



WORKING PAPER

WORLDWIDE AIR TRANSPORT CONFERENCE (ATCONF)

SIXTH MEETING

Montréal, 18 to 22 March 2013

Agenda Item 2: Examination of key issues and related regulatory framework

Agenda Item 2.4: Fair competition

FAIR COMPETITION AND AFRICAN AIR TRANSPORT

(Presented by 54 Member States¹, Members of
the African Civil Aviation Commission (AFCAC))

EXECUTIVE SUMMARY

This working paper, which is presented by the 54 African States, highlights the Yamoussoukro Decision (YD), which is an African Air Transport liberalization policy and the competition regimes developed as excellent answers to the challenge of small and developing economies participating in air transport and contributing to the global market as of right.

The working paper describes the designation rules, the multilateral character of the YD and the eligibility criteria, which present a unique opportunity for global competition regulation and an answer to concerns about ownership.

Action: The Conference is invited to agree to the recommendations presented in paragraph 5.

References: ATConf/6 reference material is available at www.icao.int/meetings/atconf6.

1. INTRODUCTION

1.1 The Yamoussoukro Decision (YD) of 1999 establishes a perfect blend of opportunities. It enables African States to ensure commercial air transport within their territories and prevents any particular State to suffer from the negative impact of its relatively weaker strength in the industry. It prevents a return to protectionism.

¹ Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cap Verde, Central African Republic, Chad, Comoros, Congo, Cote d'Ivoire, Democratic Republic of the Congo, Djibouti, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Libyan Arab Jamahiriya, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, Southern Sudan, Sudan, Swaziland, Togo, Tunisia, Uganda, United Republic of Tanzania, Zambia, Zimbabwe.

1.2 The African experiment if logically carried through could impact on how air transport is perceived on the continent and how African designations under Air Service Agreements (ASAs) should be received.

2. SAFEGUARDS

2.1 The typical argument for the delayed implementation of the Yamoussoukro Decision had been that: a) either stronger African carriers were likely to swallow the leaner 'national carriers'; b) the size of the national market of some countries could not sustain bigger carriers with its attendant cost in expansion of airport and air navigation infrastructure; and c) the likelihood of undesirable passengers from other countries overrunning the economies of other States or other such logical socio-political arguments.

2.2 The same arguments are heard in the current debate of foreign carriers dominating the African market and operating 6th freedom rights among others.

2.3 Undoubtedly these arguments can be justified and always remain the basis for the call for safeguard measures.

2.4 An added consideration is whether or not a particular State or economic bloc has a functioning competition law regime prior to liberalisation. It needs to be said that less than 20 per cent of African countries have general competition law, thereby necessitating the clamour for region-wide competition regulation as a sine qua non to total liberalisation under the YD.

2.5 If considered as a tool to encourage normal operation and only to step in to prevent abuses, one will then see competition regulation not as a measure of providing a socio-politically fair playing field but rather as a measure to ensure that operators engage in normal commercial transactions under normal rules.

2.6 While Africa's unique experiment in developing a special set of air transport competition rules can be seen as the need for safeguards or an attempt at levelling the playing field in the transition from protectionist politico-commercial operations to a free and liberalised market under the YD, the current measures on the continent could however lead to an innovative solution of the quest for a fair balance between commercial air transport operations and the obligation of each state to protect and enhance its economy.

3. THE STATUS OF THE AFRICAN EXPERIMENT

3.1 Following a 10 year delay in globally implementing measures required under the YD, a study has been conducted which, provides for a number of solutions that the developing continent of Africa can utilise to:

- a) ensure the achievement of a liberalised African air transport market;
- b) secure a fair and balanced intra-continental and intra-regional air transport operation;
and

- c) effectively manage any perceived uncompetitive practices, abuse of dominant position and other forms of economic imbalances resulting from African and non-African air transport operators.

3.2 The on-going study commissioned by the African Union under the management and for the benefit of the African Civil Aviation Commission (AFCAC) seeks to:

- a) empower AFCAC as an Executing Agency to manage and supervise the air transport liberalisation in Africa;
- b) liaise with the regional YD authorities to ensure a seamless implementation of the YD, including implementing the harmonised competition regime of the regional and continental levels;
- c) enable AFCAC to impose sanctions when needed; and
- d) enable AFCAC to apply various dispute resolution measures, including applying to court when needed.

3.3 The study proposed draft harmonised competition rules to be applied to African and non-African air transport services providers including but not limited to airlines, airport operators and air navigation service providers. The competition rules harmonise the rules that have been existing in the various regional blocs of Africa.

3.4 The proposed draft regulates interstate, intra-regional(intra-continental operations as well as inter regional (inter-continental) operations, and further provides for a role for the Executing Agency and the regional YD Authorities (RYAs) in the regulation of competition. As stated, it does not limit itself to African eligible carriers but also applies to non-African airlines and other service providers providing services in one or more African countries.

3.5 It is anticipated that the current wave of activities at the continental and regional levels will soon see the implementation of measures to ensure effective liberalisation and the monitoring of a competitive environment using the tools offered by the harmonised competition regime.

3.6 Thus, through the implementation of the concept of a public good and the harmonised competition rules at the regional and continental levels, the necessary atmosphere is created for traffic growth within regions, within the continent and beyond the continent.

4. THE FUTURE OF THE AFRICAN EXPERIMENT ON AIR TRANSPORT COMPETITION

4.1 The harmonised competition rules empower the Executing Agency, and the regional RYAs to enforce competition rules against third party airlines which could include airlines from within Africa as well as airlines from other continents. This power accorded to the RYAs and the Executing Agency enables the regulator to critically review the practices of undertakings on a case-by-case basis to determine whether or not any infringement of the rules has taken place and, in consequence, impose penalties as required.

4.2 The above measures and other measures serve initially to re-enforce on inter and intra-regional air transport as purely normal commercial business demanding the necessary safety and security regulation and no more.

4.3 The consequence of the African experiment, if carried to a logical conclusion, building on the strengths of a relatively poor base, to develop the needed infrastructure for the continent could be the acceptance of 'the African airline' in designation provisions of BASAs agreed by African countries and the world at large.

4.4 Importantly, the psychological safeguards are provided through the synergies created.

5. **RECOMMENDATIONS**

5.1 The Conference is invited to consider the African experiment as a basis for global regulation of competition and safeguards.

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