



Market and Regulatory Developments in the African Aviation Industry in a Globalising Economy:

COMESA-EAC-SADC TRIPARTITE EXPERIENCE

Brief History of COMESA.EAC.SADC

- COMESA established in 1994 in Kampala – FTA 2000, CU in 2009
- SADC established in 1992 Windhoek Treaty – FTA 1n 2008 and CU in 2010
- EAC established in 2000 - CU in 2006



COMESA.EAC.SADC IN CONTINENTAL CONTEXT

- COMESA/EAC/SADC established under the auspices of Lagos Plan of Action and Final Act of Lagos of April 1980 and the Treaty establishing the African Economic Community (AEC) signed at Abuja, on 3rd June, 1991
- Regional Economic Communities (RECs) are building Blocks of the African Economic Community
- COMESA/EAC/SADC Regional Integration Programs in line with Abuja Treaty(ratified1994)



AIR TRANSPORT LIBERALISATION PROGRAMS OF AFRICAN UNION

- At Continental level the Air Transport Liberalization Program is based on:
 - AU/AEC – Abuja Treaty(1994 - Articles:61 & 88)
 - Yamoussoukro Declaration (1988 reviewed in 1994); and
 - Yamoussoukro Decision (YD) of 2000



YAMOUSSOUKRO DECISION

- Yamoussoukro Decision based on Abuja Treaty and came into force 12 August 2000 and its primary objective is to pool resources among African States and their airlines with a view to enhancing:
 - Operation of air services by African airlines through multi-designation of air carriers, deregulation of frequencies, capacity and tariffs, removal of restrictions on traffic rights including 5th Freedom
 - Creation of a multilateral Executive Agency geared to supervise and enforce liberalization whilst acting as regulatory agency and at same time placing responsibility on RECs to implement the principles of YD



YAMOUSSOUKRO DECISION cont..

➤ and:

- Co-operation between and integration of airlines, to be achieved in three phases
- Technical co-operation in the field of maintenance, fleet planning and joint purchase activities
- Management of airlines
- Joint undertaking of other facilities (group purchase of equipment and the establishment of an African leasing company, studies, adoption of common positions on noise restrictions & enforcement of the above measures)



Institutional and Implementation Structures of the YD

- Decision making:
 - AU Summit of Heads of State and Government
 - Sub-Committee on Transport and Communications – Ministers responsible for transport and communications
 - Monitoring Body - AU, RECs, AFCAC, AFRAA, UNECA
 - Executing Agency – AFCAC entrusted by AU Ministers
- Legal Instruments: -?(still outstanding)
 - Regulations & Procedures for the establishment of the Executing Agency - supervise, enforce and regulate liberalization – review of AFCAC constitution and structures
 - Competition Regulations – leveling the playing field
 - Common position and guidelines for external relations with third countries or group of countries –e.g. EC



AIR TRANSPORT LIBERALISATION PROGRAMS OF COMESA/EAC/SADC

- At Regional level the Air Transport Liberalization Program is based on:
 - COMESA, EAC and SADC Treaties (Articles:87, 92 and 21 Respectively)
 - Decisions of COMESA/EAC/SADC Authority/Summit and Council decisions
 - Yamoussoukro Decision; and
 - Legal Notice No. 2 of 1999 and Protocol on Transport and Communications – ATRB, AT Sub Comte, CAC
 - Joint COMESA.EAC.SADC Competition Regulations
 - Guidelines,Provisions and Procedures for Implementing the Competition Regulations



CO-OPERATION IN AIR TRANSPORT LIBERALISATION

- Need for Competition Regulations envisaged/realized and embarked upon in 2001 by all three RECs
- Joint COMESA/EAC/SADC meeting at Matola, Maputo in 2001 agreed on co-operation in developing Competition regulations and implementation of YD for their integrated market
- Work commenced on the harmonization of competition Regulations that had been developed by the three institutions
- Joint stakeholders meeting of COMESA/EAC/SADC held in August 2002 to review unified Competition Regulations for COMESA/EAC/SADC
- Joint COMESA/EAC/SADC meeting of Ministers of Transport at Pretoria in September 2002 adopted common Regulations for Competition of Air Transport Services within COMESA/EAC/SADC
- Unified Competition adoption process: 9/2004 - SADC, 11/2004 - EAC and 12/2004 – COMESA

Regulations for Competition in Air Transport Services within COMESA/EAC/SADC

- Recognize necessity to promote free and fair competition between airlines and to safeguard the interests of consumers in Africa and sub-region and note that practices which affect air transport may have a substantial effect on trade between Member States
- Provisions of the Competition Regulations:
 - Chapter One – deals with formal matters: such as definitions of concerned practices, dominant position, excessive capacity, excessively high/low price, market, subsidy and undertaking; geographical scope of the regulations
 - Chapter Two – deals with anti-competitive practices, agreements and decisions and exemptions; abuse of dominant positions, non-discrimination in national legislations
 - Chapter Three- deals with enforcement, investigation, negotiation, arbitration and judicial review; establishment and operation of JCA (application and enforcement of competition regulations, monitoring implementation of YD and implementation of measures to increase transparency, public awareness and consumer protection); dispute settlement procedures (in line with provisions contained in Appendix 2 of YD)
 - Many of these Articles needed additional legal instruments in the form of Implementing provisions, guidelines, rules of procedure and standard forms for the application of the Regulations by the JCA

Guidelines, Implementing Provisions and Rules of Procedure; External Relations and Consumer Protection

- COMESA.EAC.SADC through a consultative process jointly developed the guidelines- developing TORs, engaging Consultant Leiden University to carry out Study in 2005
- 3 Joint COMESA/EAC/SADC aviation and legal experts meetings convened in 2006 (Lusaka, Johannesburg & Victoria Falls)
- 3rd Joint meeting of COMESA/EAC/SADC Ministers of transport in Harare, November 2006 which adopted the guidelines, provisions and procedures for the implementation of the Competition regulations & JCA
- Policy Organs of COMESA, EAC and SADC then adopted the Guidelines in 2007
- What was remaining was to launch the JCA leading to full implementation of the YD within COMESA.EAC.SADC



COMESA.EAC.SADC. TRIPARTITE

- Need for establishing a legal and institutional framework for the 3 RECs:
 - 3 RECs had common/multiple memberships
 - 3 RECs were moving into deeper integration,- FTA, Customs Union
 - There need to harmonise and develop/implement joint programs
- IN 2005 RECS established a Tripartite Task Force of the CEOs of the Secretariats to spearhead the harmonisation program as well as the process for establishing an Institutional framework for cooperation
- This culminated in the COMESA.EAC.SADC Tripartite Summit of Heads of State and Government on 20 October 2008 in Kampala, Uganda that established an institutional framework comprising the Tripartite Summit, Council and Sectoral Ministers Meetings all supported through an MOU signed by the Chairpersons of the 3 RECs.
- The Tripartite Summit among others decided that:
 - 3 RECs be merged into one REC and that a road map be developed
 - A Single FTA be established and study on Single FTA be completed in 6 months – this will be followed by a CU
- In the area of Air Transport the Tripartite Launched the JCA comprising 7 Members (COMESA is current Chair and SADC is Secretariat) thereby completing the legal and institutional framework for the full implementation of the YD in COMESA.EAC.SADC

WHAT ARE THE NEXT STEPS for COMESA. EAC . SADC

- Need to mobilize resources for JCA for institutional capacity building and technical assistance
- Need for awareness campaign in MS in order to fast track implementation of air transport liberalization and the YD
- Need to expand cooperation between COMESA/EAC/SADC and other RECs and the AU



CHALLENGES and WAY FORWARD FOR YD IMPLEMENTATION at Continental Level

- Need to complete the YD institutional and legal framework:
 - Adoption of common Competition Regulations; and
 - Adoption of Guidelines; Provisions and Procedures for Implementing Provisions the Competition Regulations, and the
 - Executing Agency – need to complete the Review of the AFCAC Constitution and restructuring AFCAC institutions
- Need to agree on a permanent framework for External Relations – Interim Negotiating Guidelines to be institutionalized into the YD
- Need to agree on YD implementation timetable and for awareness campaign in RECs and MS for political commitment to full implementation of YD
- Need to understand EU Aviation Policy and Proposed Horizontal and Block to Block Agreements and their implications
- How YD can benefit from EU Experience with the EU Aviation Policy including cooperation between EU and Africa





Thank You for Your Attention

Amos Marawa

amarawa@comesa.int

www.comesa.int