détermine les critères de délivrance et de maintien en validité, par les États membres, de l'agrément aux transporteurs aériens établis dans l'Union. Le transport aérien de passagers, de fret et/ou de courrier, effectué par des aéronefs non entraînés par un organe moteur et/ou par des ultralégers motorisés, ainsi que les vols locaux n'impliquant pas de transport entre différents aéroports et le travail aérien ne relèvent pas du présent Règlement.

### ***Article 3 : Agrément de transporteur aérien***

Sans préjudice de l'article 5 paragraphe 5 ci-dessous, les États membres ne délivrent pas ou ne maintiennent pas en validité un agrément de transporteur aérien, dès lors que les conditions fixées dans le présent Règlement ne sont pas respectées.

Toute entreprise satisfaisant aux conditions fixées dans le présent Règlement a droit à un agrément de transporteur aérien.

Toute entreprise satisfaisant aux conditions fixées dans le présent Règlement a droit à un agrément de transporteur aérien et à un permis d'exploitation aérienne à moins que l'Autorité Aéronautique Civile ne trouve de déficiences techniques dans son organisation technique, conformément à l'article 10 du présent Règlement».

### ***Article 4 : Conditions d'obtention de l'agrément de transporteur aérien***

Une Autorité de l'Aviation Civile ne délivre d'agrément à une entreprise, que si cumulativement :

- a) son principal établissement et, le cas échéant, son siège, sont situés dans cet État membre ;
- b) son activité principale est le transport aérien, exclusivement ou en combinaison avec toute autre activité commerciale comportant l'exploitation d'aéronefs ou la réparation et l'entretien d'aéronefs ;
- c) soit son capital est détenu majoritairement par des États membres et/ou des ressortissants des États membres et qu'elle est contrôlée effectivement par ces États membres et/ou ses ressortissants ; soit les services qu'elle exploite ont majoritairement comme points de départ et d'arrivée un ou des aéroports d'un État membre et son personnel technique, opérationnel et de gestion est composé majoritairement des ressortissants des États membres.

L'entreprise doit pouvoir prouver, à tout moment, à l'Autorité Aéronautique Civile qui lui a délivré l'agrément de transporteur aérien, qu'il satisfait aux conditions fixées dans le présent article.

La Commission, de sa propre initiative ou, agissant à la demande d'un État membre, vérifie le respect des conditions prévues au présent article. Elle peut le cas échéant, édicter une Décision sur l'agrément.

### ***Article 5 : Obligations du transporteur aérien***

1. Toute entreprise demandant un agrément de transport aérien pour la première fois, doit pouvoir démontrer, de manière suffisamment convaincante, à l'Autorité Aéronautique Civile qu'elle sera, à la fois, à même :

- a) de faire face, à tout moment, pendant une période de vingt-quatre mois à compter du début de l'exploitation, à ses obligations actuelles et potentielles, évaluées sur la base d'hypothèses réalistes;
  - b) d'assumer, pendant une période de trois mois à compter du début de l'exploitation, les frais fixes et les dépenses d'exploitation découlant de ses activités conformément au plan d'entreprise et évalués sur la base d'hypothèses réalistes, sans avoir recours aux recettes tirées de ses activités.
2. Aux fins du paragraphe 1 ci-dessus, toute demande d'agrément de transport aérien est accompagnée d'un plan d'entreprise portant sur, au moins, les deux premières années d'exploitation. Le plan d'entreprise doit aussi indiquer le détail des liens financiers du demandeur avec d'autres activités commerciales auxquelles il se livrerait soit directement, soit par l'intermédiaire d'entreprises apparentées. Le demandeur fournit également toutes informations utiles, en particulier les données visées à l'annexe A du présent Règlement.
  3. Toute entreprise doit notifier, préalablement, à l'Autorité Aérienne Civile, ses projets concernant l'exploitation d'un nouveau service régulier ou d'un service non régulier vers un continent ou une région du monde qui n'était pas desservi auparavant, les changements devant intervenir dans le type ou le nombre d'avions exploités ou une modification substantielle du volume de ses activités. La soumission, trois mois avant la période à laquelle il se réfère, d'un plan d'entreprise couvrant une période de douze mois constitue une notification suffisante au titre du présent paragraphe en ce qui concerne les modifications des activités et/ou éléments actuels qui figurent dans le plan d'entreprise. Elle notifie aussi préalablement tout projet de fusion ou de rachat et notifie dans les quatorze jours à l'autorité qui délivre les agréments tout changement dans la détention de toute participation représentant 10 per cent ou plus de l'ensemble du capital du transporteur aérien ou de la société mère ou de la société qui le contrôle en dernier ressort.
  4. Si l'Autorité Aérienne Civile estime que les changements notifiés conformément au paragraphe 3 ont des incidences importantes sur la situation financière du transporteur aérien, elle demande qu'un plan d'entreprise révisé lui soit présenté, dans lequel figurent les changements annoncés et qui couvre au moins une période de douze mois à compter de la date de sa mise en oeuvre, ainsi que toutes les informations utiles, y compris les données visées à l'annexe B du présent Règlement, pour pouvoir apprécier si le transporteur aérien est à même de faire face à ses obligations actuelles et potentielles au cours de ladite période. L'Autorité Aérienne Civile prend une décision sur le plan d'entreprise révisé dans un délai de trois mois à compter de sa date de présentation. Le silence gardé par l'autorité à l'expiration de ce délai vaut approbation.
  5. L'Autorité Aérienne Civile, peut à tout moment, lorsqu'il apparaît clairement qu'une entreprise à laquelle, elle a délivré un agrément, rencontre des difficultés financières, procéder à une évaluation de ses résultats financiers et elle peut suspendre ou retirer l'agrément si elle n'a plus la certitude que l'entreprise est à même de faire face à ses obligations actuelles ou potentielles pendant une période de douze mois. L'Autorité Aérienne Civile peut aussi délivrer un agrément temporaire pendant la restructuration financière de l'entreprise, à condition que la sécurité ne soit pas mise en cause.
  6. À chaque exercice financier et sans retard indu, les transporteurs aériens doivent fournir à l'Autorité Aérienne Civile, les comptes certifiés se rapportant à l'exercice précédent. À tout moment, à la demande de l'Autorité Aérienne Civile, les transporteurs aériens doivent fournir les informations



nécessaires aux fins du paragraphe 5 ci-dessus et, en particulier, les données visées à l'annexe C du présent Règlement.

7. a) Les paragraphes 1 à 4 et le paragraphe 6 ci-dessus ne s'appliquent pas aux transporteurs aériens qui exploitent exclusivement des aéronefs d'un poids maximal au décollage de 10 tonnes et/ou d'une capacité inférieure à 20 sièges.

Ces transporteurs doivent à tout moment être en mesure d'apporter la preuve que leurs fonds propres s'élèvent au moins à 10 millions CFA ou qu'elles disposent d'une caution bancaire équivalente. Elles doivent, le cas échéant, fournir les informations nécessaires aux fins du paragraphe 5 ci-dessus, à la demande de l'Autorité Aéronautique Civile.

Toutefois, une Autorité Aéronautique Civile peut appliquer les paragraphes 1 à 4 et le paragraphe 6 du présent article aux transporteurs aériens auxquels il a délivré un agrément et qui exploitent des services réguliers ou dont le chiffre d'affaires annuel dépasse 300 millions CFA.

- b) Le Conseil peut, sur proposition de la Commission, majorer les montants visés au point a), si l'évolution économique fait apparaître la nécessité d'une telle Décision.

#### ***Article 6 : Dirigeants des entreprises de transport aérien***

1. La délivrance d'un agrément de transporteur aérien est subordonnée à la vérification de la moralité des personnes qui dirigeront effectivement les activités de l'entreprise. Est acceptée comme preuve suffisante la production de documents délivrés par les autorités compétentes de l'État membre d'origine ou de provenance.
2. Lorsque les documents visés à l'alinéa précédent ne sont pas délivrés par les autorités compétentes de l'État membre d'origine ou de provenance, ils sont remplacés par une déclaration sous serment - ou, dans les États membres où un tel serment n'existe pas, par une déclaration sur l'honneur - faite par l'intéressé devant une autorité judiciaire ou administrative compétente ou, devant un notaire ou un organisme professionnel qualifié de l'État membre d'origine ou de provenance, qui délivrera une attestation faisant foi de ce serment ou de cette déclaration solennelle.
3. Les autorités compétentes des États membres peuvent exiger que les documents ou attestations visés au paragraphe 1.

## 14.3 Tariff Regulation

### **Règlement N° 08/2002/CM/UEMOA relatif aux tarifs de passagers, de fret et poste applicables aux services aériens à l'intérieur, de et vers les Etats membres de l'UEMOA**

Le Conseil des Ministres de l'Union Economique et Monétaire Ouest Africaine (UEMOA)

**Vu** le Traité de l'UEMOA, notamment en ses articles 4, 6, 16, 20, 23, 25, 26, 42 à 46, 101 et 102 ;

**Vu** le Protocole Additionnel n° II relatif aux politiques sectorielles de l'UEMOA, notamment en ses articles 7 et 8 ;

**Vu** le Règlement n° 06/UEMOA/CM en date du 27 juin 2002 relatif à l'agrément de transporteur aérien au sein de l'UEMOA ;

**Considérant** la Convention relative à l'aviation civile internationale signée à Chicago le 07 décembre 1944 ;

**Considérant** la Décision en date du 14 novembre 1999 relative à la mise en œuvre de la Déclaration de Yamoussoukro sur la libéralisation de l'accès aux marchés du transport aérien en Afrique signée le 12 juillet 2000 par le Président en exercice de l'OUA ;

**Soucieux** de promouvoir le développement d'un transport aérien sûr, ordonné et efficace dans l'Union ;

**Vu** l'avis en date du 19 juin 2002 du Comité des experts statutaire ;

Sur proposition de la Commission de l'UEMOA ;

### ***EDICTE LE RÈGLEMENT DONT LA TENEUR SUIT :***

#### ***Article premier : Définitions***

Pour l'application du présent Règlement, les termes et expressions ci-après ont les significations suivantes :

**Union** : Union Economique et Monétaire Ouest Africaine

**Conseil** : Conseil des Ministres prévu à l'article 20 du Traité de l'UEMOA

**Commission** : Commission de l'Union prévue à l'article 26 du Traité de l'UEMOA

**Etat membre** : Etat partie prenante au Traité de l'UEMOA tel que prévu par le préambule de celui-ci.

**Autorité aéronautique Civile** : Autorité gouvernementale en charge de l'aviation civile, l'Autorité ou la personne morale ou l'organe habilité à exercer une telle fonction.

**Tarif aérien** : prix exprimés en francs CFA à payer pour le transport de passagers et de fret sur un service aérien, ainsi que les conditions d'application de ces prix, y compris la rémunération et les conditions offertes aux agences et autres services auxiliaires ;

**Service aérien** : vol ou une série de vols transportant, à titre onéreux, des passagers, du fret et/ou du courrier;

**Transporteur aérien** : entreprise de transport aérien titulaire d'un agrément d'exploitation en cours de validité;

**Transporteur aérien de l'Union** : transporteur aérien titulaire d'un agrément en cours de validité délivrée par une Autorité Aéronautique Civile conformément au Règlement N° 06/2002/CM/UEMOA relatif à l'agrément de transporteur aérien au sein de l'UEMOA;

**État(s) membre(s) concerné(s)** : État membre à l'intérieur duquel, ou les États membres entre lesquels le tarif passager, de fret ou de poste est appliqué ;

**État(s) membre(s) impliqué(s)** : État membre concerné et/ou États membres dans lesquels le ou les transporteurs aériens exploitant le service aérien sont titulaires d'un agrément de transporteur aérien ;

**Tarif passagers de base** : tarif entièrement flexible le plus bas pour un aller simple ou un aller et retour qui est offert au moins dans une aussi large mesure que tout autre tarif entièrement flexible offert pour le même service aérien ;

**Tarif fret standard** : tarifs fret normalement pratiqués par le transporteur aérien, déduction faite des rabais normaux convenus entre transporteurs aériens.

### ***Article 2 : Objet***

Le présent Règlement détermine les critères et les procédures applicables en vue de la fixation des tarifs aériens de passagers, de fret et/ou de poste pratiqués par les transporteurs aériens exploitant des droits de trafic en provenance ou à destination du territoire de l'Union. Le présent Règlement s'applique, également, à toutes les compagnies aériennes exploitant ou opérant des droits de trafic en provenance ou à destination du territoire de l'Union.

### ***Article 3 : Fixation des tarifs***

Sans préjudice du présent Règlement, les transporteurs aériens de l'Union ou établis sur le territoire communautaire fixent librement les tarifs aériens de passagers, de fret et/ou de poste.

### ***Article 4 : Tarifs fixés en application d'obligation de service public***

Le présent Règlement n'est pas applicable aux tarifs aériens des passagers, de fret et/ou de postes établis en application d'obligations de service public.

### ***Article 5 : Dépôt des tarifs***

1. Les tarifs aériens sont déposés auprès du ou des États membres concernés au moins soixante douze heures ouvrables avant leur entrée en vigueur, sauf en cas d'alignement sur un tarif existant pour lequel seule une notification préalable est requise.
2. Un État membre peut exiger que les tarifs pratiqués sur les liaisons intérieures exploitées par un seul transporteur titulaire d'un agrément qu'il a délivré sur les liaisons intérieures ou exploitées en commun par deux transporteurs titulaires d'un agrément qu'il a délivré, soient déposés plus d'un jour ouvrable, mais moins de cinq jours ouvrables avant leur entrée en vigueur.
3. Un tarif aérien peut être appliqué à la vente et au transport aussi longtemps qu'il n'a pas été suspendu conformément à l'article 7 du présent Règlement.

### ***Article 6 : Communication des tarifs***

Les transporteurs aériens opérant dans l'Union communiquent leurs tarifs aériens passagers de base et leurs tarifs de fret standard à toute personne, physique ou morale, qui en fait la demande.

### ***Article 7 : Suspension des tarifs***

1. Un Etat membre concerné peut, à tout moment, décider de suspendre l'application du tarif de base excessivement élevé ou anormalement bas, eu égard à l'ensemble des coûts supportés par le(s) transporteur(s) aérien(s), y compris ceux relatifs à la rémunération du capital ou si l'intérêt général est en cause.
2. Une décision prise en vertu du paragraphe 1 ci-dessus doit être motivée et notifiée à la Commission et à tout autre État membre impliqué ainsi qu'aux transporteurs aériens concernés.
3. Si, dans un délai de quatorze jours à partir de la date de réception de la notification, ni un État membre concerné, ni la Commission, n'ont notifié leur désapprobation en la motivant sur la base des critères visés au paragraphe 1 ci-dessus, l'État membre qui a pris la décision, en vertu du même paragraphe, peut ordonner aux transporteurs aériens concernés de suspendre l'application du tarif en cause.
4. En cas de désapprobation, la Commission ou tout État membre impliqué peut demander à l'Etat membre concerné des consultations en vue d'étudier la situation. Ces consultations se déroulent dans un délai maximal de quatorze jours à partir de la date où elles ont été demandées, à moins qu'il n'en soit convenu autrement.
5. lorsque les consultations prévues à l'alinéa 4 ci-dessus sont infructueuses, la question est soumise au Conseil des Ministres qui, le cas échéant, peut statuer par voie de Décision.

### ***Article 8 : Demande d'informations***

1. Dans le cadre du suivi de l'application du présent Règlement, la Commission peut recueillir toutes les informations nécessaires auprès des États membres et entreprises concernées.
2. Lorsque les informations requises ne sont pas fournies dans le délai fixé par la Commission ou sont fournies de façon incomplète, celle-ci les demande par voie de Décision. La Décision précise les informations demandées et fixe un délai approprié dans lequel elles doivent être fournies. Lorsque délibérément ou par négligence les entreprises de transport aérien ne fournissent pas les renseignements demandés ou fournissent des renseignements inexacts, à une demande présentée par la Commission, celle-ci peut infliger des amendes de un à cinq millions de francs CFA.
3. Si le transporteur ne s'acquitte pas de l'amende infligée, la Commission peut demander la suspension de tout ou partie des droits dont il bénéficie en vertu du présent Règlement.
4. En cas d'absence de réaction de la part d'un Etat, la Commission prendra les dispositions nécessaires conformément au Traité.

### ***Article 9 : Consultations***

Une fois par an, la Commission consulte les transporteurs aériens et les représentants des associations d'usagers des transports aériens dans l'Union sur les tarifs aériens et les questions connexes et, à cette fin, fournit aux participants les informations appropriées.

La Commission favorisera également des consultations sous son égide entre les transporteurs et les associations d'usagers des transports aériens.

#### ***Article 10 : Rapport***

La Commission soumet au Conseil, tous les deux ans, un rapport sur l'application du présent Règlement. Ledit rapport sera communiqué aux Etats et publié au Bulletin officiel de l'Union.

#### ***Article 11 : Coopération***

1. Les États membres et la Commission coopèrent en vue de la mise en œuvre du présent Règlement, notamment en ce qui concerne la collecte des informations nécessaires pour l'établissement du rapport visé à l'article 10 du présent Règlement.
2. Les informations confidentielles obtenues dans le cadre de l'application du présent Règlement sont couvertes par le secret professionnel.

#### ***Article 12 : Entrée en vigueur***

Le présent Règlement, qui entre en vigueur à compter de sa date de signature, sera publié au Bulletin officiel de l'Union.

Fait à Dakar, le 27 juin 2002  
Pour le Conseil des Ministres  
Le Président  
Tankpadja LALLE

Source: Commission de l'UEMOA, Juillet 2002

## 14.4 Denied Boarding Regulations

### **Règlement N° 03/2003/CM/UEMOA établissant les règles relatives aux compensations pour refus d'embarquement des passagers et pour annulation ou retard important d'un vol**

#### ***LE CONSEIL DES MINISTRES DE L'UEMOA***

**Vu** le Traité de l'Union Économique et Monétaire Ouest Africaine (UEMOA), notamment en ses articles 4, 6, 16, 20, 21, 23, 25, 26, 42 à 46, 101 à 102,

**Vu** le Protocole Additionnel n° II relatif aux politiques sectorielles de l'UEMOA, notamment en ses articles 7 et 8,

**Vu** le Règlement n° 06/2002/CM/UEMOA du 27 juin 2002 relatif à l'agrément de transporteur aérien au sein de l'UEMOA,

**Vu** la Décision n° 08/2002/CM/UEMOA du 27 juin 2002 portant adoption du programme commun du transport aérien des États membres de l'UEMOA,

**Considérant** la Convention pour l'unification de certaines règles relatives au transport aérien international, signée à Varsovie le 12 octobre 1929 et tous les instruments juridiques internationaux la modifiant ;

**Considérant** les principes et les objectifs de la Convention relative à l'Aviation Civile Internationale signée à Chicago, le 07 décembre 1944 ;

**Considérant** que le refus d'embarquement et l'annulation ou le retard important d'un vol sont des actes préjudiciables aux intérêts des usagers ;

**Considérant** la nécessité de garantir un niveau élevé de protection des passagers.

**Vu** l'avis en date du 19 mars 2003 du Comité des Experts statuaire ;

**Sur** proposition de la Commission de l'UEMOA.

### ***EDICTE LE RÈGLEMENT DONT LA TENEUR SUIT :***

Article premier : Définitions

Aux fins du présent Règlement, on entend par :

- a) **Commission** : la Commission de l'Union prévue à l'article 26 du Traité de l'UEMOA;
- b) **Conseil** : le Conseil des Ministres de l'Union prévu à l'article 20 du Traité de l'UEMOA;
- c) **Destination finale** : destination figurant sur le billet présenté à l'enregistrement ou, s'il y a plusieurs vols successifs, sur le coupon correspondant au dernier vol. Les vols de correspondance qui peuvent être effectués sans difficultés, même si le refus d'embarquement a provoqué un retard, ne sont pas pris en considération;
- d) **Etat membre** : l'Etat partie prenante au Traité de l'UEMOA tel que prévu par le préambule de celui-ci;
- e) **Refus d'embarquement** : refus par le transporteur aérien d'embarquer des passagers qui cumulativement disposent d'un billet en cours de validité, d'une réservation confirmée pour le vol concerné et se sont présentés à l'enregistrement dans les délais et conditions requis ;
- f) **Réservation confirmée** : fait qu'un billet, vendu par le transporteur aérien ou par son agent de voyage agréé:
  - précise le numéro, la date et l'heure du vol,
  - porte dans le cadre réservé à cet effet la mention « OK » ou toute autre mention ou moyen, par lesquels le transporteur aérien indique qu'il a enregistré et expressément confirmé la réservation;

- g) **transporteur aérien** : une entreprise de transport aérien exploitant des droits de trafic à destination, en provenance et à l'intérieur des États membres de l'UEMOA ;
- h) **UEMOA** : l'Union Économique et Monétaire Ouest Africaine ;
- i) **Union** : l'Union Économique et Monétaire Ouest Africaine ;
- j) **Vol régulier** : vol qui présente les caractéristiques suivantes :
- effectué, à titre onéreux, au moyen d'aéronefs destinés à transporter des passagers et du fret et/ou du courrier, dans des conditions telles que, sur chaque vol, des places sont mises à la disposition du public, soit directement par le transporteur aérien, soit par ses agents agréés,
  - organisé de façon à assurer la liaison entre deux points ou plus :
  - soit selon un horaire publié ;
  - soit avec une régularité ou une fréquence telle qu'il fait partie d'une série systématique évidente;
- k) **Vol surservé** : vol sur lequel le nombre de passagers disposant d'une réservation confirmée et se présentant à l'enregistrement dans les délais et conditions requis dépasse le nombre de sièges disponibles;
- l) **Volontaire** : personne qui, disposant d'une réservation confirmée et, s'étant présentée à l'enregistrement dans les délais et conditions requis, est prête à céder, lorsque le transporteur aérien en fait la demande, ladite réservation en échange d'une compensation ;

### *Article 2 : Champ d'application*

Le présent Règlement établit les règles minimales applicables aux passagers refusés à l'embarquement d'un vol régulier surservé et aux passagers victimes d'un vol annulé ou objet d'un retard important pour lesquels ils disposent d'un billet en cours de validité et ayant fait l'objet d'une confirmation de réservation, au départ d'un aéroport situé sur le territoire d'un État membre, et ce quels que soient l'Etat dans lequel est établi le transporteur aérien, la nationalité du passager ainsi que le lieu de destination.

### *Article 3 : Règles d'embarquement*

1. Le transporteur aérien doit fixer les règles qu'il suivra pour l'embarquement des passagers dans le cas d'un vol surservé. Il notifie ces règles et toutes les éventuelles modifications à l'État membre concerné et à la Commission, qui les mettra à la disposition des autres États membres. Les éventuelles modifications entreront en vigueur un mois après la notification des transporteurs aériens.
2. Les règles visées au paragraphe 1 ci-dessus sont mises à la disposition du public dans les agences et les comptoirs d'enregistrement du transporteur aérien de manière visible, accessible et lisible.
3. Les règles visées au paragraphe 1 ci-dessus doivent prévoir un recours à des volontaires disposés à renoncer à l'embarquement.

4. En tout état de cause, le transporteur aérien doit prendre en considération les intérêts des passagers devant être acheminés en priorité pour des raisons légitimes, tels que les personnes à mobilité réduite et les enfants non accompagnés.

#### ***Article 4 : Compensations financières en cas de refus d'embarquement***

1. En cas de refus d'embarquement, le passager a le droit de choisir l'une des compensations ci-après :
  - le remboursement sans pénalité du prix du billet dans les meilleurs délais pour la partie du voyage non effectué ;
  - le réacheminement dans les meilleurs délais jusqu'à la destination finale ou,
  - le réacheminement à une date ultérieure à la convenance du passager.
2. Indépendamment du choix effectué par le passager dans le cas visé au paragraphe 1 ci-dessus, le transporteur aérien doit payer, immédiatement après le refus d'embarquement, une compensation minimale, égale à :
  - 100 000 F CFA au passager en classe économique et 200 000 F CFA au passager en classe affaires pour les vols de 2 500 kilomètres au plus ;
  - 400 000 F CFA au passager en classe économique et 800 000 F CFA au passager en classe affaires pour les vols de plus de 2 500 kilomètres, compte tenu de la destination finale prévue dans le billet.
3. Lorsque le transporteur offre un réacheminement jusqu'à la destination finale sur un autre vol dont l'heure d'arrivée n'excède pas celle programmée pour le vol initialement réservé de trois heures dans le cas des liaisons allant jusqu'à 2 500 kilomètres et de cinq heures dans le cas des liaisons de plus de 2 500 kilomètres, les compensations prévues au paragraphe 2 ci-dessus, sont réduites de moitié par la compagnie.

Les distances indiquées aux paragraphes 2 et 3 ci-dessus sont mesurées en fonction de la méthode de la distance du plus grand cercle (route orthodromique).
4. En tout état de cause, les montants des compensations sont limités au prix du billet correspondant à la destination finale.

Les compensations doivent être payées en espèces ou, en accord avec le passager, en bons de voyage et/ou autres services.
5. Au cas où, sur un vol sursé, le passager accepte de voyager dans une classe inférieure à celle pour laquelle le billet a été payé, il a droit au remboursement de 50 per cent du plein tarif.
6. Le transporteur aérien n'est pas tenu au paiement d'une compensation de refus d'embarquement lorsque le passager voyage gratuitement ou à des tarifs réduits non disponibles directement ou indirectement au public.



### ***Article 5 : Compensation dans le cadre d'un voyage à forfait***

En cas de refus d'embarquement sur un vol commercialisé dans le cadre d'un voyage à forfait, le transporteur aérien est tenu d'indemniser l'organisateur du voyage qui devra à son tour indemniser le passager.

### ***Article 6 : Compensations en cas d'annulation d'un vol***

En cas d'annulation d'un vol, les dispositions suivantes s'appliquent, sauf si le transporteur aérien ou l'organisateur de voyages prouve que cette décision n'a été motivée que par des circonstances exceptionnelles n'engageant ni sa responsabilité, ni celle de son sous-traitant.

1. Lorsque, avant l'heure initiale prévue de départ, un transporteur aérien ou un organisateur de voyages annule ou prévoit raisonnablement d'annuler un vol, il met tout en œuvre pour prendre contact avec les passagers concernés et convenir avec eux des conditions dans lesquelles ils accepteraient de renoncer à leur réservation confirmée. Au strict minimum, les passagers se voient offrir le choix entre:
  - a) le remboursement intégral du billet, au tarif auquel il a été acheté, pour la ou les parties du voyage non effectué et pour la ou les parties du voyage déjà effectué et devenu inutile par rapport à leur plan de voyage initial, ainsi qu'un vol retour vers leur point de départ initial dans les meilleurs délais ;
  - b) un réacheminement vers leur destination finale, dans des conditions de transport comparables et dans les meilleurs délais, ou
  - c) un réacheminement vers leur destination finale dans les conditions de transport comparables à une date à leur convenance.
2. Les passagers avec lesquels le transporteur aérien ou l'organisateur de voyages ne parvient pas à un accord conformément aux dispositions du paragraphe 1 ci-dessus et qui se présentent à l'enregistrement conformément aux dispositions de l'article 3, paragraphe 1 ci-dessus, se voient offrir la compensation et l'assistance offertes en cas de refus d'embarquement, comme spécifié aux articles 4 et 5 ci-dessus.

### ***Article 7 : Compensations en cas de retard important de vol***

Lorsqu'un transporteur aérien ou un organisateur de voyages prévoit raisonnablement qu'un vol sera retardé, par rapport à l'heure de départ initialement prévue, d'au moins trois heures pour les vols de moins de 2500 kilomètres et d'au moins cinq heures pour les vols de 2500 kilomètres ou plus, les passagers se voient offrir l'assistance prévue conformément aux dispositions de l'article 8 ci-dessous.

En tout état de cause, cette assistance est proposée au plus tard dans les trois heures suivant l'heure de départ prévue dans le cas d'un vol de moins de 2500 kilomètres, et au plus tard dans les cinq heures suivant l'heure de départ initiale prévue dans le cas d'un vol de 2500 kilomètres ou plus.

Lorsqu'un transporteur aérien ou un organisateur de voyages prévoit raisonnablement qu'un vol sera retardé de trois heures ou plus par rapport à l'heure de départ initiale prévue, il offre immédiatement aux passagers handicapés et à leurs accompagnateurs, ainsi qu'aux autres passagers à mobilité réduite et aux enfants non accompagnés l'assistance prévue conformément aux dispositions de l'article 8 ci-dessous ainsi que toute autre forme d'assistance nécessaire pour répondre aux besoins particuliers de ces passagers.

### ***Article 8 : Autres compensations***

1. Outre les compensations minimales prévues à l'article 4 ci-dessus, le transporteur aérien offre par ailleurs gratuitement, aux passagers refusés à l'embarquement :
  - a) le coût d'une communication téléphonique et/ou d'un message adressé par télex/télécopie ou courrier électronique au lieu de destination ;
  - b) la possibilité de se restaurer suffisamment compte tenu du délai d'attente ;
  - c) l'hébergement dans un hôtel au cas où les passagers se trouveraient bloqués pour une ou plusieurs nuits.
2. Lorsqu'une ville ou une région est desservie par plusieurs aéroports et qu'un transporteur aérien propose à un passager refusé à l'embarquement un vol en direction d'un autre aéroport que celui réservé par le passager, les frais de déplacement entre les aéroports de remplacement ou vers une destination de rechange toute proche, convenue avec le passager, sont à la charge du transporteur aérien.

### ***Article 9 : Informations des passagers***

Les transporteurs aériens doivent fournir à chaque passager refusé à l'embarquement, victime d'une annulation ou d'un retard important de vol, une notice exposant les règles de compensations financières.

### ***Article 10 : Autres recours***

1. Les dispositions du présent Règlement s'appliquent sans préjudice de toute action en responsabilité civile que pourrait exercer le passager devant les juridictions compétentes.
2. Le paragraphe 1 ci-dessus ne s'applique pas aux volontaires tels que définis à l'article 1, alinéa l) ci-dessus qui ont accepté une compensation en application des règles visées à l'article 4 ci-dessus.

### ***Article 11 : Entrée en vigueur***

Le présent règlement qui entre en vigueur à compter de sa date de signature sera publié au Bulletin Officiel de l'Union.

Fait à Ouagadougou, le 20 mars 2003  
Pour le Conseil des Ministres,  
La Présidente  
Madame Ayawovi Demba TIGNOKPA

Source: Commission de l'UEMOA, Mars 2003

## 14.5 Air Carrier Liability Regulations

### **Règlement N° 02/2003/CM/UEMOA relatif à la responsabilité des transporteurs en cas d'accident**

#### *LE CONSEIL DES MINISTRES DE L'UEMOA*

**Vu** le Traité de l'Union Économique et Monétaire Ouest Africaine (UEMOA), notamment en ses articles 4, 6, 16, 20, 21, 23, 25, 26, 42 à 46, 101 à 102,

**Vu** le Protocole Additionnel n° II relatif aux politiques sectorielles de l'UEMOA, notamment en ses articles 7 et 8,

**Vu** le Règlement n° 06/2002/CM/UEMOA du 27 juin 2002 relatif à l'agrément de transporteur aérien au sein de l'UEMOA,

**Vu** la Décision n° 08/2002/CM/UEMOA du 27 juin 2002 portant adoption du programme commun du transport aérien des Etats membres de l'UEMOA,

**Vu** la Directive n°05/2002/CM/UEMOA du 27 juin 2002, relative aux principes fondamentaux régissant les enquêtes sur les accidents et les incidents de l'aviation civile au sein de l'UEMOA ;

**Considérant** la Convention pour l'unification de certaines règles relatives au transport aérien international, signée à Varsovie, le 12 octobre 1929, et tous les instruments juridiques internationaux la modifiant ;

**Considérant** les principes et les objectifs de la Convention relative à l'Aviation Civile Internationale signée à Chicago, le 07 décembre 1944 ;

**Considérant** la nécessité d'assurer la protection des intérêts des usagers dans le transport aérien international et celle d'une indemnisation équitable fondée sur le principe de la réparation ;

**Vu** l'avis en date du 19 mars 2003 du Comité des Experts statutaire ;

**Sur** proposition de la Commission de l'UEMOA.

#### ***EDICTE LE RÈGLEMENT DONT LA TENEUR SUIT :***

##### ***Article premier : Définitions***

1. Aux fins du présent Règlement, on entend par :
  - a) **Accident** : événement, lié à l'utilisation d'un aéronef, qui se produit entre le moment où une personne monte à bord de l'aéronef avec l'intention d'effectuer un vol et le moment où toutes les personnes qui sont montées dans cette intention sont descendues, et au cours duquel :
    - 1) une personne est mortellement ou grièvement blessée du fait qu'elle se trouve:

- dans l'aéronef, ou
  - en contact direct avec une partie quelconque de l'aéronef, y compris les parties qui s'en sont détachées, ou
  - directement exposée au souffle des réacteurs, sauf s'il s'agit de lésions dues à des causes naturelles, de blessures infligées à la personne par elle-même ou par d'autres ou de blessures subies par un passager clandestin caché hors des zones auxquelles les passagers et l'équipage ont normalement accès, ou
- 2) l'aéronef subit des dommages ou une rupture structurelle :
- qui altèrent ses caractéristiques de résistance structurelle, de performances ou de vol, et
  - qui devraient normalement nécessiter une réparation importante ou le remplacement de l'élément endommagé, sauf s'il s'agit d'une panne de moteur ou d'avaries de moteur, lorsque les dommages sont limités au moteur, à ses capotages ou à ses accessoires ou encore de dommages limités aux hélices, aux extrémités d'ailes, aux antennes, aux pneumatiques, aux freins, aux carénages ou à de petites entailles ou perforations du revêtement ou
- 3) l'aéronef a disparu ou est totalement inaccessible.
- b) **Commission** : la Commission de l'Union prévue à l'article 26 du Traité de l'UEMOA ;
- c) **Conseil** : le Conseil des Ministres prévu à l'article 20 du Traité de l'UEMOA;
- e) **Convention de Varsovie** : la Convention pour l'unification de certaines règles relatives au transport aérien international, signée à Varsovie le 12 octobre 1929 modifiée par le Protocole signé à La Haye le 28 septembre 1955, complétée par la Convention signée à Guadalajara le 18 septembre 1961, et modifiée par les Protocoles additionnels n° 1 et 2, et le Protocole de Montréal n° 4 signés à Montréal le 25 septembre 1975;
- e) **DTS** : les droits de tirages spéciaux tels que définis par le Fonds Monétaire International;
- f) **Etat membre** : l'Etat partie prenante au Traité de l'UEMOA tel que prévu par le préambule de celui-ci;
- g) **Personne n'ayant droit à indemnisation** : le voyageur ou toute personne pouvant prétendre à réparation au titre dudit voyageur conformément au droit applicable ;
- h) **Transporteur aérien** : une entreprise de transport aérien exploitant des droits de trafic à destination, en provenance et à l'intérieur des Etats membres de l'UEMOA ;
- i) **Transporteur aérien de l'Union** : un transporteur aérien titulaire de l'agrément en cours de validité délivré par un Etat membre conformément aux dispositions du Règlement relatif à l'agrément de transporteur aérien au sein de l'Union ;
- j) **UEMOA** : l'Union Economique et Monétaire Ouest Africaine ;

- k) **Union** : l'Union Economique et Monétaire Ouest Africaine ;
2. Les notions contenues dans le présent Règlement qui ne seraient pas définies au paragraphe 1 sont équivalentes à celles utilisées dans la Convention de Varsovie.

### ***Article 2 : Champ d'application***

Le présent Règlement fixe les obligations des transporteurs aériens en ce qui concerne leur responsabilité à l'égard des voyageurs pour les préjudices subis lors d'accidents en cas de décès, de blessures ou de toutes autres lésions corporelles d'un voyageur dès lors que l'accident qui est à l'origine dudit préjudice a eu lieu à bord d'un aéronef ou pendant toute opération d'embarquement ou de débarquement sur le territoire de l'Union.

En outre, le présent Règlement fixe des exigences en ce qui concerne les informations que doivent fournir les transporteurs aériens aux usagers.

### ***Article 3 : Niveau de responsabilité***

1.
  - a) La responsabilité d'un transporteur aérien pour un dommage subi, en cas de décès, de blessure ou de toute autre lésion corporelle, par un voyageur à l'occasion d'un accident ne peut faire l'objet d'une limitation pécuniaire, même si celle-ci est fixée par voie législative, conventionnelle ou contractuelle.
  - b) L'obligation d'assurance visée à l'article 7 du Règlement relatif à l'agrément de transporteur aérien au sein de l'UEMOA s'entend de l'obligation pour tout transporteur aérien d'être assuré à hauteur de la limite de responsabilité prévue au paragraphe 2 ci-dessous et au-delà pour un montant raisonnable.
2. Le transporteur aérien n'est pas responsable des dommages visés au paragraphe 1 ci-dessus, lorsqu'ils dépassent 100 000 de droits de tirages spéciaux par passager, s'il prouve :
  - a) que le dommage n'est pas dû à sa négligence ou à un autre acte ou omission de sa part, de ses préposés ou de ses mandataires ; ou
  - b) que ces dommages résultent uniquement de la négligence ou d'un acte ou omission préjudiciable d'un tiers.
3. Les transporteurs aériens appliquent d'office la réglementation du pays d'origine de l'exploitant lorsque celle-ci contient des dispositions plus favorables aux usagers que celles prévues dans le présent article et à l'article 5 ci-dessous.

### ***Article 4 : Responsabilité solidaire/recours du transporteur***

En cas de décès, de blessure ou de toute autre lésion corporelle d'un voyageur survenu à l'occasion d'un accident, aucune disposition du présent Règlement ne peut être interprétée:

- a) comme désignant le transporteur aérien seule partie redevable de dommages intérêts ou
- b) comme limitant le droit d'un transporteur aérien de demander à une tierce réparation conformément au droit applicable.

### ***Article 5 : Versement d'avance***

1. Avec toute la diligence nécessaire et, en tout état de cause, au plus tard quinze jours après que la personne physique ayant droit à indemnisation a été identifiée, le transporteur aérien verse à cette personne ou à ses ayants droit une avance lui permettant de faire face à ses besoins immédiats, en proportion du préjudice matériel subi.
2. Sans préjudice du paragraphe 1 ci-dessus, l'avance ne doit pas être inférieure à 15 000 DTS par voyageur en cas de décès.
3. Le versement d'une avance ne constitue pas une reconnaissance de responsabilité et l'avance peut être déduite de toute somme payée ultérieurement en fonction de la responsabilité du transporteur aérien ; elle n'est pas remboursable, sauf dans les cas visés au paragraphe 2 de l'article 3 ci-dessus ou lorsqu'il est prouvé par la suite que la faute de la personne à laquelle l'avance a été versée constitue le fait générateur du dommage ou y a concouru ou que cette personne n'avait pas droit à indemnisation. Toutefois, l'acceptation de cette avance ne vaut pas transaction.

### ***Article 6 : Information du voyageur***

1. Les dispositions des articles 3 et 5 ci-dessus doivent figurer dans les conditions de transport du transporteur aérien de l'Union.
2. Une information adéquate concernant les dispositions des articles 3 et 5 ci-dessus doit être fournie aux voyageurs, à leur demande, par les agences du transporteur aérien de l'Union, par les agences de voyage, aux comptoirs d'enregistrement et aux points de vente. Le titre de transport ou le document équivalent comporte un résumé des prescriptions rédigé en termes simples et intelligibles.
3. Les transporteurs aériens qui appliquent des dispositions plus favorables aux usagers que les articles 3 et 5 ci-dessus en informent clairement et expressément les voyageurs au moment de l'achat du billet dans les agences du transporteur, dans les agences de voyage ou aux comptoirs d'enregistrement situés sur le territoire d'un État membre. Les transporteurs aériens fournissent aux voyageurs une notice précisant leurs conditions. Le fait que le titre de transport ou le document équivalent, indique seulement que la responsabilité est limitée ne constitue pas une information suffisante.

### ***Article 7 : Juridiction compétente***

L'action en responsabilité devra être portée au choix du demandeur, soit devant les tribunaux compétents des États membres de l'Union, soit devant le tribunal du siège du transporteur aérien, du lieu de son principal établissement, soit devant le tribunal du lieu de destination.

### ***Article 8 : Délai de recours***

L'action en responsabilité doit être intentée, sous peine de déchéance, dans le délai de deux ans à compter de l'arrivée à destination, ou du jour où l'aéronef aurait dû arriver, ou de l'arrêt du transport aérien. Le mode de calcul du délai est déterminé par la loi du tribunal saisi.

### ***Article 9 : Rapport***

Deux ans au plus tard après l'entrée en vigueur du présent Règlement, la Commission établit un rapport au Conseil des Ministres sur son application, tenant compte, notamment, de l'évolution de la situation économique et de l'environnement international.

Le rapport visé à l'alinéa précédent est transmis au Conseil des Ministres.

***Article 10 : Entrée en vigueur***

Le présent Règlement qui entre en vigueur à compter de la date de sa signature sera publié au Bulletin Officiel de l'Union.

Fait à Ouagadougou, le 20 mars 2003  
Pour le Conseil des Ministres,  
La Présidente  
Madame Ayawovi Demba TIGNOKPA

Source: Commission de l'UEMOA, Mars 2003

## 14.6 Common Competition Rules

### **Règlement N° 02/2002/CM/UEMOA relatif aux pratiques anticoncurrentielles à l'intérieur de l'UEMOA**

Le Conseil Des Ministres De L'Union Economique et Monétaire Ouest Africaine (UEMOA)

**VU** le Traité de l'UEMOA, notamment en ses articles 4(a), 6, 7, 16, 20, 21, 24, 26, 42, 76(c), 88, 89 et 90;

**VU** le Protocole Additionnel N° 1 relatif aux Organes de contrôle de l'UEMOA, en ses articles 5 et 6 ;

**DESIREUX** de renforcer l'efficacité et la compétitivité des activités économiques et financières des Etats membres dans le cadre d'un marché ouvert, concurrentiel et favorisant l'allocation optimale des ressources ;

**CONSIDERANT** que le libre jeu de la concurrence est le cadre idéal pour l'épanouissement des entreprises opérant sur le marché communautaire ;

**SUR** proposition de la Commission ;

**VU** l'avis, en date du 07 décembre 2001, du Comité des Experts ;

#### ***ADOpte LE PRESENT REGLEMENT***

Article premier : Définitions

Aux fins du présent Règlement, il faut entendre par :

- UEMOA : l'Union Economique et Monétaire Ouest Africaine,
- Union : l'Union Economique et Monétaire Ouest Africaine,

- Conseil : le Conseil des Ministres de l'UEMOA,
- Commission : la Commission de l'UEMOA,
- Etat membre : tout Etat partie prenante au Traité de l'Union Economique et Monétaire Ouest Africaine.

### ***Article 2 : Interdiction et champ d'application***

Par application des dispositions de l'article 88 du Traité de l'UEMOA, constituent des pratiques anticoncurrentielles les pratiques visées aux articles 3, 4, 5 et 6 ci-dessous. Ces pratiques sont interdites, sans qu'aucune décision préalable ne soit nécessaire, lorsqu'elles ont été mises en oeuvre au moins un an après l'entrée en vigueur du Traité de l'UEMOA.

Les accords ou décisions interdits en vertu du paragraphe qui précède sont déclarés nuls de plein droit.

### ***Article 3 : Ententes anticoncurrentielles***

Sont incompatibles avec le Marché Commun et interdits, tous accords entre entreprises, décisions d'associations d'entreprises et pratiques concertées entre entreprises, ayant pour objet ou pour effet de restreindre ou de fausser le jeu de la concurrence à l'intérieur de l'Union, et notamment ceux qui consistent en :

- a) des accords limitant l'accès au marché ou le libre exercice de la concurrence par d'autres entreprises;
- b) des accords visant à fixer directement ou indirectement le prix, à contrôler le prix de vente, et de manière générale, à faire obstacle à la fixation des prix par le libre jeu du marché en favorisant artificiellement leur hausse ou leur baisse ; en particulier des accords entre entreprises à différents niveaux de production ou de distribution visant à la fixation du prix de revente ;
- c) des répartitions des marchés ou des sources d'approvisionnement, en particulier des accords entre entreprises de production ou de distribution portant sur une protection territoriale absolue ;
- d) des limitations ou des contrôles de la production, des débouchés, du développement technique ou des investissements ;
- e) des discriminations entre partenaires commerciaux au moyen de conditions inégales pour des prestations équivalentes
- f) des subordinations de la conclusion des contrats à l'acceptation, par les partenaires, de prestations supplémentaires, qui, par leur nature ou selon les usages commerciaux, n'ont pas de lien avec l'objet de ces contrats.

### ***Article 4 : Abus de position dominante***

- 4.1 Est incompatible avec le Marché Commun et interdit, le fait pour une ou plusieurs entreprises d'exploiter de façon abusive une position dominante sur le Marché Commun ou dans une partie significative de celui-ci.



Sont frappées de la même interdiction, les pratiques assimilables à l'exploitation abusive d'une position dominante, mises en oeuvre par une ou plusieurs entreprises. Constituent une pratique assimilable à un abus de position dominante les opérations de concentration qui créent ou renforcent une position dominante, détenue par une ou plusieurs entreprises, ayant comme conséquence d'entraver de manière significative une concurrence effective à l'intérieur du Marché Commun.

4.2 Les pratiques abusives peuvent notamment consister à :

- a) imposer de façon directe ou indirecte des prix d'achat ou de vente ou d'autres conditions de transactions non équitables ;
- b) limiter la production, les débouchés ou le développement technique au préjudice des consommateurs ;
- c) appliquer à l'égard de partenaires commerciaux des conditions inégales à des prestations équivalentes, en leur infligeant de ce fait un désavantage dans la concurrence ;
- d) subordonner la conclusion de contrats à l'acceptation, par les partenaires, de prestations supplémentaires, qui, par leur nature ou selon les usages commerciaux, n'ont pas de lien avec l'objet de ces contrats.

4.3 Constituent une concentration au sens de l'article 4.1 alinéa 2 du présent Règlement :

- a) la fusion entre deux ou plusieurs entreprises antérieurement indépendantes ;
- b) l'opération par laquelle :
  - une ou plusieurs personnes détenant déjà le contrôle d'une entreprise au moins, ou
  - une ou plusieurs entreprises, acquièrent directement ou indirectement, que ce soit par prise de participations au capital ou achat d'éléments d'actifs, contrat ou tout autre moyen, le contrôle de l'ensemble ou de parties d'une ou de plusieurs autres entreprises ;
- c) la création d'une entreprise commune accomplissant de manière durable toutes les fonctions d'une entité économique autonome.

#### ***Article 5 : Aides d'État***

Par application des dispositions de l'article 88(c) du Traité de l'UEMOA, sont incompatibles avec le Marché Commun et interdites, les aides accordées par les Etats ou au moyen de ressources d'État sous quelque forme que ce soit, lorsqu'elles faussent ou sont susceptibles de fausser la concurrence en favorisant certaines entreprises ou certaines productions. Les dispositions du présent article sont précisées par voie de Règlement du Conseil des Ministres.

#### ***Article 6 : Pratiques anticoncurrentielles imputables aux Etats membres***

6.1 En application des dispositions des articles 4(a), 7 et 76(c) du Traité de l'UEMOA, les Etats membres s'abstiennent de toutes mesures susceptibles de faire obstacle à l'application du présent Règlement et des textes subséquents.

Ils s'interdisent notamment d'édicter ou de maintenir, en ce qui concerne les entreprises publiques et les entreprises auxquelles ils accordent des droits spéciaux et exclusifs, quelque mesure contraire aux règles et principes prévus à l'article 88 paragraphes (a) et (b) du Traité de l'Union.

Les Etats membres s'interdisent en outre, d'édicter des mesures permettant aux entreprises privées de se soustraire aux contraintes imposées par l'article 88 paragraphes (a) et (b) du Traité de l'UEMOA.

- 6.2 Les entreprises chargées de la gestion de services d'intérêt économique général ou présentant le caractère d'un monopole fiscal sont soumises aux règles du Traité relatives à la concurrence.

Cependant, dans l'hypothèse où l'application de ces règles fait échec à l'accomplissement en droit ou en fait de la mission particulière qui leur a été impartie, la Commission, conformément à l'article 89 alinéa 3 du Traité de l'UEMOA, peut octroyer des exemptions à l'application de l'article 88 (a) et le cas échéant, de l'article 88 (b) du Traité.

Afin de bénéficier des exemptions prévues au paragraphe précédent, les parties intéressées et/ou les Etats membres auxquels elles sont rattachées doivent notifier la pratique à la Commission dans les conditions arrêtées, par voie de Règlement, par le Conseil des Ministres.

- 6.3 La Commission veille à l'application des dispositions du présent article. Elle adresse aux Etats membres, au Conseil des Ministres de l'UEMOA, ainsi qu'aux autres institutions de l'Union, des avis et recommandations relatifs à tous projets de législation nationale ou communautaire susceptibles d'affecter la concurrence à l'intérieur de l'Union, en proposant les modifications opportunes.
- 6.4 Si l'Etat membre concerné ne se conforme pas à une décision, la Commission peut saisir la Cour de Justice de l'UEMOA, conformément aux articles 5 et 6 du Protocole Additionnel N° 1 du Traité.

### ***Article 7 : Exemptions individuelles et par catégorie***

En application de l'article 89 alinéa 3 du Traité de l'UEMOA, la Commission peut déclarer les articles 88(a) du Traité de l'UEMOA et 3 du présent Règlement inapplicables,

- à tout accord ou catégorie d'accords,
- à toute décision ou catégorie de décisions d'associations d'entreprises,
- et à toute pratique concertée ou catégorie de pratiques concertées, qui contribuent à améliorer la production ou la distribution des produits ou à promouvoir le progrès technique ou économique, tout en réservant aux utilisateurs une partie équitable du profit qui en résulte, et sans
  - a) imposer aux entreprises intéressées des restrictions qui ne sont pas indispensables pour atteindre ces objectifs ;
  - b) donner à des entreprises la possibilité, pour une partie substantielle des produits en cause, d'éliminer la concurrence.

### *Article 8 : Dispositions finales*

Le présent Règlement, qui entre en vigueur à compter du 1er janvier 2003, sera publié au Bulletin Officiel de l'Union.

Fait à Abidjan, le 23 mai 2002  
Pour le Conseil des Ministres,  
le Président  
Tankpadja LALLE

Source: Commission de l'UEMOA, Juin 2002

## 14.7 Competition Procedures

### **Règlement N° 03/2002/CM/UEMOA relatif aux procédures applicables aux ententes et abus de position dominante à l'intérieur de l'UEMOA**

*LE CONSEIL DES MINISTRES DE L'UNION ÉCONOMIQUE ET MONÉTAIRE OUEST AFRICAINE (UEMOA)*

**VU** le Traité de l'UEMOA, notamment en ses articles 4(a), 6, 7, 16, 20, 21, 24, 26, 42, 76(c), 88, 89 et 90 ;

**VU** le Protocole Additionnel N° 1 relatif aux Organes de contrôle de l'UEMOA, en ses articles 5 et 6 ;

**VU** le Règlement N° 1/96/CM/UEMOA, du 05 juillet 1996, portant Règlement de procédures de la Cour de justice de l'UEMOA ;

**VU** le Règlement N° 02/2002/CM/UEMOA, du 23 mai 2002, relatif aux pratiques anticoncurrentielles à l'intérieur de l'UEMOA;

**DESIREUX** de renforcer l'efficacité et la compétitivité des activités économiques et financières des Etats membres dans le cadre d'un marché ouvert, concurrentiel et favorisant l'allocation optimale des ressources ;

**CONSIDERANT** que le libre jeu de la concurrence est le cadre idéal pour l'épanouissement des entreprises opérant sur le marché communautaire ;

**SUR** proposition de la Commission ;

**VU** l'avis, en date du 07 décembre 2001, du Comité des Experts ;

## **ADOpte LE PRESENT REGLEMENT**

### **TITRE I : DISPOSITIONS GENERALES**

#### ***Article premier : Définitions***

Aux fins du présent Règlement, il faut entendre par :

- **UEMOA** : l'Union Economique et Monétaire Ouest Africaine,
- **Union** : l'Union Economique et Monétaire Ouest Africaine,
- **Conseil** : le Conseil des Ministres de l'UEMOA,
- **Commission** : la Commission de l'UEMOA,
- **Etat membre** : tout Etat partie prenante au Traité de l'Union Economique et Monétaire Ouest Africaine.

#### ***Article 2 : Champ d'application du Règlement***

Le présent Règlement a pour objet de définir les procédures applicables aux ententes et aux abus de position dominante prévues aux articles 88 paragraphes (a) et (b) et 89 alinéa 3 du Traité de l'UEMOA.

### **TITRE II : POUVOIR DECISIONNEL DE LA COMMISSION**

#### ***Article 3 : Attestation négative***

- 3.1 : La Commission peut constater d'office ou sur demande des entreprises et associations d'entreprises intéressées, qu'il n'y a pas lieu pour elle, en fonction des éléments dont elle a connaissance, d'intervenir à l'égard d'un accord, d'une décision ou d'une pratique en vertu des dispositions de l'article 88 paragraphes (a) ou (b) du Traité.
- 3.2 : Demande d'attestation négative : Les accords, décisions et pratiques concertées visés à l'article 88 paragraphes (a) et (b) du Traité en faveur desquels les intéressés désirent se prévaloir du bénéfice d'une attestation négative en vertu du paragraphe précédent, doivent être notifiés à la Commission dans les conditions prévues aux articles 8 à 11 du présent Règlement.

#### ***Article 4 : Constatation des infractions :***

- 4.1 : Si la Commission constate, sur demande ou d'office, une infraction aux dispositions de l'article 88 paragraphes (a) ou (b) du Traité, elle peut, suivant la procédure visée à l'article 16 du présent Règlement, contraindre les entreprises et associations d'entreprises intéressées à mettre fin à l'infraction constatée.
- 4.2 : Sont habilités à présenter une demande à cet effet :
- a. les Etats membres ;
  - b. toutes personnes physiques ou morales.

4.3 : Lorsqu'elle a connaissance d'une opération de concentration constituant une pratique assimilable à un abus de position dominante aux termes de l'article 4.1, 2e alinéa du Règlement N° 02/2002/CM/UEMOA relatif aux pratiques anticoncurrentielles à l'intérieur de l'UEMOA, la Commission peut enjoindre aux entreprises, soit de ne pas donner suite au projet de concentration ou de rétablir la situation de droit antérieure, soit de modifier ou de compléter l'opération ou de prendre toute mesure propre à assurer ou à rétablir une concurrence suffisante.

#### *Article 5 : Mesures provisoires*

5.1 : La Commission peut, d'office ou sur demande, après audition dans les 15 jours des entreprises ou associations d'entreprises intéressées, adopter des mesures provisoires dans les 5 jours à compter de l'audition. L'audition est mise en oeuvre en respect des règles prescrites à l'article 17 du présent Règlement.

5.2 : L'adoption d'une mesure provisoire doit nécessairement être suivie d'une décision d'ouverture de la procédure contradictoire sous l'article 16 du présent Règlement.

5.3 : Ces mesures ne peuvent intervenir que si la pratique dénoncée porte une atteinte grave, irréparable et immédiate à l'économie générale, ou à celle du secteur intéressé, ou à l'intérêt des consommateurs, ou des concurrents.

5.4 : Les mesures provisoires peuvent consister en toutes mesures nécessaires afin d'assurer l'efficacité d'une éventuelle décision ordonnant au terme de la procédure la cessation d'une infraction, et notamment :

- a. l'injonction de revenir à l'état antérieur,
- b. la suspension de la pratique concernée,
- c. l'imposition de conditions nécessaires à la prévention de tout effet anticoncurrentiel potentiel.

Les mesures provisoires doivent rester strictement limitées à ce qui est nécessaire pour faire face à l'urgence.

5.5 : En cas de non exécution des mesures provisoires, la Commission peut imposer les sanctions pécuniaires et astreintes prévues aux articles 22 et 23 du présent Règlement.

5.6 : Lorsque la mesure provisoire est décidée sur requête d'un intéressé, la Commission peut exiger de celui-ci qu'il présente une caution ou dépose un cautionnement.

5.7 : La validité des mesures provisoires ne peut excéder un délai de six mois et expire, en tout état de cause, lors de l'adoption par la Commission d'une décision définitive.

5.8 : La Commission peut à tout moment, par voie de décision, modifier, suspendre ou abroger les mesures provisoires.

5.9 : Ces mesures sont susceptibles de recours devant la Cour de Justice de l'UEMOA.

### *Article 6 : Règlements d'exécution aux fins d'exemption par catégorie*

- 6.1 : La Commission, en application de l'article 89 alinéa 3 du Traité et de l'article 7 du Règlement N° 02/2002/CM/UEMOA relatif aux pratiques anticoncurrentielles à l'intérieur de l'UEMOA, peut adopter, par voie de Règlement d'exécution, des exemptions par catégorie. Les Règlements d'exécution portant adoption d'exemption par catégorie sont régis par l'article 6 paragraphes 2 à 8 ci-dessous relatifs aux conditions de forme et de fond.
- 6.2 : Peuvent notamment faire l'objet d'un règlement d'exécution aux fins d'exemption par catégorie (a) les accords de spécialisation, (b) les accords de recherche et de développement et (c) les accords de transfert de technologie. Ces trois catégories sont respectivement définies comme :
- a) Les accords par lesquels des entreprises s'engagent réciproquement, à des fins de spécialisation,
    - soit à ne pas fabriquer elles-mêmes ou à ne pas faire fabriquer des produits déterminés et à laisser à leurs contractants le soin de fabriquer ces produits,
    - soit à ne fabriquer ou ne faire fabriquer des produits déterminés qu'en commun.
  - b) Les accords entre entreprises ayant pour objet :
    - la recherche et le développement en commun de produits ou de procédés ainsi que l'exploitation en commun de leurs résultats ;
    - l'exploitation en commun des résultats obtenus lors de recherches conjointes sur la base d'un accord antérieur ;
    - la recherche et le développement en commun de produits ou de procédés, à l'exclusion de l'exploitation de leurs résultats dans la mesure où ils tombent sous l'interdiction de l'article 88(a) du Traité.
  - c) Les accords entre entreprises, de licence de brevet ou de licence de savoir-faire, les accords mixtes de brevet et de savoir-faire et les accords comportant des clauses accessoires relatives à des droits de propriété intellectuelle autres que les brevets.
- 6.3 : Le Règlement d'exécution doit comprendre une définition des accords auxquels il s'applique et préciser notamment les restrictions et les clauses qui ne peuvent pas figurer dans les accords.
- 6.4 : Le Règlement d'exécution peut préciser la part de marché détenue par les parties à l'accord au delà de laquelle le bénéfice de l'exemption par catégorie ne pourra être invoqué par les parties.
- 6.5 : Le Règlement d'exécution portant adoption d'exemption par catégorie peut prévoir qu'il s'applique avec effet rétroactif.
- 6.6 : Le Règlement d'exécution peut être abrogé ou modifié en cas de changement de circonstances relatif à un élément qui fut déterminant pour son adoption. Le cas échéant, une période d'adaptation pour les accords et pratiques concertées visés par le Règlement antérieur doit être prévue.

- 6.7 : La Commission doit publier tout projet de Règlement d'exécution aux fins d'exemption par catégorie et recueillir les observations des personnes intéressées. D'autre part, la Commission consulte le Comité Consultatif de la Concurrence avant la publication du projet et avant d'adopter le Règlement d'exécution.
- 6.8 : La Commission constate d'office ou sur demande d'un Etat membre ou de personnes physiques ou morales que, dans un cas déterminé, des accords, décisions ou pratiques concertées, visés par un Règlement d'exécution aux fins d'exemption par catégorie, ont cependant certains effets qui sont incompatibles avec les conditions prévues à l'article 7 du Règlement n° 02/2002/CM/UEMOA relatif aux pratiques anticoncurrentielles à l'intérieur de l'UEMOA. La Commission peut dans ce cas retirer le bénéfice de l'application du Règlement d'exécution portant adoption d'exemption par catégorie.

***Article 7 : Décisions d'exemption individuelle : Obligation de notifier***

- 7.1 : La Commission, en application de l'article 89 alinéa 3 du Traité, d'office ou sur demande des entreprises ou associations d'entreprises intéressées, peut déclarer inapplicable :
- a) l'article 88 (a) à un accord, une décision ou une pratique concertée remplissant les conditions prévues à l'article 7 du Règlement N° 02/2002/CM/UEMOA relatif aux pratiques anticoncurrentielles à l'intérieur de l'UEMOA ;
  - b) l'article 88 paragraphes (a) et (b) aux ententes et abus de position dominante remplissant les conditions prévues à l'article 6.2 du Règlement N° 02/2002/CM/UEMOA relatif aux pratiques anticoncurrentielles à l'intérieur de l'UEMOA.
- 7.2 : Les accords, décisions et pratiques concertées, visés à l'article 88 (a) du Traité et les abus de position dominante visés à l'article 88 (b) remplissant les conditions prévues à l'article 6.2 du Règlement N° 02/2002/CM/UEMOA relatif aux pratiques anticoncurrentielles à l'intérieur de l'UEMOA, en faveur desquels les intéressés désirent se prévaloir du bénéfice d'une exemption, doivent être notifiés à la Commission dans les conditions prévues aux articles 8 à 11 du présent Règlement.
- 7.3 : Durée de validité et révocation des décisions d'exemption :
- a. la décision d'exemption individuelle est accordée pour une durée déterminée et peut être assortie de conditions et de charges ;
  - b. l'exemption individuelle peut porter sur l'acte ab initio, quand bien même cela impliquerait l'application de l'exemption à une période antérieure à la date de notification;
  - c. la décision peut être renouvelée d'office ou sur demande si les conditions d'octroi d'une exemption individuelle continuent d'être réunies ;
  - d. la Commission peut révoquer, modifier sa décision ou interdire des actes déterminés aux intéressés : (i) si la situation de fait se modifie à l'égard d'un élément essentiel à la décision, (ii) si les intéressés contreviennent à une charge ou condition dont la décision a été assortie, (iii) si la décision repose sur des indications inexactes ou incomplètes, ou a été obtenue frauduleusement, ou (iv) si les intéressés abusent de l'exemption des dispositions de l'article 88 (a) qui leur a été accordée par la décision.

Dans les cas visés aux alinéas (ii), (iii) et (iv), qui précèdent, la décision peut aussi être révoquée avec effet rétroactif.

### ***TITRE III : DEMANDES, NOTIFICATIONS ET PLAINTES***

#### ***Chapitre I : Demandes et notifications***

##### ***Article 8 : Personnes habilitées à présenter des demandes et notifications***

8.1 : Est habilitée à présenter une demande en application de l'article 3 du présent Règlement concernant l'article 88 (a) du Traité, ou une notification en application de l'article 7 du présent Règlement :

- a. toute entreprise et toute association d'entreprises participant à des accords ou à des pratiques concertées ;
- b. toute association d'entreprises qui prend des décisions ou se livre à des pratiques qui sont susceptibles de tomber dans le champ d'application de l'article 88 (a);

En outre, conformément à l'article 6.2, 2<sup>e</sup> alinéa du Règlement N° 02/2002/CM/UEMOA relatif aux pratiques anticoncurrentielles à l'intérieur de l'UEMOA, les parties intéressées et/ou les Etats membres auxquels elles sont rattachées, sont habilités à présenter une notification en application de l'article 7.1 du présent Règlement.

Si la demande ou la notification n'est présentée que par certains des participants visés au point a, ceux-ci en informent les autres participants.

8.2 : Est habilitée à présenter une demande en application de l'article 3 du présent Règlement concernant l'article 88(b) du Traité, toute entreprise qui est susceptible de détenir, seule ou avec d'autres entreprises, une position dominante sur le marché commun ou dans une partie substantielle de celui-ci.

8.3 : Si les représentants de personnes, d'entreprises ou d'associations d'entreprises signent la demande ou la notification, ils doivent prouver par un écrit leur pouvoir de représentation.

8.4 : En cas de demande ou de notification collective, un mandataire commun, investi du pouvoir de transmettre et de recevoir des documents au nom de tous les demandeurs ou notifiants, doit être désigné.

##### ***Article 9 : Dépôt des demandes et notifications***

9.1 : Les demandes prévues à l'article 3 ainsi que les notifications prévues à l'article 7 du présent Règlement, doivent être présentées en utilisant le formulaire N, dont les spécifications figurent en annexe au présent Règlement.

Dans l'hypothèse où la même pratique fait l'objet d'une demande d'attestation négative ainsi que d'une notification pour exemption individuelle, il y a lieu de n'utiliser qu'un seul formulaire.

9.2 : Les demandes et les notifications sont déposées auprès de la Commission à l'adresse indiquée dans le formulaire N en 10 exemplaires et leurs annexes en trois exemplaires.



- 9.3 : Les documents joints à la demande ou à la notification sont fournis en original ou en copie. S'il s'agit de copies, les demandeurs ou notifiants doivent certifier qu'elles sont conformes et complètes.

#### ***Article 10 : Teneur des demandes et notifications***

- 10.1 : Les demandes et les notifications doivent contenir les indications et les documents requis par le formulaire N. Ces indications doivent être correctes et complètes.
- 10.2 : Les demandes prévues à l'article 3 du présent Règlement et concernant l'article 88 (b) du Traité doivent comporter un exposé complet des faits indiquant, notamment, la pratique dont il s'agit et la position occupée par la ou les entreprises sur le marché commun ou dans une partie significative de celui-ci pour les produits ou les services concernés par la pratique.
- 10.3 : La Commission peut dispenser de l'obligation de communiquer toute indication particulière requise par le formulaire N qui ne lui apparaît pas nécessaire pour l'examen de l'affaire.
- 10.4 : La Commission délivre sans délai aux demandeurs et notifiants un accusé de réception de la demande ou de la notification.

#### ***Article 11 : Prise d'effet des demandes et notifications***

- 11.1 : Sans préjudice des paragraphes 2 à 5 ci-dessous, les demandes et notifications prennent effet à compter de la date de réception par la Commission. Toutefois, lorsque la demande ou la notification est envoyée par lettre recommandée, elle prend effet à la date indiquée par le cachet de la poste du lieu d'expédition.
- 11.2 : Si la Commission constate que les indications contenues dans la demande ou notification, ou les documents y annexés, sont incomplètes sur un point essentiel, elle en informe sans délai par écrit le demandeur ou notifiant et fixe un délai approprié pour qu'il puisse les compléter. Dans ce cas, la demande ou la notification prend effet à la date de la réception des indications complètes par la Commission.
- 11.3 : Les modifications essentielles des éléments indiqués dans la demande ou notification, dont le demandeur ou notifiant a connaissance ou devrait avoir connaissance, doivent être communiquées à la Commission spontanément et sans délai.
- 11.4 : Les notifications contenant des informations inexactes ou dénaturées sont considérées comme des notifications incomplètes.
- 11.5 : Si, à l'expiration d'un délai d'un mois à compter de la date à laquelle elle a reçu la demande ou notification, la Commission n'a pas communiqué au demandeur ou au notifiant l'information prévue au paragraphe 2, la demande ou la notification est présumée avoir pris effet à la date de sa réception par la Commission.

## ***Chapitre II : Plaintes***

### ***Article 12 :***

Une plainte contre un accord, décision ou pratique peut être déposée auprès de la Commission par toute personne physique ou morale.

### **Article 13 :**

La plainte peut être verbale ou écrite. Dans le cas où une plainte écrite est constituée, il est recommandé que celle-ci contienne les informations suivantes :

- nom et adresse du plaignant, objet de la plainte et une copie de tout document utile ;
- description du produit en cause, indication de la nature et de la structure du marché pertinent ;
- décision sollicitée par le plaignant.

### **Article 14 :**

La Commission doit respecter l'anonymat du plaignant si celui-ci en fait expressément la demande. La Commission pourra sanctionner sous forme d'amende comprise entre 1.000.000 francs CFA et 5.000.000 francs CFA, toute plainte jugée abusive car fondée intentionnellement sur des informations inexactes ou erronées.

## **TITRE IV : PROCEDURE D'ADOPTION DES DECISIONS**

### **PREVUES AUX ARTICLES 3, 4 et 7**

#### **Chapitre I : Procédure en cas de notification**

### **Article 15 :**

Suite à une notification effectuée dans les conditions prévues aux articles 8, 9, 10 et 11 du présent Règlement, la procédure décisionnelle se présente comme suit:

- 15.1 : Dès réception d'une notification, la Commission publie une brève communication reproduisant le « résumé non confidentiel » joint au formulaire de notification « N ». Cette publication a pour objet d'inviter les parties tierces à faire des observations sur l'accord, la décision ou la pratique en question.
- 15.2 : Dans les six mois à compter de la notification, la Commission peut, en application des articles 3 et 7 du présent Règlement, décider d'octroyer une attestation négative ou une exemption individuelle.
- 15.3 : Si elle émet des doutes sur la compatibilité des accords, décisions ou pratiques concertées avec le marché commun, la Commission peut décider d'initier la procédure contradictoire visée à l'article 16 du présent Règlement.
- 15.4 : Pendant la période de six mois qui suit la notification, la Commission a le pouvoir de négocier avec les intéressés dans le but de rendre l'accord, la décision ou la pratique, compatibles avec le Traité de l'UEMOA. La Commission peut à cette fin conclure avec les parties un accord informel. Les demandes d'information, audits ou autres procédures n'ont en aucun cas pour effet d'interrompre ni de suspendre le délai de six mois.

- 15.5 : Si dans un délai de six mois après la notification, aucune décision visée aux paragraphes 2 et 3 n'a été adoptée par la Commission, celle-ci est réputée avoir implicitement adopté soit une décision d'attestation négative, soit une décision d'exemption individuelle, basée respectivement sur les articles 3 et 7 du présent Règlement.

## ***Chapitre II : Procédure contradictoire***

### ***Article 16 :***

La procédure contradictoire est initiée sur décision de la Commission suite à une plainte, une notification ou de sa propre initiative, en vue de l'adoption d'une décision basée sur les articles 3, 4 ou 7 du présent Règlement. La procédure contradictoire se déroule comme suit :

#### 6.1 : Communication des griefs :

- a. La Commission communique par écrit à chacune des entreprises et associations d'entreprises ou à un mandataire commun qu'elles ont désigné, les griefs retenus contre elles. Elle fixe le délai dans lequel les entreprises et associations d'entreprises ont la faculté de lui faire connaître leur point de vue.
- b. Les entreprises et associations d'entreprises expriment par écrit et dans le délai imparti leur point de vue sur les griefs retenus contre elles. Elles peuvent exposer tous les moyens et faits utiles à leur défense dans leurs observations écrites, ainsi que joindre des documents jugés utiles.

16.2 : Suivant les principes posés à l'article 28 paragraphes 3 à 7 du présent Règlement, la Commission saisit le Comité Consultatif de la Concurrence si elle envisage d'adopter une décision expresse sur la base des articles 3, 4 ou 7.

16.3 : Si dans les 12 mois à compter de l'ouverture de la procédure contradictoire, la Commission n'a adopté aucune décision, ce silence vaut décision implicite d'attestation négative ou d'exemption individuelle sur la base des articles 3 ou 7 du présent Règlement.

16.4 : Si au cours de la procédure contradictoire, des mesures provisoires sont adoptées en vertu de l'article 5 du présent règlement, le délai de 12 mois prévu au paragraphe précédent est suspendu jusqu'à expiration des mesures provisoires.

## ***TITRE V : AUDITIONS***

### ***Article 17 : Audition des intéressés et des tiers et droits de la défense***

17.1 : La Commission doit procéder à une audition des parties contre lesquelles elle a retenu des griefs en vue de l'adoption de décisions sous les articles 3, 4, 5, 7, 22 et 23 du présent Règlement.

17.2 : Dans ses décisions, la Commission ne retient que les griefs au sujet desquels les parties ont eu l'occasion de faire connaître leur point de vue.

17.3 : Dans la mesure où la Commission l'estime nécessaire, elle peut aussi entendre d'autres personnes physiques ou morales. Si des personnes physiques ou morales justifiant d'un intérêt suffisant demandent à être entendues, il doit être fait droit à leur demande.

17.4 : Observations orales :

- a. la Commission donne aux personnes qui l'ont demandé dans leurs observations écrites l'occasion de développer verbalement leur point de vue si celles-ci ont justifié d'un intérêt suffisant à cet effet ou si la Commission se propose de leur infliger une amende ou une astreinte;
- b. la Commission peut également donner à toute personne l'occasion d'exprimer oralement son point de vue.

17.5 : Convocation :

- a. la Commission convoque les personnes à entendre pour la date qu'elle fixe;
- b. elle transmet sans délai copie de la convocation aux autorités compétentes des Etats membres qui peuvent désigner un fonctionnaire pour participer à l'audition.

17.6 : Audition Divers :

- a. Il est procédé aux auditions par les personnes que la Commission mandate à cet effet.
- b. Les personnes invitées à se présenter comparaissent elles-mêmes, ou sont représentées, selon le cas, par des représentants légaux ou statutaires. Les entreprises et associations d'entreprises peuvent être représentées par un mandataire dûment habilité et choisi dans leur personnel permanent.

Les personnes entendues par la Commission peuvent être assistées par leurs conseillers juridiques ou par d'autres personnes qualifiées admises par la Commission.

- c. L'audition n'est pas publique. Chaque personne est entendue séparément ou en présence d'autres personnes invitées. Dans ce cas, il est tenu compte de l'intérêt légitime des entreprises à ce que leurs secrets d'affaires et autres informations confidentielles ne soient pas divulgués.
- d. Les déclarations de chaque personne entendue seront répertoriées de la façon jugée appropriée par la Commission. Une copie sera fournie à chaque personne entendue qui en fait la demande. Les secrets d'affaires et autres informations confidentielles seront éliminés avant communication d'une telle copie.

17.7 : Les communications et convocations émanant de la Commission sont envoyées à leurs destinataires par lettre recommandée avec accusé de réception ou leur sont remises contre reçu.

17.8 : Les droits de la défense des intéressés sont pleinement assurés dans le déroulement de la procédure. L'accès au dossier est ouvert au moins aux parties directement intéressées tout en respectant l'intérêt légitime des entreprises à ce que leurs secrets d'affaires ne soient pas divulgués.

17.9 : Délais :

- a. Pour fixer le délai prévu à l'article 16.1.a du présent Règlement, la Commission prend en considération le temps nécessaire à l'établissement des observations ainsi que l'urgence de l'affaire. Le délai ne peut être inférieur à deux semaines ; il peut être prorogé.
- b. Les délais courent le lendemain du jour de la réception ou de la remise des communications.
- c. Avant l'expiration du délai fixé, les observations écrites doivent parvenir à la Commission ou être expédiées par lettre recommandée. Toutefois, lorsque ce délai prend fin un dimanche ou un jour férié, son expiration est reportée à la fin du jour ouvrable suivant.

## **TITRE VI : DEMANDES DE RENSEIGNEMENTS ET VERIFICATIONS**

### ***Article 18 : Demande de renseignements***

- 18.1 : Dans l'accomplissement des tâches qui lui sont assignées par le présent Règlement, la Commission peut recueillir tous les renseignements nécessaires auprès des gouvernements, des autorités compétentes des Etats membres, des entreprises et associations d'entreprises ainsi que de toutes personnes physiques ou morales.
- 18.2 : Lorsque la Commission adresse une demande de renseignements à une personne, à une entreprise ou à une association d'entreprises, elle adresse simultanément une copie de cette demande à l'autorité compétente de l'Etat membre sur le territoire duquel se trouve le domicile de la personne ou le siège de l'entreprise ou de l'association d'entreprises.
- 18.3 : Dans sa demande, la Commission indique les bases juridiques et le but de sa demande, ainsi que les sanctions prévues à l'article 22 au cas où un renseignement inexact serait fourni.
- 18.4 : Sont tenus de fournir les renseignements demandés, dans le cas des entreprises, leurs propriétaires ou leurs représentants et, dans le cas de personnes morales, de sociétés ou d'associations n'ayant pas la personnalité juridique, les personnes chargées de les représenter selon la loi ou les statuts.
- 18.5 : Si une personne, une entreprise ou une association d'entreprises ne fournit pas les renseignements demandés dans le délai imparti par la Commission ou les fournit de façon incomplète, la Commission les demande par voie de Décision. La Décision précise les renseignements demandés, fixe un délai approprié dans lequel les renseignements doivent être fournis et indique les sanctions prévues aux articles 22 et 23, ainsi que le recours ouvert devant la Cour de justice contre la Décision.
- 18.6 : La Commission adresse simultanément copie de sa Décision à l'autorité compétente de l'Etat membre sur le territoire duquel se trouve le domicile de la personne ou le siège de l'entreprise ou de l'association d'entreprises.

### ***Article 19 : Enquêtes par secteurs économiques***

- 19.1 : Si dans un secteur économique donné, l'évolution des échanges entre Etats membres, les fluctuations de prix, la rigidité des prix ou d'autres circonstances font présumer que la concurrence est restreinte ou faussée à l'intérieur du marché commun, la Commission peut décider de procéder à une enquête générale et, dans le cadre de cette dernière, demander aux entreprises de ce secteur économique tous les renseignements nécessaires à l'application des principes figurant à l'article 88 paragraphes (a) et (b) du Traité et à l'accomplissement des tâches qui lui sont confiées. 19.2 : La

Commission procède à des études et recherches en matière de concurrence et incite au débat les acteurs économiques concernés et notamment, la Chambre Consulaire Régionale de l'Union, les organisations professionnelles, les Chambres consulaires nationales, les organisations de consommateurs, les autorités nationales et étrangères de la concurrence, ainsi que les organisations internationales. Elle publie chaque année un rapport sur l'état de la concurrence dans l'Union.

19.3 : Les dispositions de l'article 28, et des articles 18, 20 et 21 sont applicables par analogie.

***Article 20 : Vérifications par les autorités des Etats membres :***

20.1 : A la demande de la Commission, les autorités compétentes des Etats membres procèdent aux vérifications que la Commission juge indiquées au titre de l'article 21.1 ou qu'elle a ordonnées par voie de Décision prise en application de l'article 21.3. Les agents des autorités compétentes des Etats membres chargés de procéder aux vérifications sont dûment assermentés selon le droit national, et exercent leurs pouvoirs sur production d'un mandat écrit délivré par l'autorité compétente de l'Etat membre sur le territoire duquel la vérification doit être effectuée. Ce mandat indique l'objet et le but de la vérification.

20.2 : Les agents de la Commission peuvent, sur sa demande ou sur celle de l'autorité compétente de l'Etat membre sur le territoire duquel la vérification doit être effectuée, prêter assistance aux agents de cette autorité dans l'accomplissement de leurs tâches.

***Article 21 : Pouvoirs de la Commission en matière de vérification***

21.1 : Dans l'accomplissement des tâches qui lui sont assignées par l'article 90 du Traité, la Commission peut procéder à toutes les vérifications nécessaires auprès des entreprises et associations d'entreprises.

(i) A cet effet, les agents mandatés par la Commission dûment assermentés devant la Cour de Justice de l'UEMOA, sont investis des pouvoirs ci-après:

- a) contrôler les livres et autres documents professionnels ;
- b) prendre copie ou extrait des livres et documents professionnels; la Commission peut également prendre possession de ces livres et documents pendant une période maximum de 10 jours ;
- c) demander sur place des explications orales ;
- d) accéder à tous locaux, terrains et moyens de transport des entreprises, conformément aux dispositions pertinentes des lois nationales en la matière.

(ii) Suite à tout acte de vérification, l'agent mandaté dressera un procès-verbal de la vérification. Ce procès-verbal ainsi qu'une liste de tous les documents provisoirement retenus seront communiqués dans un délai maximum de 3 jours aux parties ainsi qu'à l'autorité nationale concernée.

21.2 : Les agents mandatés par la Commission pour ces vérifications exercent leurs pouvoirs sur production d'un mandat écrit qui indique l'objet et le but de la vérification, ainsi que la sanction prévue à l'article 22 du présent Règlement au cas où les livres ou autres documents professionnels requis

seraient présentés de façon incomplète. La Commission avise, en temps utile avant la vérification, l'autorité compétente de l'Etat membre sur le territoire duquel la vérification doit être effectuée de la mission de vérification et de l'identité des agents mandatés.

- 21.3 : Les entreprises et associations d'entreprises sont tenues de se soumettre aux vérifications que la Commission a ordonnées par voie de Décision. La Décision indique l'objet et le but de la vérification, fixe la date à laquelle elle commence, et indique les sanctions prévues aux articles 22 et 23, ainsi que la possibilité de recours ouvert devant la Cour de Justice de l'Union contre la Décision.
- 21.4 : Les agents de l'autorité compétente de l'Etat membre sur le territoire duquel la vérification doit être effectuée peuvent, sur la demande de cette autorité ou sur celle de la Commission, prêter assistance aux agents de la Commission dans l'accomplissement de leurs tâches.
- 21.5 : Lorsqu'une entreprise s'oppose à une vérification ordonnée en vertu du présent article, l'Etat membre intéressé prête aux agents mandatés par la Commission l'assistance nécessaire pour leur permettre d'exécuter leur mission de vérification.

## **TITRE VII : SANCTIONS PECUNIAIRES**

### ***Article 22 : Amendes***

- 22.1 : La Commission peut, par voie de Décision, infliger aux entreprises et associations d'entreprises des amendes d'un montant maximum de 500.000 francs CFA, lorsque, de manière délibérée ou par négligence :
- a. elles donnent des indications inexactes ou dénaturées à l'occasion d'une demande présentée en application de l'article 3 ou d'une notification en application de l'article 7,
  - b. elles fournissent un renseignement inexact en réponse à une demande faite en application de l'article 18, paragraphes 3 ou 5, ou de l'article 19, ou ne fournissent pas un renseignement dans le délai fixé dans une décision prise en vertu de l'article 18, paragraphe 5,
  - c. elles présentent de façon incomplète, lors des vérifications effectuées au titre de l'article 20 ou de l'article 21, les livres ou autres documents professionnels requis, ou ne se soumettent pas aux vérifications ordonnées par voie de décision prise en application de l'article 21, paragraphe 3.
- 22.2 : La Commission peut, par voie de Décision, infliger aux entreprises et associations d'entreprises des amendes de 500.000 F CFA à 100.000.000 F CFA, ce dernier montant pouvant être porté à dix pour cent du chiffre d'affaires réalisé au cours de l'exercice social précédent par chacune des entreprises ayant participé à l'infraction ou dix pour cent des actifs de ces entreprises, lorsque, de propos délibéré ou par négligence :
- a. elles commettent une infraction aux dispositions de l'article 88 (a), ou de l'article 88 (b) du Traité,
  - b. elles contreviennent à une charge imposée en vertu de l'article 7, paragraphe 3, alinéa (a) du présent Règlement.

Pour déterminer le montant de l'amende, il y a lieu de prendre en considération, outre la gravité de l'infraction, la durée de celle-ci.

- 22.3 : Les dispositions de l'article 28 paragraphes 3 à 7 relatifs à la consultation du Comité Consultatif, sont applicables.
- 22.4 : Les décisions prises en vertu des paragraphes 1 et 2 n'ont pas un caractère pénal. Les sanctions prononcées par la Commission sont sans préjudice des recours devant les juridictions nationales relatifs à la réparation des dommages subis. Les juridictions nationales peuvent demander des informations à la Commission en vue d'apprécier ces dommages.
- 22.5 : Les amendes prévues au paragraphe 2, alinéa a, ne peuvent pas être infligées pour des agissements postérieurs à la notification à la Commission et antérieurs à la décision par laquelle elle accorde ou refuse l'octroi d'une exemption, pour autant qu'ils restent dans les limites de l'activité décrite dans la notification.
- 22.6 : Les dispositions du paragraphe 5 ne sont pas applicables, dès lors que la Commission a fait savoir aux entreprises intéressées qu'après examen provisoire elle estime que les conditions d'application de l'article 88 (a), du Traité sont remplies et qu'une application de l'article 7 du Règlement N° 02/2002/CM/UEMOA, relatif aux pratiques anticoncurrentielles à l'intérieur de l'UEMOA, n'est pas justifiée.
- 22.7 : Les recettes provenant des amendes visées à l'article 22 paragraphes 1 et 2 ci-dessus, sont versées au budget général de l'UEMOA. Le Conseil décide de l'affectation de ces ressources.

### ***Article 23 : Astreintes***

- 23.1 : La Commission peut, par voie de décision, infliger aux entreprises et associations d'entreprises des astreintes à raison de 50.000 F CFA à 1.000.000 F CFA par jour de retard à compter de la date qu'elle fixe dans sa décision, pour les contraindre :
- a. à mettre fin à une infraction aux dispositions des articles 88 (a) ou (b) du Traité conformément à une décision prise en application de l'article 4 du présent Règlement,
  - b. à mettre fin à toute action interdite en vertu de l'article 7, paragraphe 3, alinéa (d) du présent Règlement ,
  - c. à fournir de manière complète et exacte un renseignement qu'elle a demandé par voie de décision prise en application de l'article 18, paragraphe 5,
  - d. à se soumettre à une vérification qu'elle a ordonnée par voie de Décision prise en application de l'article 21, paragraphe 3.
- 23.2 : Lorsque les entreprises ou associations d'entreprises ont satisfait à l'obligation pour l'exécution de laquelle l'astreinte avait été infligée, la Commission peut fixer le montant définitif de celle-ci à un chiffre inférieur à celui qui résulterait de la décision initiale.
- 23.3 : Les astreintes sont prononcées conformément aux dispositions de l'article 28, paragraphes 3 à 7 relatifs à la consultation du Comité consultatif.



23.4 : Les recettes provenant des astreintes visées à l'article 23.1 ci-dessus, sont versées au budget général de l'UEMOA. Le Conseil décide de l'affectation de ces ressources.

## ***TITRE VIII : LA PRESCRIPTION EN MATIERE DE POURSUITE ET D'EXECUTION***

### ***Article 24 : Le principe de la prescription***

- i) Le pouvoir de la Commission d'infliger des sanctions en cas d'infraction à l'article 88 paragraphes (a) et (b) du Traité, ainsi que celui d'exécuter les décisions par lesquelles les amendes, sanctions ou astreintes sont infligées, est limité par un délai de prescription.
- ii) La prescription court à compter du jour où l'infraction a été commise.

Toutefois, pour les infractions continues, la prescription ne court qu'à compter du jour où l'infraction a pris fin.

### ***Article 25 : Les délais de prescription***

Le délai de prescription est fixé à :

- 1) Trois ans pour l'adoption de sanctions en cas d'infractions aux dispositions relatives aux demandes ou notifications des entreprises ou associations d'entreprises, à la recherche de renseignements ou à l'exécution de vérifications.
- 2) Cinq ans pour l'adoption de sanctions concernant toutes autres infractions.
- 3) Cinq ans pour l'exécution des décisions prononçant des sanctions pour toutes infractions à l'article 88 paragraphes (a) et (b) du Traité.

### ***Article 26 : L'interruption de la prescription***

26.1 : Définition : Certains actes entraînent l'interruption de la prescription. La prescription court à nouveau à partir de la fin de chaque interruption. Toutefois, la prescription est acquise au plus tard le jour où un délai égal au double du délai de prescription arrive à expiration (c'est-à-dire 6 et 10 ans respectivement), sans que la Commission ait prononcé une sanction; ce délai est prorogé de la période pendant laquelle la prescription est suspendue conformément à l'article 27. L'interruption de la prescription vaut à l'égard de toutes les entreprises et associations d'entreprises ayant participé à l'infraction.

26.2 : Actes entraînant l'interruption en matière d'adoption de sanctions :

- a. La prescription en matière de poursuites est interrompue par tout acte de la Commission ou d'un Etat membre, agissant à la demande de la Commission, visant à l'instruction ou à la poursuite de l'infraction. L'interruption de la prescription prend effet le jour où l'acte est notifié à au moins une entreprise ou association d'entreprises ayant participé à l'infraction.
- b. Constituent notamment des actes interrompant la prescription: i) les demandes de renseignements écrites de la Commission ou de l'autorité compétente d'un Etat membre, agissant à la demande de la Commission, ainsi que les décisions de la Commission exigeant les renseignements demandés; ii) les mandats écrits de vérification délivrés à ses agents par la Commission ou par

l'autorité compétente d'un Etat membre, agissant à la demande de la Commission, ainsi que les décisions de la Commission ordonnant des vérifications; iii) l'engagement d'une procédure par la Commission; iv) la communication des griefs retenus par la Commission.

26.3 : Actes entraînant l'interruption en matière d'exécution des sanctions :

La prescription en matière d'exécution est interrompue : i) par la notification d'une décision modifiant le montant initial de l'amende, de la sanction ou de l'astreinte ou rejetant une demande tendant à obtenir une telle modification; ii) par tout acte de la Commission ou d'un Etat membre, agissant à la demande de la Commission, visant au recouvrement forcé de l'amende, de la sanction ou de l'astreinte.

***Article 27 : Suspension de la prescription***

La prescription en matière d'adoption de sanctions est suspendue aussi longtemps que la décision de la Commission fait l'objet d'une procédure pendante devant la Cour de Justice de l'UEMOA.

***TITRE IX : RELATIONS AVEC LES ETATS MEMBRES***

***Article 28 : Liaison avec les autorités des Etats membres***

28.1 : La Commission transmet sans délai aux autorités compétentes des Etats membres, copie des demandes et des notifications ainsi que des pièces les plus importantes qui lui sont adressées en vue de l'adoption de décisions visées aux articles 3, 4 et 7 du présent Règlement.

28.2 : Elle mène les procédures visées au paragraphe 1 ci-dessus, en liaison étroite et constante avec les autorités compétentes des Etats membres, qui sont habilitées à formuler toutes observations sur ces procédures.

28.3 : Il est créé un Comité Consultatif de la Concurrence, composé de fonctionnaires compétents en matière de concurrence. Chaque Etat membre désigne deux fonctionnaires qui le représentent et qui peuvent être remplacés en cas d'empêchement par d'autres fonctionnaires. Le fonctionnement du Comité est régi par un Règlement Intérieur adopté par la Commission après avis du Comité.

Lorsque le Comité est amené à statuer sur une affaire relevant d'un secteur d'intérêt économique général, la délégation de chaque Etat membre devra comprendre un représentant de l'agence nationale de régulation du secteur concerné ou à défaut un représentant de l'association professionnelle dudit secteur.

28.4 : Le Comité Consultatif en matière de concurrence est consulté préalablement à toute décision consécutive à une procédure visée au paragraphe 1 et à toute décision concernant le renouvellement, la modification ou la révocation d'une décision prise en application de l'article 6 du Règlement N° 02/2002/CM/UEMOA relatif aux pratiques anticoncurrentielles à l'intérieur de l'UEMOA. Il est également consulté sur le niveau des sanctions pécuniaires prévues aux articles 22 et 23 du présent Règlement.

28.5 : La consultation a lieu au cours d'une réunion commune sur invitation de la Commission. A cette invitation, sont annexés un exposé de l'affaire avec indication des pièces les plus importantes et un avant-projet de décision pour chaque cas à examiner. La réunion a lieu au plus tôt quatorze

jours après l'envoi de la convocation. La Commission peut exceptionnellement abréger ce délai de manière appropriée en vue d'éviter un préjudice grave à une ou plusieurs entreprises concernées par une opération de concentration.

28.6 : Le Comité Consultatif émet son avis sur le projet de décision de la Commission, le cas échéant en procédant à un vote. Le Comité Consultatif peut émettre un avis, même si des membres sont absents et n'ont pas été représentés, à condition que la moitié au moins de ses membres soit présente.

Cet avis est consigné par écrit et sera joint au projet de décision.

28.7 : Le Comité Consultatif peut recommander la publication de l'avis. La Commission peut procéder à cette publication. La décision de publication tient dûment compte de l'intérêt légitime des entreprises à ce que leurs secrets d'affaires ne soient pas divulgués ainsi que de l'intérêt des entreprises concernées à ce qu'une publication ait lieu.

## ***TITRE X : RECOURS ET PUBLICITE DES DECISIONS***

### ***Article 29 : Publicité des décisions***

29.1 : La Commission publie les décisions qu'elle prend en application des articles 3, 4, 5, 7, 22 et 23 du présent Règlement.

29.2 : La publication mentionne les parties intéressées et l'essentiel de la décision; elle doit tenir compte de l'intérêt légitime des entreprises à ce que leurs secrets d'affaires ne soient pas divulgués.

29.3 : Registre de la Concurrence :

- a. Un registre de la concurrence est tenu par la Commission. Y sont rapportées toutes les affaires ayant fait l'objet d'une demande en application de l'article 3, d'une notification en application de l'article 7 ou d'une procédure contradictoire sous l'article 16 du présent Règlement.
- b. L'inscription au registre inclut les noms des parties, une brève description de la pratique en cause, et le cas échéant, le dispositif de la décision.
- c. L'accès au registre est ouvert à toute personne. En fonction de ses moyens techniques, la Commission pourra rendre le registre accessible sur Internet.

### ***Article 30 : Secret professionnel***

30.1 : Les informations recueillies en application des articles 18 à 21, ne peuvent être utilisées que dans le but pour lequel elles ont été demandées.

30.2 : La Commission et les autorités compétentes des Etats membres ainsi que leurs fonctionnaires et autres agents sont tenus de ne pas divulguer les informations recueillies en application du présent règlement et qui par leur nature, sont couvertes par le secret professionnel.

30.3 : Les dispositions des paragraphes 1 et 2 ci-dessus ne s'opposent pas à la publication de renseignements généraux ou d'études ne comportant pas d'indications individuelles sur les entreprises ou associations d'entreprises.

### ***Article 31 : Recours juridictionnels***

La Cour de Justice de l'UEMOA apprécie la légalité des décisions prises par la Commission en vertu du présent règlement dans les conditions prévues au Protocole Additionnel N°1 relatif aux Organes de contrôle de l'Union.

En vertu de l'article 8 du Protocole précité, le recours en appréciation de la légalité est ouvert aux Etats membres et au Conseil. Ce recours est également ouvert à toute personne physique ou morale contre tout acte lui faisant grief.

Conformément aux dispositions de l'article 15 alinéa 3 du Règlement N° 1/96/CM/UEMOA du 05 juillet 1996, la Cour de Justice statue, avec compétence de pleine juridiction, sur les recours intentés contre les décisions par lesquelles la Commission fixe une amende ou une astreinte. Elle peut modifier ou annuler les décisions prises, réduire ou augmenter le montant des amendes et des astreintes ou imposer des obligations particulières.

### ***Article 32 : Notes interprétatives***

L'annexe N° 1, relative aux notes interprétatives fait partie intégrante du présent Règlement.

### ***Article 33 : Dispositions finales***

Le présent Règlement, qui entre en vigueur à compter du 1er janvier 2003, sera publié au Bulletin Officiel de l'Union.

Fait à Abidjan, le 23 mai 2002  
Pour le Conseil des Ministres,  
le Président  
Tankpadja LALLE

# Annexe n° 1 au règlement n° 03/2002/CM/UEMOA

Relative aux procédures applicables aux ententes et abus de position dominante à l'intérieur de l'UEMOA:

## **Notes interprétatives de certaines notions**

### *Note 1 : La notion d'entreprise*

Dans l'application de la législation communautaire de la concurrence, la notion d'entreprise se définit comme une organisation unitaire d'éléments personnels, matériels, et immatériels, exerçant une activité économique, à titre onéreux, de manière durable, indépendamment de son statut juridique, public ou privé, et de son mode de financement, et jouissant d'une autonomie de décision.

Ainsi, au sens des règles de concurrence de l'Union, les entreprises peuvent être des personnes physiques, des sociétés civiles ou commerciales ou encore des entités juridiques ne revêtant pas la forme d'une société.

### *Note 2 : Les notions « d'accord, de décision d'associations et de pratiques concertées » au sens de l'article 88(a) du Traité*

L'article 3 du Règlement N° 02/2002/CM/UEMOA relatif aux pratiques anticoncurrentielles à l'intérieur de l'UEMOA, basé sur l'article 88(a) du Traité interdit les accords entre entreprises, les décisions d'associations d'entreprises et les pratiques concertées ayant pour objet ou pour effet de restreindre ou de fausser la concurrence à l'intérieur de l'Union. Le contenu de ces accords, décisions et pratiques est précisé par le Règlement. En ce qui concerne la forme juridique qu'emprunteront ces actes, la Commission appliquera une interprétation large des notions d'accord, de décisions et de pratiques qui peuvent être regroupés sous le terme « ententes ». En particulier, l'existence d'un accord entre parties au sens de l'article 88 (a) n'implique pas nécessairement un contrat écrit. Il suffit que l'acte résulte d'un accord de volonté entre les parties pour tomber dans le champ d'application de l'article 88 (a). Les décisions d'associations d'entreprises se manifesteront notamment sous la forme de délibérations des associations professionnelles. Enfin, de simples comportements parallèles pourront constituer un accord ou une pratique concertée.

### *Note 3 : La notion de « position dominante » au sens de l'article 88(b) du Traité*

L'article 88(b) du Traité sanctionne les abus de position dominante. Dans l'application de cet article, la Commission contrôlera les pratiques unilatérales d'entreprises en situation de position dominante. Cette dernière notion se définit comme la situation où une entreprise a la capacité, sur le marché en cause, de se soustraire à une concurrence effective, de s'affranchir des contraintes du marché, en y jouant un rôle directeur. L'existence d'une position dominante dépend de nombreux critères.

Le critère le plus déterminant sera la part de marché qu'occupe une entreprise sur le marché en cause. Cette part se calcule en tenant compte des ventes réalisées par l'entreprise concernée et de celles réalisées par ses concurrents. Il y aura lieu de prendre en considération d'autres facteurs que la part de marché et notamment :

- L'existence de barrières à l'entrée : ces barrières peuvent résider dans des obstacles législatifs et réglementaires ou dans les caractéristiques propres au fonctionnement du marché en cause. Par exemple, peuvent constituer des barrières à l'entrée la complexité technologique propre au marché de produit, la difficulté d'obtenir les matières premières nécessaires ainsi que des pratiques restrictives des fournisseurs déjà établis.
- L'intégration verticale.
- La puissance financière de l'entreprise ou du groupe auquel elle appartient.

**Note 4 : La notion de « marché en cause »**

Afin d'apprécier l'effet anticoncurrentiel d'une pratique et notamment, pour identifier une position dominante, la Commission utilisera comme critère la part de marché détenue par les parties à la pratique. Pour pouvoir déterminer cette part de marché, il est nécessaire d'avoir préalablement défini avec précision le « marché en cause ». Ce marché est le résultat de la combinaison entre « le marché de produits en cause » et le « marché géographique en cause ».

Le marché de produits en cause comprend tous les produits et/ou services que le consommateur considère comme interchangeables ou substituables en raison de leurs caractéristiques, de leurs prix et de l'usage auquel ils sont destinés.

Les facteurs considérés comme déterminants dans l'identification de ce marché sont les suivants :

- le degré de similitude physique entre les produits et/ ou services en question,
- toute différence dans l'usage final qui est fait des produits,
- les écarts de prix entre deux produits,
- le coût occasionné par le passage d'un produit à un autre s'il s'agit de deux produits potentiellement concurrents,
- les préférences établies ou ancrées des consommateurs pour un type ou une catégorie de produits,
- les classifications de produits (nomenclatures des associations professionnelles)

Le marché géographique en cause correspond quant à lui au territoire sur lequel les entreprises concernées contribuent à l'offre de produits et de services, qui présente des conditions de concurrence suffisamment homogènes et qui peut être distingué des territoires limitrophes par le fait notamment que les conditions de concurrence y sont sensiblement différentes. Les facteurs considérés comme déterminants sont les suivants :

- la nature et les caractéristiques des produits ou des services concernés,
- l'existence de barrières à l'entrée,
- les préférences des consommateurs,
- des différences appréciables de parts de marché ou des écarts de prix substantiels,
- les coûts de transport.

Ainsi, dans l'appréhension du marché en cause dans une affaire d'abus de position dominante, le territoire géographique d'un Etat membre, quelque soit le poids économique de celui-ci, pourra être considéré comme une « partie significative du marché commun », au sens de l'article 4.1 du Règlement N° 02/2002/ CM/ UEMOA, relatif aux pratiques anticoncurrentielles à l'intérieur de l'UEMOA.

***Note 5 : La distinction entre « accords verticaux » et « accords horizontaux »***

Il est possible de distinguer les accords entre entreprises en deux catégories, à savoir, les accords dits « verticaux » et les accords dits « horizontaux ». Cette distinction est importante du fait que les premiers sont considérés comme, en principe, moins restrictifs de la concurrence que les seconds.

Les accords horizontaux sont des accords conclus à un même niveau de production ou de distribution (i.e. accords entre producteurs ou accords entre détaillants). Les accords horizontaux incluent notamment, les accords portant sur l'échange d'informations, la répartition des marchés, l'exploitation en commun d'une activité et toute autre forme d'entente entre opérateurs du même niveau de production ou de distribution.

La catégorie des accords verticaux est constituée d'accords conclus entre deux ou plusieurs entreprises, dont chacune opère, aux fins de l'accord, à un niveau différent de la chaîne de production ou de distribution, et qui concernent les conditions dans lesquelles les parties à l'accord peuvent acquérir, vendre ou revendre certains biens ou services.

Bien que potentiellement restrictifs de la concurrence, les accords verticaux emportent néanmoins des effets positifs pour la concurrence. Toute entrée dans un marché nécessite de lourds investissements et entraîne des risques. Elle est souvent facilitée par la conclusion d'accords entre des producteurs désireux d'intégrer un nouveau marché et des distributeurs locaux. Une distribution efficiente est en outre un élément du jeu de la concurrence inter-marques qui procure des avantages au consommateur.

Cette qualité propre aux accords verticaux justifie une politique plus souple de la Commission à leur égard. Selon cette politique, la Commission considérera que sont en principe hors du champ d'application de l'article 88(a) tous les accords verticaux à l'exception de deux types d'accords dont les effets anticoncurrentiels sont jugés plus importants que leurs effets positifs pour la concurrence en particulier en ce qu'ils font obstacle à l'intégration des marchés en cause. Ces deux catégories sont d'une part les accords comportant une protection territoriale absolue et d'autre part ceux portant sur la fixation du prix de revente.

Demeurent également sous le contrôle stricte de la Commission tous les accords verticaux entre parties occupant une position dominante sur le marché en cause. En d'autres termes, aucun des accords verticaux ne sort du champ d'application de l'article 88 (b) portant sur les abus de position dominante.

# Annexe n° 2 au règlement n° 03/2002/CM/UEMOA

## Relative aux procédures applicables aux ententes et abus de position dominante à l'intérieur de l'UEMOA:

Spécifications du formulaire N:

Formulaire obligatoire pour les demandes et notifications pour attestation négative et pour exemption.

Section préliminaire : Règles régissant le formulaire N et informations préliminaires

- 1) Doit être indiquée sur la première page de la demande ou notification, la mention "Demande d'attestation négative / Notification selon le formulaire N". Les parties notifiantes doivent indiquer si la notification vise à l'octroi d'une attestation négative, d'une exemption, ou indifféremment de l'une ou l'autre.
- 2) La remise de ce formulaire n'exclut en aucun cas la possibilité pour la Commission de requérir des informations supplémentaires.
- 3) Les notifiants doivent indiquer dans la demande/ notification (ci-après, la notification) quelles informations doivent être considérées comme confidentielles.
- 4) Résumé non confidentiel : Dès réception d'une notification, la Commission peut publier une brève communication invitant les parties tierces à faire des observations sur l'accord en question. Cette communication ne contiendra aucune information considérée comme confidentielle. A cet effet, le notifiant doit répondre aux questions suivantes sans y inclure d'information confidentielle:
  - a) Indiquez les noms des parties à l'accord notifié ainsi que les groupes d'entreprises auxquelles elles appartiennent.
  - b) Donnez un court résumé de la nature du contenu et des objectifs de l'accord. A titre indicatif, ce résumé ne devrait pas excéder cent mots.
  - c) Identifiez les secteurs de produits affectés par l'accord en question.
- 5) Documents à soumettre à la notification : La notification dûment établie est présentée en un exemplaire unique. Elle doit comporter les versions finales de tous les accords qui font l'objet de la notification et doit être accompagnée des documents suivants :
  - a) 10 copies de la notification elle-même ;



- b) trois copies des rapports et comptes annuels de toutes les parties à l'accord, faisant l'objet de la notification pour les trois dernières années ;
  - c) trois copies des études de marché ou des documents prévisionnels les plus récents, aussi bien internes qu'externes, afin d'évaluer ou d'analyser le(s) marché(s) affecté(s) en ce qui concerne les conditions de concurrence, les concurrents (réels et potentiels) et la situation du marché. Chaque document doit préciser le nom et la fonction de l'auteur.
  - d) trois copies des rapports et des analyses qui ont été préparés par ou pour tout cadre(s) ou directeur(s) afin d'évaluer ou d'analyser l'accord notifié.
- 6) Si la notification est présentée pour le compte d'une seule entreprise ou d'une partie seulement des entreprises parties à l'accord/ pratique objet de la notification, il est nécessaire de confirmer que les autres entreprises ont été informées en précisant par quel moyen elles l'ont été.
- 7) Doivent être mentionnés dans la notification tous contacts formels pris avec d'autres autorités de la concurrence au sujet de la présente notification en désignant les autorités concernées et en précisant la nature du contact pris. Doivent également être mentionnés toutes procédures antérieures, ou tous contacts officieux avec la Commission ou avec les autorités et juridictions nationales des Etats membres de l'UEMOA.

## **Section I : Identité des parties**

- 8) Veuillez énumérer les entreprises pour le compte desquelles la notification est présentée, en indiquant leur dénomination légale ainsi que leur nom commercial.
- 9) Veuillez décrire brièvement les entreprises ou associations d'entreprises à l'origine de la notification. Précisez leur objet social ainsi que leur champ territorial d'activité.
- 10) Enumérez les associés qui possèdent une participation significative dans le capital de la société. Précisez s'ils possèdent une participation dans une autre société.
- 11) Si la notification est présentée pour le compte d'un tiers ou de plusieurs personnes, veuillez indiquer le nom, l'adresse, le numéro de téléphone, la qualité du représentant et joindre à la notification l'autorisation écrite d'agir pour le compte de l'entreprise ou des entreprises présentant la notification.
- 12) Appartenance à un groupe d'entreprises: Indiquez l'identité des groupes auxquels appartiennent les parties. Précisez les secteurs d'activité de ces groupes ainsi que le chiffre d'affaire mondial de chaque groupe.
- 13) Faire une brève description de l'accord, de la décision ou de la pratique qui fait l'objet de la présente notification.
- 14) Le marché en cause :
- a) Veuillez expliquer la définition du (ou des) marché(s) de produits en cause sur laquelle, à votre avis, la Commission doit fonder son analyse de la notification. En particulier, veuillez indiquer

les produits ou services spécifiques directement ou indirectement affectés par l'accord notifié en identifiant les catégories de produits considérés comme étant substituables selon votre définition du marché.

- b) Veuillez expliquer la définition donnée au(x) marché(s) géographique(s) en cause sur laquelle, à votre avis, la Commission doit fonder son analyse de la notification. En particulier, veuillez identifier les pays dans lesquels les parties sont actives sur le(s) marché(s) de produits en cause.
- c) Veuillez préciser pour chacun des pays concernés, le chiffre d'affaires des entreprises parties à l'accord, la décision ou la pratique, ainsi que les parts de marché et leur évolution pendant les trois dernières années.
- d) Indiquez les noms et parts de marché de vos concurrents (y compris les entreprises étrangères ou importateurs) détenant une part de marché supérieure à 5 per cent.
- e) Veuillez donner votre avis sur l'entrée sur le marché et la concurrence potentielle par rapport aux produits et aux secteurs géographiques.

15) Renseignements sur l'accord :

Veuillez détailler les clauses figurant dans l'accord qui pourraient être susceptibles de restreindre la liberté des participants de prendre des décisions commerciales autonomes, concernant par exemple :

- les prix d'achat ou de vente, les remises ou d'autres conditions de transaction,
- les quantités de produits à fabriquer ou à distribuer ou de services à offrir,
- le développement technique ou les investissements,
- le choix des marchés ou des sources d'approvisionnement,
- les achats à des tiers ou les ventes à des tiers,
- l'application de conditions identiques à des livraisons de biens ou de services équivalents,
- l'offre séparée ou conjointe de produits ou services distincts.

### **Section III : Motifs justifiant l'exemption ou l'attestation négative**

16) Motifs justifiant l'octroi d'une attestation négative :

- a) Indiquez les motifs, c'est-à-dire les effets de l'accord ou du comportement qui, selon vous, peuvent soulever des problèmes de compatibilité avec les règles de concurrence de l'UEMOA.
- b) Exposer les faits et les motifs d'où résulte à votre avis la non-applicabilité de l'article 88 paragraphes (a) ou (b), c'est-à-dire, pourquoi l'accord, la décision ou la pratique n'ont pas pour objet ou pour effet de restreindre ou de fausser le jeu de la concurrence à l'intérieur de

l'UEMOA, ou pourquoi votre entreprise n'a pas de position dominante ou pourquoi son comportement ne constitue pas un abus de celle-ci.

17) Motifs justifiant l'octroi d'une exemption :

Dans le cas d'une notification pour exemption, veuillez expliquer :

- a) En quoi l'accord, la décision ou la pratique contribue à améliorer la production ou la distribution de biens ou services et/ou à promouvoir le progrès technique ou économique.
- b) Comment les utilisateurs tirent une partie équitable du profit résultant de cette amélioration ou de ce progrès.
- c) En quoi les dispositions restrictives de l'accord sont indispensables pour atteindre les objectifs mentionnés au point (a). Expliquer en quoi les avantages issus de l'accord tels qu'invoqués dans la notification, ne pourraient pas être obtenus ou ne pourraient pas être obtenus avec autant de rapidité et d'efficacité ou seulement à un coût plus élevé ou avec moins de chance de succès i) en l'absence de la conclusion de l'accord en entier, ii) sans les clauses susceptibles de restreindre la liberté des participants de prendre des décisions commerciales autonomes.
- d) Comment l'accord n'élimine pas la concurrence pour une partie substantielle des produits ou services en cause.

Source: Commission de l'UEMOA, Juin 2002.

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The following is a list of some important studies and publications on African Air Transport

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5. OAU; *Lagos Plan of Action for the Economic Development of Africa 1980-2000*,
6. OAU: *Monrovia Strategy for the Development of Africa and the Declaration of Commitment of the Heads of State and Government of the OAU and Measures for National and Collective Self-Reliance in Social and Economic Development for the Establishment of a New International Economic Order- Monrovia July 1979*

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9. ITA: *Study on the Optimum Development of Air Services in Africa* – July 1984; study carried out for AFCAC and ECA within the framework of the Transport and Communications Decade for Africa
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12. TRANS/AIR/CONF/84/5/a and TRANS/AIR/CONF/84/5/b on the effects of the 5<sup>th</sup> freedom
13. TRANS/AIR/CONF/84/47/a on “*la taxe compensatoire liée a l’exploitation des droits de cinquième liberté*”
14. TRANS/AIR/CONF/84/7/b on “*Régionalisation du transport en Afrique*”
15. TRANS/AIR/CONF/84/7/c on *Tentative pour la conclusion d’un accord multilatéral sur les services aérien en Afrique*
16. TRANS/AIR/CONF/84/7/d
17. TRANS/AIR/CONF/84/3 and 84/8 on facilitation issues in Africa
18. E/ECA/TRANS/17 : *Study on the Optimum Development of Air Services in Africa* – July 1984; ITA study carried out for AFCAC and ECA within the framework of the Transport and Communications Decade for Africa.
19. ECA/TCEC /TR/AIR/V/3 – *the Declaration of Yamoussoukro on a New African Air Transport Policy* – 7 October 1988
20. ICAO: *Survey of International Fares and Rates*, 1988

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21. ECA Second Decade for Transport and Communications for Africa 1991 – 2000;
22. *The State of African Air Transport Baseline Assessment and Recommendations* September 1990
23. ECA//DOC/UNTACDA/90/SCC/6 –: *ECA Strategy and Programme for the Air Transport Sub-Sector for UNCTADA II*; 20 October 1990
24. ECARRANS/EXP/94-05, Evaluation of the Implementation of the Yamoussoukro Declaration
25. ECA/ TRANS/EXP/94-04, Reports on the Implementation Of the Yamoussoukro Declaration submitted by the sub-regional coordinating Ministers to the Ministerial Meeting, Mauritius, September, 1994
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39. ECA, TRANSCOM/1025: *Politique Aéronautique et Intégration en Afrique – Coopération et Intégration des Compagnies Aériennes Africaines*, Décembre 1995
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## Endnotes

- <sup>1</sup> See ECA study: “The State of African Air Transport: Baseline Assessment and Recommendations”, September 1990.
- <sup>2</sup> See Evaluation Report of UNTACDA II: 1991-2000. Africa has 2 million km of which 27.6 per cent is asphalted (about 62,000 km). The road density is 6.84 km per 100 square km road network, which is 50.6 km per 1000 sq. km with 50 per cent major roads and 50 per cent secondary rural roads, most lacking maintenance and the others with high operating costs.
- <sup>3</sup> Delays in corridors have been reported to be 20 to 40 days. For example, trucks in the Lome/Bamako corridor have to stop at 15 checking points and spend 3 to 4 days for 1,600 km. Air transport does not need this much time; it needs only a few hours.
- <sup>4</sup> It is estimated that it costs US\$ 260,000 to build one kilometre of road. For 600 km the investment required will be 156 million dollars, which is at least the price of two B767 or A310 and the construction of two airports.
- <sup>5</sup> ECA was established by the Economic and Social Council (ECOSOC) in April 1958. ECA has broad objectives for the initiation and participation in measures to facilitate concerted action for economic development and the strengthening of economic relations of African countries.
- <sup>6</sup> For a general review of the new “inward looking” economic approach expounded by the ECA, see Adedeji and Shaw: *Economic Crisis in Africa*, (1985).
- <sup>7</sup> See ADB Report 1989.
- <sup>8</sup> OAU, Monrovia Strategy for the Development of Africa and the Declaration of Commitment of the Heads of State and Government of the OAU on Guidelines and Measures for National and Collective Self-Reliance in Social and Economic Development for the Establishment of a New International Economic Order (AHG/ST 3(XVI)/Rev.1), Monrovia, July 1979.
- <sup>9</sup> OAU Lagos Plan of Action for the Economic Development of Africa, 1980 – 2000.
- <sup>10</sup> The body was set up as a policy making body of UNCTADA I. See ECA Global Evaluation Report UNTACDA ( E/ECA/TCD/55).
- <sup>11</sup> Preamble of the Charter.
- <sup>12</sup> Resolution 142 (VII)
- <sup>13</sup> E/ECA/TRANS/45: “Study on Optimum Development of Air Services in Africa”. A considerable amount of statistical data has been assembled for the year 1982; the study was carried out for AFCAC and ECA in July 1984 within the framework of the Transport and Communications Decade for Africa; it has the most compact and homogeneous set of information available for this early period of the history of African air transport.



See also ECA study: “State of African Air Transport - Baseline Assessment and Recommendations”, September 1990; ECA/TRANSCOM/AIR/53: “Mesures pour l’amélioration des activités et les services aériens en Afrique”, November 1993.

14 See, for example, the ECA paper: E/ECA/CM.37/2 8, April 2004.

15 ICAO, Aeronautical Agreements and Arrangements, ICAO Doc.9460 LGB/382, January 1, 1946 to 31 December 1990. The US and the UK have the largest number of bilateral agreements, with 258 and 241 respectively

16 Optimum Development of Air Services.

17 ECA/TRANS/45 and ECA/TCTD/ECOWAS 11.1./92: “Study on the Harmonization and Coordination of Schedules in West Africa”, 1992.

18 ECA: “The State of African Airlines – Baseline Assessment”, September 1990.

19 TRANSCOM/524

20 AFCAC/DAS/1 – WP/3: African Air Services Route Network : Current Status and Problems.

21 According to ICAO data (ICAO Circular 147 – AT/51), in 1977 there were 493 actual country pairs linked by through plane services, representing 20 per cent of the total potential links. The term “through Plane Scheduled Services” as used by ICAO refers to a service between two countries operated by the same aircraft even though the flight may involve one or more en-route stops.

22 The northern region consists of Algeria, Egypt, Libya, Morocco, Sudan and Tunisia, based on ICAO grouping.

23 The Western Region consists of Burkina Faso, Benin, Cape Verde, Gambia, Ghana, Guinea, Guinea Bissau, Ivory Coast, Nigeria, Liberia, Mali, Mauritania, Niger, Sao Tome, Senegal, Sierra Leone, Togo.

24 Botswana, Comoros, Ethiopia, Kenya, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Reunion, Seychelles, Somalia, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe.

25 The average country/country traffic flow was about 10,000 passengers a year in the case of intra-regional routes and about 4000 passengers a year in the case of trans-regional routes.

26 ECA/TRANSCOM/AIR/53.

27 Frequency (the optimum being 7 per week; schedule arrival times and days of the week; number of stops; aircraft type, fares, schedule connections and services at airports; facilitation).

28 See ECA/TRANSCOM/AIR53.

29 Reported in AFCAC/DAS/1.

30 For a review of some of these studies, see Annex attached.

31 See preamble and Article 11, Charter of the Organization of African Unity, May 1963.

32 The history of air transport integration in Africa dates back to the colonial era. Both the East African Community (EAC) and the Federation of Rhodesia and Nyasaland (FNR) had integrated road, rail and air transport systems. The main EAC entities were the East African Railways & Harbours, East African Posts and Telecommunications, and the East African Airways. FNR entities were the Central Africa Road Services, Central African Railways and the Central African Airway. Both the Federation and EAC broke up in 1963 and 1977 respectively.

See ECA/RCID/06/98. “Environnement Aéronautique: Activités D’intégration Aérienne Et L’avenir De La Décennie Pour Les Transport Et Les Communication En Afrique Au Delà De L’an 2000”

33 AFCAC was established in 1969 as an inter-governmental body responsible for harmonization and coordination of aviation policies of its member states.

34 See E/CN.14/TRANS/1470: Global Strategy and Plan of Action of the First Phase of UNTACDA.

35 ECA: E/CN.14/TRANS/1470, Global Strategy and Plan of Action of the First Phase of UNTACDA.

36 See AFCAC Sixth Plenary Session Report.

37 OAU, Monrovia Strategy for the Development of Africa and the Declaration of Commitment of the Heads of State and Government of the OAU on Guidelines and Measures for National and Collective Self-Reliance in Social and Economic Development for the Establishment of a New International Order, (AHG/ST. 3(XVI)/Rev.1), Monrovia July 1 1979.

38 OAU, Lagos Plan of Action for the Economic Development of Africa 1980 – 2000.

39 ECA Doc E/5037, March 1977.

40 “The Monrovia Strategy and Lagos Plan of Action: Five Years After” – in Adedeji and Shaw (1985).

41 See Resolution ECA/UNCTADA/RES. 79/6.

42 The conference was attended by representatives of the following countries: Benin, Cameroon, Congo, Côte d’Ivoire, Egypt, Ethiopia, Gabon, Ghana, Kenya, Malawi, Mauritius, Niger, Nigeria, Tanzania, Swaziland, Chad, Zaire, Zambia and Zimbabwe. The following airlines were also represented: Air Afrique, Air Burundi, Air Djibouti, Air Gabon, Air Mauritius, Air Chad, Air Zaire and Cameroon airlines, Ethiopian Airlines, Ghana Airways, Kenya Airways, Nigeria Airways, Royal Swazi National Airways and Zambia Airways.

Observers: ASECNA, IATA, PTA and PAPU (Pan African Postal Union).

- 43 This is evident from the agenda of the conference and the extensive documentation prepared by ECA. The agenda included a wide range of issues relating to traffic rights: a general review of the state of air transport in Africa and the inadequacies of the network and the measures for improvement of the inadequacies; the impediments for the granting of traffic rights, in particular the 5th freedom; the effects of granting of 5th freedom on the overall strategy for development of air transport in Africa; measures to be taken for facilitating the exchange of traffic rights, in particular the 5th freedom.
- 44 These included: TRANS/AIR/CONF/84/2 - activities of ECA; TRANS/AIR/CONF/84/4/a and TRANS/AIR/CONF/84/4/b on the inadequacies of African air transport network; TRANS/AIR/CONF/84/5/a and TRANS/AIR/CONF/84/5/b on the effects of the 5th freedom
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- 45 See generally E/ECA/TRANS/17: “Optimum Development of air services”.
- 46 See AFCAC Report Ninth Plenary Niamey, 21-31 May 1985.
- 47 The other members are Benin, Burkina Faso, Republic of Central Africa, Chad, Congo, and Côte d’Ivoire. Mali, Mauritania, Niger, Senegal and Togo, Cameroon and Gabon withdrew in 1971 and 1977 respectively.
- 48 AAROTEC, Inc Air Transport Regulatory Framework in West and Central Africa, Final Report, October 1999.
- 49 See ECA, “The Sate of African Air Transport – Baseline Assessment” , September 1990, page 72.
- 50 It is interesting to note that the US uses several discriminatory policies under US law and US policy which have been catalogued by Wassenberg: visit USA fares; FAA Sec. 1380 (loans or financial aid to national air carriers); Section 1117(a) Federal Aviation Act and Competitive Practices Act of 1974 (US Government Travel); US tax laws permits local governments to tax foreign carriers for non-airport purposes; FAA Sec. 1376(a) (mail rates); US tax law (benefits to US lessors of aircraft to US carriers); US Post office policy, etc. - ITA Bulletin, June 1982.
- 51 See, for example, ECA/RCID/WG-2/CM-CA/99.
- 52 See also E/ECA/TRANS/77, “Report on the Special Conference of African Ministers in Charge of Civil Aviation”, issued by ECA on 17 October 1988.
- 53 See, for example, the report of the subregional meeting of Experts of Civil Aviation and airlines from Eastern and Southern Africa – E/ECA/TCD/78 , Mauritius 28-30 November 1990.

54 Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cape Verde, Central African Republic, Chad, Comoros, Congo, Côte d'Ivoire, Egypt, Eritrea, Ethiopia, Gabon, Ghana, Guinea, Kenya, Madagascar, Malawi, Mali, Morocco, Mauritania, Mauritius, Mozambique, Namibia, Niger, Nigeria, Senegal, Seychelles, South Africa, Sudan, Swaziland, Togo, Tunisia, United Republic of Tanzania, Uganda, Zaire, Zambia and Zimbabwe.

The following airlines were also represented: Air Afrique, Air Botswana, Air Burkina, Air Burundi, Air Ivoire, Air Chad, Air Malawi, Air Madagascar, Air Mali S.A., Air Mauritania, Air Mauritius, Air Namibia, Air Seychelles, Air Tanzania, Air Zimbabwe, Cabo Verde Airlines, Cameroon Airlines, Ghana Airways, Egypt Air, Ethiopian Airlines, Libyan Airlines, Ghana Airways, Kenya Airways, Lina Congo, Nigeria Airways, Royal Swazi, South African Airways, TAAG Angola Airlines, TUNISAIR, Uganda Airlines, and Sudan Airways.

The following African intergovernmental organizations and United Nations specialized agencies were represented: Organization of African Unity (OAU), United Nations Development Programme (UNDP), African Development Bank (ADB), Agency for the Safety of Air Navigation in Africa and Madagascar (ASECNA), African Civil Aviation Commission (AFCAC), African Airlines Association (AFRAA), the International Civil Aviation Organization (ICAO), the Economic Community for West African Countries (ECOWAS), the Southern African Transport, the International Air Transport Association (IATA), and the Indian Ocean Commission (IOC).

55 E/ECA/TCTD/ 94-92 Annex 1.

56 The questionnaires were sent to all member States in January 1996 by ECA for the purpose of gathering information on the implementation of the Mauritius decisions, in particular those relating to traffic rights and the operation of cargo flights. Of the 53 countries to which questionnaires were sent, ECA received 27 responses, namely Algeria, Angola, Benin, Burkina Faso, Burundi, Cameroon, Côte d'Ivoire, Egypt, Ethiopia, Ghana Airways, Kenya Airways, Madagascar, Mali, Malawi, Air Mauritius, Namibia, Air Seychelles and Seychelles, South Africa, Sudan Airways, Royal Swaziland, Tanzania, Togo, Tunisia, Uganda, Air Zimbabwe and Zimbabwe.

57 See the report of the Conference: ECA/TPTCOM/MIN.11/RPT/97.

58 This policy is reflected in the massive withdraw of government support and/or liquidation or curtailment of operations (i.e. Zambia Airways, Uganda Airlines, Royal Swazi, Air Chad, Lesotho Airways and recently Air Afrique, Nigeria Airways etc.)

59 Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cape Verde, Central African Republic, Chad, Comoros, Congo, Côte d'Ivoire, Democratic Republic of Congo, Egypt, Equatorial Guinea, Ethiopia, Eritrea, Gabon, the Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Libyan Arab Jamahiriya, Madagascar, Malawi, Mali, Morocco, Mauritania, Mauritius, Mozambique, Namibia, Niger, Nigeria, Uganda, United Republic of Tanzania, Rwanda, Sao Principe, Senegal, Seychelles, Sierra Leone, South Africa, the Sudan, Swaziland, Togo, Zambia and Zimbabwe.

60 Aéro Consult International, AFFRETAIR, Air Afrique, Air Burkina, Air Gabon, Air Guinea, Air Horizon Africa, Air Sao Tomé, Air Tanzania Corporation, Air Zimbabwe, All Aeronautic Consultants,

Cabo Verde Airlines, Cameroon Airlines, CORSAIR, Egypt Air, Ethiopian Airlines, Libyan Airlines, Ghana Airways, Nigeria Airways, South African Airways, Alliance Air, Sierra National Airlines, TAAG Angola Airlines, TUNISAIR, Sudan Airways and Lignes Aériennes Congolaises.

<sup>61</sup> African Development Bank (ADB), Agency for the Safety of Air Navigation in Africa and Madagascar (ASECNA), African Civil Aviation Commission (AFCAC), African Airlines Association (AFRAA), the International Civil Aviation Organisation (ICAO), the Organisation of African Unity (OAU), the Southern African Trans and Communications Commission (SATCC), the West African Economic and Monetary Union (WAEMU), the Common Market for Eastern and Southern Africa (COMESA), and the World Bank.

<sup>62</sup> The Decision includes: a Preamble setting forth the context within which the Decision was prepared; Definition Article assigning meaning to essential terms used; Scope of Application Article which expresses the main purpose of the Decision; a Grant of Rights Article which sets forth the rights granted; a Tariff article which lays the rules governing fares and rates; a Capacity and Frequency Article which sets forth the agreed principles for the amount of services to be provided by the designated airlines; a Designation and Authorization Article specifying the conditions for designation of airlines to operate including eligibility criteria, the conditions for the revocation of authorization, the recognition of certificates and licenses; an Aviation Safety and Security Article providing for cooperation or dealing with or avoiding acts or threats to the security of civil aviation and the commitment to comply with the civil aviation safety standards and practices recommended by ICAO; a Competition Article which is a fair opportunity provision which is a general principle of non-discrimination; a Settlement of Disputes Article intended to establish the agreed mechanism for resolving disputes between the parties; an Institutional Arrangement Article which establishes a framework for the running of the system; a Transitional Measures Article which specifies the conditions under which the parties may limit their commitment, including the opt out from the application of the traffic rights and tariff liberalization for a transitional period of 2 years.; a Miscellaneous Provisions Article which lumps together such items as commercial opportunities, operational flexibility, cooperative marketing arrangements such as blocked-space, code sharing, franchising or leasing arrangement, consultation, periodic review and registration; a Final Provisions Article relating to the entry into force and role of subregional and regional organization.

<sup>63</sup> Article 3 – Grant of Rights.

<sup>64</sup> Article 4.

<sup>65</sup> Article 5.

<sup>66</sup> Article 6.

<sup>67</sup> Article 9.

<sup>68</sup> The member states of ECCAS are: Angola, Burundi, Cameroon, Central African Republic, Chad, Congo, Gabon, Equatorial Guinea, Rwanda, Sao Tome and Principe and Zaire.

<sup>69</sup> The agreement was signed at the 5th Ordinary Session of the Heads of State and Government of ECCAS.

- 70 The member states are Cameroon, Central Africa Republic, Congo, Gabon, Equatorial Guinea and Chad. The declared objectives of the CEMAC arrangement include the promotion of greater community air links; development of economic and commercial relations between the member States of the community; halt measures that are likely to be prejudicial to the, development of air transport among the states; encourage the implementation of safety measures in night security; and promote technical and commercial cooperation between airlines.
- 71 See Draft Report prepared ECOWAS Secretariat on the implementation of the Decision in Benin, Ghana, Guinea, Mali, Nigeria, Senegal and Togo. May 2004. Along the same lines See ECA Study on the Evaluation of the Yamoussoukro Decision in CEMAC subregion covering Cameroon, Central African Republic, Congo and Gabon April 2004.
- 72 ECA/TRID/08/03: "Progress, Problems and Prospects of Air Transport in Africa", 5 August 2003.
- 73 The basic data and information on which the analysis is based has been gathered during field mission to the four countries. This information has been supplemented by desk research at the ECA headquarters in Addis Ababa and the CEMAC Secretariat. Refer to the detailed Study entitled "Evaluation de la Mise en Oeuvre de la Decision de Yamoussoukro", April 2004, which was issued separately.
- 74 The CEMAC Treaty was signed on 16 March of 1994 and entered into force in June 1999 among Cameroon, RCA, Congo, Gabon, Equatorial Guinea and Chad.
- 75 The members States of CEMAC are: Angola, Burundi, Cameroon, Central African Republic, Chad, Congo, Gabon, Equatorial Guinea, Rwanda, Sao Tome et Principe and Zaire.
- 76 Established by Law No. 98/023 of 24 December 1998.
- 77 Established by Decree No. 81/098 of 20 November 1981.
- 78 Established by Decree No. 78/288 of 14 April 1978.
- 79 Established by Decree No. 1245/PR/MACC of 31 August 1983.
- 80 L'Agence pour la Sécurité de la Navigation Aérienne en Afrique et à Madagascar): ASECNA is a multinational body grouping 16 States (14 African states of West and Central Africa, Madagascar and France).
- 81 Règlement no. 10/100-CEMAC-0066-CM-04 portant adoption du Code de l'Aviation Civile de la CEMAC.
- 82 The Code is divided into ten parts covering technical and economic regulation of air transport. In the field of the economic regulation of air transport, the following should be noted: in respect to air transport: designation, ownership, operating licence, operators certificate, liberalisation of traffic rights ; Aviation personnel; safety and security.
- 83 Règlement No.6/99 /UEAC/-003-CM-02 portant adoption de l'Accord relatif au transport aérien entre les États membre de la CEMAC.

84 The original signatories of the Treaty were Benin, Burkina Faso, Central African Republic, Chad, Congo, and Côte d'Ivoire. Mali, Mauritania, Niger, Senegal and Togo

85 Pendant une période transitoire de deux ans a compter de l'entrée en vigueur de l'accord (août 1999), la 5eme liberté était limitée a 40per cent du trafic base sur le trafic de l'année précédente, au-delà de cette période, la libéralisation totale interviendra.

86 Air Guinée, Air Ivoire/ Nouvelle Air Ivoire, Bénin Air Golf, Equatorial Airlines Of Sao Tome, Ethiopian Airlines ; Inter Air ; Kenya Airways ; Nigeria Airways ; Royal Air Maroc ; Soudan Airways ; TAAG Angola Airlines et Trans Air Bénin.

87 Global Airlines: "Competition in a transnational industry".

88 This principle led to the inclusion of two major provisions in the Chicago Convention to govern the exchange of traffic rights: Article 5 and Article 6. In Article 5, "each Contracting State agrees that all aircraft of the other Contracting States, being aircraft not engaged in international air services, shall have the right ... to make flights" into or across its territory. As regards scheduled services, Article 6 states that "no scheduled international air service may be operated over or into the territory of a Contracting State, except with the special permission or other authorization of that State

89 ICAO, "Aeronautical Agreements and Arrangements", ICAO Doc.9460 LGB/382, 1 January 1946 to 31 December 1990. The US and the UK have the largest number of bilateral agreements, with 258 and 241 respectively.

90 These "open skies" agreements consist of the following: open entry on all routes; unrestricted capacity; the right to operate between any points in country A and any points in country B without restriction, including service to intermediate and beyond points and the right to transfer passengers to an unlimited number of smaller aircraft at the international gateway; flexibility in setting fares; liberal charter arrangements; liberal cargo arrangements. The agreements also provide: the right to convert and remit earnings into hard currency without restrictions; open code-sharing opportunity; the right of a carrier to perform its own ground handling in the other country; the right of carriers to freely enter into commercial transaction related to their flights; commitment to non-discriminatory operation of access to computer reservation.

91 See also ECA/TRANSCOM/1025: "Politique Aéronautique et Intégration en Afrique des Compagnies Aériennes", December 1995.

92 Some of the services on the negotiation table are telecommunications, banking, insurance and transport.

93 The original Member States were Bolivia, Chile, Colombia, Ecuador and Peru. Venezuela joined the Group in 1973, while Chile withdrew in 1976.

94 Namely, Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana Jamaica, Montserrat, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, and Trinidad and Tobago.

95 ICAO Annual Report.

96 Office of the Assistant Secretary for Aviation and International Affairs, Office of International Aviation, 24 June 2002.

97 ICAO ATConf/5-WP/20.

98 The following definitions of the Freedoms of the Air is taken from the ICAO Manual on the Regulation of International Air Transport The Seventh Freedom of the Air is the right or privilege granted by one State to another State, of transporting traffic between the territory of the granting State and any third State with no requirement to include on such operation any point in the territory of the recipient State, i.e. the service need not connect to or be an extension of any services to/from the home State of the carrier.

The Eighth Freedom of the Air is the right or privilege of transporting cabotage traffic between two points in the territory of the granting State on a service which originates or terminates in the home territory of the foreign carrier or (in connection with the so-called Seventh Freedom of the Air) outside the territory of the granting State (also known as “consecutive cabotage”).

The Ninth Freedom of the Air is the right or privilege of transporting cabotage traffic of the granting State on a service performed entirely within the territory of the granting State (also known as “stand alone” cabotage).

99 The national ownership and effective control criterion provides a convenient link between the carrier and the designating State by which parties to the agreement can: a) implement a “balance of benefit” policy for the airlines involved; b) prevent a non-party State through its carrier from gaining, indirectly, an unreciprocated benefit; and c) identify those who are responsible for safety and security matters. National defence consideration is also a factor in some cases, and developmental roles encouraged the growth of national, primarily state-owned air carriers

100 In the United States, the Airline Customer Service Commitment was developed in June 1999. The Aviation Investment & Reform Act (AIR-21) in April 2000; the European Commission defined an overall approach aimed at reinforcing the rights of air passengers in June 2000, proposing new voluntary commitments and enforcement legislation.

The European Civil Aviation Conference (ECAC) developed two codes: the Airline Passenger Service Commitment and the Airport Voluntary Commitment on Air Passenger Service. These two codes became effective in February 2002. The Commission issued a proposal in December 2001 covering stronger measures for denied boarding, cancellation of flights and long delays. It also started a consultation process about service quality in December 2000. Governments in other regions have also been considering similar measures and several States, including Australia, Canada and New Zealand, apply general consumer protection laws/rules that cover a wide range of cross-functional issues.

In Latin America, the Assembly of the Latin American Civil Aviation Conference (LACAC) adopted a recommendation, in November 2000, on a consumer protection code for airlines and recommended its adoption in that region.



101 The following indicative lists, together with airlines' conditions of contract/carriage, could serve as checklists of many of the consumer interest subjects States may wish to monitor: 1) availabilities of lower fares including fares at websites; 2) reservation, ticketing and refund rules; 3) advertisements; 4) airline's commercial and operational conditions; 5) check-in procedures; 6) handling of and compensation for flight delays, cancellation and denied boarding; 7) baggage handling and liability; 8) operational performance disclosure such as on-time performance and complaints; and 9) assistance for the disabled and special-needs passengers (i.e. people with reduced mobility).

102 At the regional level, the European Union (EU) has two Council Regulations (No. 3991/91 of 16 December 1991 and No. 2407/92 of 23 July 1992) and one Resolution (19 June 1995) dealing with the use of leased aircraft by community air carriers; the European Civil Aviation Conference (ECAC) has a Recommendation on Aircraft Leasing (ECAC/21-1, 2-3 July 1997) for its members.

103 The recently announced merger of Air France and KLM Dutch Airlines in May 2002 through a share exchange deal is the most recent example of the alliance wave.

104 In terms of its economic and financial benefits, air transport remains one of the fastest growing sectors of the world's economy. Over a third of the value of the world's manufactured export is transported by air, and by 2005, the number of people travelling by air for business and vacation travel could exceed 2.5 billion each year. By the year 2010, aviation's economic impact could exceed US\$ 1,300 billion with over 33 million jobs created. It is also the key element in the world's largest industry, travel and tourism, which generates US\$ 3400 billion a year in revenue,<sup>105</sup> accounts for about 10 per cent of world GDP and employees over 200 million people, or roughly one in every nine persons in the global labour force.

106 The support given by the World Bank for the implementation of the Decision in the 23 countries of West and Central Africa sub regions is an example. This support may hopefully be extended to the COMESA and SADC region.

107 See generally ECA/RCID/009/02: *Clarification Issues and Articles of the Yamoussoukro Decision*, January 2002.

108 The term as used herein refers to the right of an airline to carry traffic between two points in another State.

109 Central American States are Guatemala, Nicaragua, Costa Rica, El Salvador and Honduras. Before liberalizing their air services agreements with the United States, it was considered necessary to integrate the small airlines of the subregion, in order to increase their competitiveness through the exploitation of economies of scale and scope. The consolidation exercise was approached cautiously because of varying national circumstances: Aviateca (Guatemala) and AeroNica (Nicaragua) were 100 per cent State-owned and in the process of privatization, while LACSA (Costa Rica), TACA International (El Salvador) and SAHSA (Honduras) were private. During 1989-1992, TACA International acquired minority equity shares in the other four carriers. Based on these shareholdings together with a series of separate commercial agreements, the Grupo TACA was launched in mid-1990s COPA (Panama) also became a marketing partner of the group. All the carriers in the group have kept their separate identities, but all the commercial and operational activities (such as purchases, maintenance, insurance, marketing and sales) were pooled. In 1996, the Grupo TACA concluded a reciprocal codesharing agreement with American Airlines, the largest US carrier operating on Central American routes.

<sup>110</sup> At the regional level, the European Union (EU) has two Council Regulations (No. 3991/91 of 16 December 1991 and No. 2407/92 of 23 July 1992) and one Resolution (19 June 1995) dealing with the use of leased aircraft by community air carriers; the European Civil Aviation Conference (ECAC) has a Recommendation on Aircraft Leasing (ECAC/21-1, 2-3 July 1997) for its members.

<sup>111</sup> ECO/TCTD/ECOWAS 11.1?92.

<sup>112</sup> Transatlantic Deregulation, The Alliance Network Effect U.S. Department of Transportation October 2000.

<sup>113</sup> Source: DOT Origin & Destination Gateway Data

<sup>114</sup> The above list of definitions is to be considered as reference material containing guidelines which could be adapted to each specific situation, as the case may be.

<sup>115</sup> This shall apply only in the case of the exchange of fifth freedom rights