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WORKING PAPER

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Agenda Item 2: Examination of key issues and related regulatory framework
Agenda Item 2.1 : Market access

AFRICA'S STRATEGY FOR MARKET ACCESS AND CATALYST FOR AIR TRANSPORT GROWTH

(Presented by 54 Member States[1], Members of the African Civil Aviation Commission (AFCAC))

EXECUTIVE SUMMARY	
This paper informs of Africa's strategy for the sustainability of air transport, through the harmonisation of the market access regulatory framework. Based on the provisions of a global framework that should be developed by ICAO as derived from Africa's Yamoussoukro Decision (YD).	
Action: The Conference is invited to agree to the recommendation presented in paragraph 5.	
References:	ATConf/6 reference material is available at www.icao.int/meetings/atconf6.

1. INTRODUCTION

1.1 As envisaged in the African treaty called the Abuja Treaty, regional integration as a strategy for achieving sustainable economic growth remains the way forward for achieving an African Economic Community, cognizant of the benefits of integration including enhanced movement of persons, goods, services, capital and economic growth.

1.2 Within this strategy, air transport, and in particular air transport market access has a significant catalytic role as an engine for inter- and intra-regional integration through enabling increased accessibility between economic hubs, reduction of travel time and cost, and providing connectivity between several city-pairs and countries which are landlocked, or do not have national carriers.

[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

1.3 According to the African Airlines Association, air transport creates directly and indirectly about 470,000 jobs across various sectors and generates revenue of about USD 1.7 billion in Africa (2008). African's share of the global aviation market stands at about 5 per cent. Nevertheless, the African aviation industry, during the recent period of world economic crisis, enjoyed a significant growth rate (5 to 7 per cent) compared to other regions of the world. Most significant to this paper is the volume of intra-African traffic, roughly 30 per cent of the total African air transport traffic, 9.8 million passengers in 2008 and projected to surpass 50 million by 2028 (ICAO Doc 9938).

1.4 Whilst recognising the basic principle of international aviation, i.e. the complete and exclusive sovereignty of every State over the airspace above its territory, as reconfirmed in the Convention on International Civil Aviation in 1944 (Article 6), the need to benefit from the catalytic impact of air transport calls for a common aviation space as envisaged in the provisions of the Yamoussoukro Decision (YD) regarding market access.

1.5 Market access in terms of the granting of traffic rights, in particular fifth freedom, is directly inter-related with other provisions to enable the exploitation of such rights including any restrictions on capacity and frequency, tariff, designation and authorization, ownership and effective control restrictions, safety and security compliance exigencies as well as doing business provisions. Market access can also be gained via foreign investment in the air carrier of a State, in particular investment by a foreign air carrier; a subject reserved in a separate paper focusing on ownership and effective control.

2. THE YAMOUSSOUKRO DECISION (YD) — FRAMEWORK FOR MARKET ACCESS

2.1 The YD deals with the liberalization of air transport market access in Africa. Its main objectives are to: a) facilitate inter-African connectivity; and b) develop an inter-African network. Its provisions include removal of obstacles, such as restrictions on traffic rights including fifth freedom rights, restrictions and limitations on capacity and frequency between city-pairs, and lack of multiple designation possibilities for competing airlines. Compared to the standard bilateral Air Services Agreement (ASA), the YD gives eligible airlines of all African States fair and equal opportunities to compete based on a common set of harmonized rules and eligibility criteria.

2.2 Africa's air transport market access strategic framework hinges on the 1999 Yamoussoukro Decision, creating a liberalized intra-African aviation space. The main thrust of the Decision is to liberalize gradually scheduled and non-scheduled intra-African air transport services in order to facilitate access to air transport markets in Africa. This decision entered into force on 12 August 2000 and is supposed to have been applicable to State parties without restrictions since 12 August 2002, given that the expiry date of the two year transition period which was instituted from its entry into force has elapsed.

2.3 The YD is an instrument placed under the umbrella and scrutiny of the Abuja Treaty and as a treaty obligation, the Decision is a legally binding instrument, creating rights and imposing obligations on Member States that are currently parties to the Decision. These obligations override national rules including pre-existing or future agreements, judged to be incompatible with the provisions of the YD.

2.4 With regard to designation and authorization, Article 6 of the Decision provides the right of States to designate in writing at least one airline to operate intra-African air transport services, the right to designate an eligible airline from another State to operate air services on its behalf, and the right to designate an eligible African multinational airline in which it is a stakeholder. Should a State Party be convinced that a designated airline does not meet the eligibility criteria (as in Article 6.9), it may refuse authorization.

2.5 States retain their sovereign rights on the granting of traffic rights, in accordance with international treaties, including the International Air Transport Agreement, whilst being required to apply the provisions of the YD for intra-African market ASAs. It is also required of States to ensure that designated carriers meet the eligibility criteria and maintain responsibility for safety and security oversight over their designated airlines.

3. MAIN CHALLENGES TO OPERATIONALIZATION OF THE YAMOUSSOUKRO DECISION

3.1 A safe, secure and efficient aviation industry is vital for ensuring a sustainable aviation industry in Africa. Therefore, safety and security concerns in Africa cannot be removed from the desire to have enhanced market access as provided for in the YD. The challenge here is in having adequate safety and security oversight, which is the responsibility of each State as well as Regional Safety Oversight Organisations (RSOOs) (ATConf/6-WP/7 refers), where they do exist.

3.2 Most current bilateral negotiations are still cast in the mindset of the cold war diplomacy. Despite the collective will to liberalize market access in Africa as reflected in the spirit of various alliances and codesharing agreements, in practice the granting of rights is still crafted around outdated policies based on the old Bermuda type agreement with emphasis on bilateralism, reciprocity and protectionism. A continental study on liberalization of air transport concludes that bilateral agreements are preferred by most States, and are an obstacle rather than a catalyst to the liberalization process.

3.3 To grant authorization in practice based on the provisions for bilateral exchange among African States as an example would require 1,431 ASAs to be signed between 54 States and 2,862 authorizations to be approved assuming each State designates one airline only. Whilst most States do apply the YD, rights are granted on a selective basis, influenced by the need for reciprocity and in some cases the request for royalties to be paid. Some airlines have been using sixth freedom rights operations to overcome fifth freedom market access restrictions, as well as to foster the development of traffic to/from their base hub location. However, sixth freedom rights traffic is a major competitive challenge for African air carriers vis-à-vis non-African carriers with respect to non-intra-African, intercontinental and long haul traffic. Intercontinental capacity to/from Africa offered by African carriers stands at 36.4 per cent compared to 63.6 per cent seat capacity offered by non-African carriers.

3.4 Other challenges are directly and indirectly related to non-physical barriers to market access, including visa requirements, custom restrictions, constraints to ground handling, slot allocation, etc. These issues are discussed separately elsewhere. The degrees of market access desired without the elimination of such non-physical barriers remains a hindrance to the sustainable development of air transport services in Africa and the world at large.

4. CONCLUSIONS

4.1 Despite the above cited challenges, where air transport liberalization has been applied, whether in full or partially, there have been significant benefits, including improved intra-African city-pairing, connectivity and growth in passenger traffic, particularly within States with a high level of tourism activity. Some established African carriers have expanded their network significantly around their hubs (in particular hubs in Johannesburg, Nairobi, Casablanca, Cairo and Addis Ababa), providing for greater connectivity of the continent. However gaps in hub development in the African region, due to the lack of a dominant African air carrier, enhance the need for a global market mechanism, which should be guided by ICAO.

4.2 There is also strong evidence that fifth freedom rights, where granted on a reciprocal basis, along with the creation of new airlines and multiple designations on some routes, have increased consumer choice of flight options but have had limited impact on the high levels of airfares and airline operating costs in Africa.

4.3 There is a need to move from the current status quo of partial liberalization, dominated by bilateralism, towards multilateralism, which is hinged on the common interest and the interest of the consumers. It would require harmonization of fragmented regulations, and detailed ICAO guidance material. Any future guidance material by ICAO should take into consideration regional liberalized ASA models or, as in the case of Africa, models developed based on the YD and fully YD compliant.

4.4 The eligibility criteria are an important link to ensuring that designated carriers on designated routes meet the minimum standards in safety and security as well as economic fitness requirements. Guidance material on determining eligibility is necessary, expanding on the criteria already specified in existing safety, security and fair competition guidance material.

4.5 States would need assistance for the revision of existing ASAs and establishment of future ASAs expediently, in order to comply with the provisions of the YD. Given a common template, a specific ICAO Air Service Negotiation Conference (ICAN) for Africa is requested to enable African States to re-align their existing bilaterals with the provisions of the YD. Indeed, the more YD compliant ASAs are established, the greater the level of market access afforded in Africa. It will also provide an opportunity for African States to revise their ASAs with non-African countries, in particular ASAs that have provisions that may be considered non-compatible with the YD.

5. RECOMMENDATION

5.1 The Conference is invited to agree that ICAO develop guidance material on the implementation of international liberalized models of ASAs as presented during this Sixth Worldwide Air Transport Conference.

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