



FIRST MEETING

OF

THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY

YAMOOUSSOUKRO DECISION IMPLEMENTATION

STEERING COMMITTEE

(CAC)

29 MAY 2008
LUSAKA, ZAMBIA

2.1 REVIEW OF THE YAMOOUSSOUKRO DECISION IMPLEMENTATION STRATEGY IN SADC

The meeting will recall that the Steering Committee was elected at the Ad-hoc CAC Meeting on 29 January 2008 pursuant to the decision of the Ministers responsible for Transport who met in Gaborone, on 5 October 2007 and took a decision to fully implement the YD by January 2009, based on the Road Map presented by the Secretariat.

The Steering Committee will recall that, the AU Ministers responsible for Air Transport adopted the Yamoussoukro Decision (YD) in 1999, following the slow pace of implementation of the Yamoussoukro Declaration of 1988. The YD, by 2000, sought to fully liberalise the African skies by the end of 2002.

The Steering Committee will also recall that the YD implementation timeframes were approved by the AU Summit in 2000 and that this year, 2008, is the 20th Anniversary of the Yamoussoukro Decision of 1999.

The meeting will further recall that the three sub-regions; namely the Common Market of Eastern and Southern Africa, East African Community and the Southern African Development Community (COMESA,EAC,SADC); took a decision in 2001 to jointly implement the YD. The YD Implementation Steering Committee is invited to note that considerable work has been done to this end in order to achieve the above.

In this regard, the Steering Committee will recall that in 2004 the three Regional Economic Communities (RECs), COMESA, EAC and SADC adopted the Regulations for Competition in Air Transport Services.

The Steering Committee will further recall that the 3rd Meeting of the Joint COMESA, EAC and SADC Ministers responsible for Transport held in Harare, Zimbabwe, in November 2008 made the following milestone decisions:

- i) Adopted the Guidelines, Provisions and Procedures for the Implementation of Regulations For Competition In Air Transport Services within COMESA, EAC and SADC; and
- ii) Urged COMESA, EAC and SADC Secretariats to develop Action Plans to facilitate the implementation of Regulations for Competition in Air Transport Services within COMESA, EAC and SADC by December 2007.

The Steering Committee is invited to note that the 4th Meeting of the Tripartite Task Force of COMESA, EAC and SADC Chief Executive Officers (CEOs) held in Victoria Falls, Zimbabwe, in October 2007 recommended that the Joint Competition Authority (JCA), which was established under the Regulations For Competition In Air Transport Services within COMESA, EAC and SADC, be launched in 2008 and that SADC hosts the JCA Secretariat whilst COMESA assumes the Chairmanship of the JCA during the first term. The Meeting will recall that the said Meeting also recommended that COMESA and EAC adopt the Action Plan for Implementation of the YD adopted by SADC as part of the harmonization processes critical to regional integration efforts.

2.2. Status of Implementation of YD in SADC.

The YD Implementation Steering Committee is invited to note that:

- SADC Ministers responsible for Air Transport adopted the *Guidelines, Provisions and Procedures for the Implementation of Regulations for Competition in Air Transport Services* within COMESA, EAC and SADC at the Meeting held in Gaborone, Botswana, in October 2007;
- The Ministers' Meeting also approved the Joint YD Implementation Plan, at their meeting held in Gaborone, Botswana, in October, 2007, whose milestones entail *full implementation of YD by January 2009*, ahead of the Federation of International Football Association (-FIFA) World Cup Soccer Tournaments to be held in South Africa in 2010, the Angola 2010 AFCON Cup and the 2011 Zambia All Africa Games;
- The Ministers further directed the Secretariat to institute a study, aimed at, inter alia, investigating and analyzing the Impact of the Implementation of the YD, in order to inform its Member States, on the proactive implications and measures to be adopted to facilitate YD Implementation; and

- Preparatory work for the Study is at an advanced stage.

2.3. Status and Institutional Arrangements for Implementation of YD in AU

The Steering Committee is invited to note that COMESA, EAC and SADC Secretariats are working together with other RECs, African Civil Aviation Commission (AFCAC) and the AU to put in place the legal and institutional framework to facilitate full implementation of the YD.

The meeting will recall that the 3rd AU Conference of Ministers responsible for Air Transport which was held in Addis Ababa, Ethiopia, in May 2007 and decided to entrust the functions of the Executing Agency (EA) to the African Civil Aviation Commission (AFCAC) in conformity with Article 9 of the YD which provides for the establishment of the EA.

The Steering Committee is reminded that, at its 19th Plenary Meeting held in Nairobi, Kenya, in July 2007, AFCAC resolved to review its constitution and policy organ structures to enable it to fully undertake its new additional role as the Executing Agency of the YD.

The Steering Committee is invited to note that:

- A new constitution incorporating the new mandate of AFCAC; derived from the Abuja Treaty, the YD and the decision of the Ministerial Meeting of the 3rd AU Conference of Ministers responsible for Air Transport; has been drafted;
- The proposed new structure includes an Executing Agency Board whose membership comprises AU, RECs, AfDB, ECA, AFRAA and the AFCAC Bureau Members;
- An Africa-wide conference, shall be convened by the AU to facilitate deliberations on the proposed Revised AFCAC Constitution and policy organs structure; and
- It is envisaged that COMESA, EAC and SADC would be represented at the AFCAC Executing Agency Board by the JCA.

2.4. Way Forward on Implementation of YD in the Eastern and Southern African (ESA) Region.

The YD Implementation Steering Committee is invited to note that:

- Pursuant to the ongoing developments with regard to the implementation of the YD, it is important that institutional framework for the YD Implementation in the ESA Region be completed;
- The launching and operationalisation of the JCA in 2008; in line with the *Action Plan* adopted by the three RECs at the 4th Meeting of the Tripartite Task Force of COMESA, EAC and SADC CEOs held in Victoria Falls, Zimbabwe, in October 2007 at which it was recommended that the JCA,

established under the Regulations for Competition in Air Transport Services within ESA be launched; is critical to the achievement of YD implementation.

In this regard the Steering Committee is invited to note that:

- i) Each of the three RECs, shall have, during the first quarter of the year, 2008, nominated two of their Member States, to the JCA;
- ii) The chairing REC, COMESA, shall nominate the Chair of the JCA;
- iii) SADC shall put in place the administrative structure for the JCA Secretariat; and
- iv) The Joint Meeting of COMESA, EAC and SADC Ministers responsible for air transport shall approve the JCA Members and recommend the launching of the JCA at the COMESA/ EAC/SADC Tripartite Summit scheduled for October, 2008.

2.5. Institutional Arrangements for Implementation of YD in SADC

The Steering Committee will recall that the Ad Hoc Civil Aviation Committee (CAC) Meeting held in Victoria Falls, Zimbabwe, on 29 January 2008, among other things, appointed Members to constitute the *SADC YD Implementation Steering Committee* which are: **Angola, South Africa and Zimbabwe** with **AASA** as an ex-officio member. **The Secretariat** facilitates the meetings.

Two Member States were elected to the COMESA/EAC/SADC *JCA* for YD implementation within the tripartite framework to work with AU and AFCAC on the continental implementation framework. The two Member States are **South Africa** and **Zimbabwe**.

The Steering Committee will also recall that the CAC Meeting elected five Member States to constitute the *SADC Regional Competition Authority (RCA)*, and these are **Lesotho, Namibia, South Africa, Zambia** and **Zimbabwe**.

2.6. Review of implementation of the Yamoussoukro Decision in SADC

The Steering Committee is invited to consider and deliberate on the level and extent of application of the following guidelines for compliance with YD implementation in SADC and recommend the way forward to the CAC:

- The completion of constitutional requirements for implementation, where applicable;
- The status of national and regional institutional mechanisms to support implementation;
- The multiple designation of airlines between all city pairs in the region;
- The harmonization of national and/ or regional air transport policies;
- The status of compliance with International Civil Aviation Organisation (ICAO) Standards and Recommended Practices (SARPs),
- The extent of liberalization of passenger and cargo services;

- Verify conformity with the eligibility criteria in the YD;
- Frequencies between any two State Parties;
- Exchange of fifth freedom traffic rights; and
- Non-approval of tariffs by Governments, taking into consideration applicable competition rules.
- Cooperation among airlines to facilitate code sharing and interlining Agreements;
- Compliance of airlines with existing norms against anti-competitive practices;
- Role of SADC YD Implementation Steering Committee;
- SADC assessment of level and extent of implementation of liberalization measures;
- Impact of Liberalization in terms of traffic volume, flight connectivity, fares/rates, reliability of services and licensing of new carriers;
- Difficulties being encountered and impediments to implementation; and
- Procedures required to implement open skies between two States.

In considering the status of implementation of the YD in SADC the Steering Committee will recall that the primary objective of the YD, which came into force on 12 August, 2002, is to pool resources among African States and their airlines with a view to enhancing:

i) The operation of air services by African airlines by implementation of liberalization measures through;

- Multi-designation of air carriers
- Deregulation of frequencies
- Deregulation of capacity and tariffs
- Removal of restrictions on the operation of traffic rights (termed as Freedoms of the Air)
- Establishing a multilateral air services regulatory framework
- Effectively replacing the system of Bilateral Air Service Agreements (BASA) as a legal basis for the exchange of traffic rights.

ii) The creation of a multilateral executive agency geared to;

- Supervise and enforce the liberalization process,
- Act as a regulatory agency,
- Placing responsibility on the RECs to implement the principles of the YD;

iii) The cooperation between and integration of airlines, to be achieved in three phases;

a) Technical cooperation in the fields of;

- Equipment maintenance,
- Fleet planning,

- Joint purchase activities;
- b) Management of airlines;
- c) The joint undertaking of other facilities such as;
- Group purchase of equipment,
 - Establishment of an African aircraft leasing company,
 - Adopting common positions on noise restrictions,
 - Enforcement of all of the above measures.

DISCUSSION

2.7. Road Map for YD Implementation within the COMESA/EAC/SADC

2.7.1 The Steering Committee will recall that the Ministers approved the following Road Map for YD Implementation Plan:

- i) January 2008, CAC convenes an Ad-hoc Meeting and appointed *YD Implementation Steering Committee* members which are Angola, South Africa, Zambia and Zimbabwe and nominated Member States to the *Joint Competition Authority*; these are: South Africa and Zimbabwe. AASA is an ex-officio member of the Steering Committee. The *Regional Competition Authority* has the following members; Lesotho, Mauritius, Namibia, South Africa and Zimbabwe.
- ii) May 2008, the Civil Aviation Committee is expected to approve the proposed YD Implementation Framework;
- iii) July 2008, SADC Ministers responsible for Air Transport approve the composition of the JCA and the framework for YD Implementation within COMESA, EAC and SADC;
- iv) June 2008, Joint Meeting of COMESA, EAC and SADC Ministers responsible for Air Transport approves the implementation of the YD in the three sub-regions; and
- v) January, 2009, Effective Date for Implementation of YD within COMESA, EAC and SADC.

2.7.2 The Steering Committee is invited to:

- Recommend to the CAC, the amendment of relevant legislation to facilitate the migration of Member States from the current Bilateral Air Services Agreements to a Multi-lateral regime if the YD Implementation date of January 2009 is to be achieved.
- Recommend measures necessary for the achievement of the full implementation of the YD as indicated in the Road Map; and
- Recommend to the CAC the approval of the YD Implementation Framework.

2.7.3 The Steering Committee is further invited to note that:

- The Ministers responsible for Transport have acknowledged that the COMESA/EAC/SADC countries were not yet ready to

- implement horizontal bloc to bloc agreements on a multilateral basis as this needed to be preceded by full implementation of YD;
- In line with the decision of the AU Commission, all external relations agreements shall be negotiated collectively under the auspices of the AU and not with individual Member States;
 - Whilst COMESA/EAC/SADC recognized the decision of the European Court of Justice (ECJ) on non discrimination of carriers in respect of community designation, the concept could not be automatically implemented within the sub-regions as the current legal framework did not provide for its implementation in the three sub-regions;
 - It is necessary for the three sub-regions (COMESA, EAC and SADC) to undertake institutional and capacity building for national institutions and African carriers respectively, to prepare the continent for competition and full implementation of the proposed external aviation relations framework;
 - The proposed guidelines on aviation external relations seek to protect the African Aviation market and carriers and that these should constitute the basis for any negotiations to commence; and
 - The three RECs participate at every stage of consultation between AU and EC on the matter to ensure that the final framework takes on board the aspirations of the three RECs;

2.7.3.1 In light of the foregoing, the Steering Committee is invited to consider this matter and recommend the necessary steps which the CAC should adopt to assist States which have been invited to the European Commission to review air services agreements.

DISCUSSION

2.8 Terms of Reference for the YD Implementation Impact Study

The Steering Committee will recall that, the Ministers, in approving the YD Road Map at their meeting held in Gaborone on 5 October 2007, directed the SADC Secretariat to facilitate a Study on “An Assessment of the Potential Impact of the Implementation of the Yamoussoukro Decision on Open Skies Policy in the SADC Region”. To this end, SADC, in conjunction with Southern African Global Competitiveness Hub, through the Trade Facilitation and Capacity Building Project have signed a Memorandum of Understanding to provide technical assistance in assessing the potential impact of implementation of the Yamoussoukro Decision (YD) on open skies policy in the SADC Region.

The Terms of Reference are attached as Appendix 1