

BACKGROUND TO EXPERIENCES OF LIBERALIZATION IN AFRICA

(Presented by Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cap Verde, Central African Republic, Chad, Comoros, Congo, Cote d'Ivoire, Democratic Republic of 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, Sudan, Swaziland, Togo, Tunisia, Uganda, United Republic of Tanzania, Zambia, Zimbabwe)

1. INTRODUCTION

1.1 Africa began its experiences in the practice of Air Services liberalization in 1988 with the Yamoussoukro Ministerial Declaration. The Declaration provides for the integration of African airlines; flexibility in the granting of 5th Freedom; improvement of airline management; financing of airline activities; product distribution system; aircraft noise and monitoring mechanisms.

1.2 In order to speed up the implementation of the Declaration, African Ministers responsible for civil aviation adopted in Mauritius in 1994, a series of measures including the relaxation of the granting of access to 5th Freedom. These measures helped to improve the African connections quite modestly and to facilitate the growth of the African airline industry.

1.3 In 1999, the African Ministers meeting for the second time in Yamoussoukro, took the decision to liberalize access to air transport markets in Africa. The Yamoussoukro Decision was later adopted in July 2000 by the Assembly of Heads of State and Government of the organization of African Unity/African Union and thus gave the said Decision a legal dimension.

1.4 The total implementation of the Decision tends to gradually eliminate all non-physical barriers and restrictions to:

- a) the granting of 5th Freedom Traffic Rights;
- b) African airlines aircraft capacity;
- c) tariff regulation;
- d) designation by states of operating tools; and

¹ French version provided by African States.

- e) the operation of cargo flights.

2. **DISCUSSION**

2.1 In compliance with Conclusion 2.2.6 g) of ATConf/4, which requested that a new dispute settlement mechanism be developed by including how to refer to it and the entitlement to proceed with a claim, a new mechanism was proposed by ICAO and a list of high level air transport experts to act as mediators or take part in a dispute resolution was made available.

2.2 Under Article 10 of the Abuja Treaty establishing the African Economic Community, the Decision entered into force a month after its signature in July 2000, namely from 12 August 2000 with a two-year transitional period (which ended on 12 August 2002) provided for in the Decision (Article 10) for the gradual granting of 5th freedom traffic rights.

2.3 In accordance with its Article 2, the Decision has precedence over all bilateral and multilateral air transport agreements that are not in line with it.

3. **AFRICAN EXPERIENCES IN THE PRACTICE OF LIBERALIZATION OR IN THE IMPLEMENTATION OF THE YAMOUSOUKRO DECISION RELATING TO THE LIBERALIZATION OF ACCESS TO AFRICAN AIR TRANSPORT MARKETS**

3.1 The lessons learnt from the implementation of the Yamoussoukro Decision since its adoption in November 1999 by the African Ministers responsible for civil aviation and by the African Heads of States in July 2000, related to the following.

3.2 **Impacts**

3.2.1 The impacts below have been observed on routes where liberalization has been practised.

- a) New lines have been provided;
- b) Frequencies have increased among African States, rendering a bit more fluid the movement of people and goods;
- c) Consumers have several frequencies and multiple tariff choices. In some cases, tariffs dropped by more than 30%;
- d) Air traffic and aircraft movements have increased on some lines;
- e) Incomes of airport authorities, airlines and airline agencies are beginning to improve;
- f) Competition has been introduced on lines, and this has led to the improvement of the quality of services and the introduction of several tariff ranges;
- g) The private sector has begun to show interest in the air transport sector in Africa through participation in the capital and/or establishment of new airlines;

- h) Airline cooperation agreements are under negotiation in several subregions;
- i) Airlines that are unable to adapt themselves to the liberalized environment are in the process of restructuring and/or reorganizing their services. Some have plans to enter into alliance agreements with African airlines;
- j) The partners have given their support to the air transport liberalization process in Africa. Indeed, the World Bank and the European Union are in the process of assisting the subregional economic communities in managing the liberalization and strengthening their institutional capacities;
- k) New jobs have been created;
- l) Some airlines operating below capacity are in danger of disappearance because they are no longer able to cope with the competition; and
- m) Some non-profitable airlines have been abandoned by the regular airlines.

3.3 Issues requiring closer attention towards a complete success of the liberalization policy

3.3.1 Liberalization pace

3.3.1.1 The level of air services development in the various African countries has led to the adoption of a gradual liberalization aimed at achieving total liberalization under a very specific timetable workable at the global level. Indeed, the African markets are not solidified, organized, mature enough and have not attained the same level of development comparable to that of the European, American, Asian and other markets. The introduction of total liberalization between Africa and the other regions of the World will also necessitate a better planning. Africa will need to ensure that some provisions have been taken into account before accepting all the liberalization principles. Africa must also study the possibility of forming a grouping in the face of the new policies, because African countries cannot, individually, cope with the effects of liberalization and as a result the principle of equal operation, such as stipulated in the Chicago Convention, will be compromised. The European countries have already taken a step in this direction through the European Union. The European Union Decision on the "Open Skies" policies is significant in this regard.

3.3.2 Slot Allocation and Difficulty of access to markets at the global level.

3.3.2.1 It was pointed out that visa regulations in some African countries create imbalance on the liberalized air transport markets. A general policy as well as rules or codes of conduct on the grant of visas is necessary for ensuring equal treatment for operators. The visa problem is not a matter for the aeronautical authorities but it is part of facilitation.

3.3.2.2 In Africa, in spite of the disappearance of some airlines, the number of movements from airports has increased following the implementation of the Yamoussoukro Decision and other liberalization policies.

3.3.2.3 However, African airports are not saturated and the situation has led foreign airlines to occupy the existing slots. On the other hand, time slots are becoming increasingly difficult to obtain at international airports outside the African continent, hence the delay in processing new applications to operate. In some cases,

the African airlines are obliged to hand over passengers to foreign airlines. African operators are therefore faced with the problem of market access at the global level.

3.3.3 Dominant position: Interests of medium sized airlines and need for partnership agreement.

3.3.3.1 On several liberalized African markets, it is noted that some airlines tend to resort to all sorts of practices to obtain dominant positions to the detriment of the interests of users and airlines that had had a good performance before the entry into force of the Yamoussoukro Decision. The well-organized companies played on their technical, financial and technological advantages to control the markets and in this way sought to reduce the activities of other airlines. In a case where airlines with the necessary resources did not want to eject the medium-sized airlines from the markets, alliances, cooperations or partnership agreements were entered into. In some cases, the medium sized airlines were transformed into feeder airlines. Other airlines had the support of their partners. The same situation can be found on routes between Africa and the other parts of the World. Consequently, African airlines are faced with competition from the major foreign airlines not only on African markets but also on international markets.

3.4 The franchising alliances and agreements that promote liberalization have helped to open the African markets to all foreign airlines.

3.5 In order to prevent the abovementioned situation, it is necessary that the practice of trans-continental liberalization be accompanied by the adoption of a model agreement, code of conduct and/or memorandum guaranteeing the operations of concerned airlines. Partnership clauses could be envisaged in the model agreements governing the liberalization.

3.5.1 Financing of air transport infrastructure and safety

3.5.1.1 African liberalization has promoted the introduction of new operators on the market and this has called for the renewal, expansion and improvement of maintenance activities as well as the building of new infrastructure. It has also created the need to strictly abide by the ICAO air safety standards. But major inadequacies were noted during the audit of ICAO started within the framework of the safety oversight. Thus, it is necessary to take into account the financial implications of airline liberalization especially in a continent where civil aviation does not occupy a dominant position because of the diverse needs.

3.5.2 Rules of Competition

3.5.2.1 The provision in the Yamoussoukro Decision relating to competition rules was deemed inadequate because that provision in the said decision does not prohibit malpractices by major airlines on the markets. This situation has undermined the credibility of the liberalization policy and has led to fears and mistrust among airlines that are in poor financial, technical and operational situation. To remedy the situation, some African subregions have developed rules of competition. In order to avoid the creation of subregional and regional blocks, it is necessary to ensure that competition rules are laid down and implemented at worldwide level.

3.5.3 Establishment of regulation and dispute settlement

3.5.3.1 In order to regulate the liberalization process and ensure uniform implementation of the provisions of the model liberalization agreements, the African Ministers felt it necessary to establish an Executive Monitoring Body whose main task would be to ensure the uniform implementation of the provisions governing the use of the liberalized African air transport markets. Although that organ is not yet functional, the need for

it is being increasingly felt in the face of the different interpretations and difficulties in the granting of new operational licenses.

3.5.3.2 Like any commercial activity, the liberalization will lead to disagreements and disputes that would need to be settled. The current text appearing in the bilateral agreements will no longer be relevant. Africa is thus envisaging the adoption of a text on conflict resolution and dispute settlement.

3.5.4 **User interests**

3.5.4.1 The Yamoussoukro Decision contains a provision on user interests. However, it is necessary for a summary document on user rights to be prepared. UEMOA (Union économique et monétaire de l'Afrique de l'Ouest) has taken some initiatives in this regard. A comprehensive text may be adopted at the Africa regional level.

4. **OPERATIONAL EXPERIENCES IN THE LIBERALIZATION POLICIES OF OTHER COUNTRIES**

4.1 European liberalization and American deregulation led to groupings within both airlines and institutional bodies. Liberalization and deregulation facilitated the creation of alliances and franchising operations. These policies also created major competition on international markets. African airlines are in a disadvantaged position on these competitive markets owing to their financial and technological constraints and high operating costs. The African markets are currently dominated by foreign airlines. It is estimated that over 70% of the African traffic is transported by foreign airlines.

4.2 European liberalization and American deregulation also reduced the opportunities available to Africans to operate some intra-European and intra-American lines. Both these foreign policies and the Yamoussoukro Decision promoted the use of intra-African air services by European and American airlines. Foreign airlines make huge profits from their operations in Africa. Theoretically, African airlines may for example enjoy the use of European services, but in practical terms, and bearing in mind the stiff competition, the African opportunities are unattainable.

4.3 The European Union "Open Skies" Decision could have some repercussions on Africa, especially with regard to rights already negotiated or under negotiation.

4.4 The continuous increase in aircraft movements in European and American airports gives African airlines little chance of beginning new operations because time slots are becoming increasingly scarce at major European and American airports.

5. **CONCLUSION**

5.1 Air transport liberalization is an essential tool for the development of air services and for the regional integration of countries and economies. It promotes cooperation among airlines as well as regional cooperation and economic development. However, it should be well regulated and governed by key principles. It should also be gradual and flexible so that all nations can take part, on an equal footing, and if possible, in partnership, in the development of international air transport. It must accept some inequalities linked to the maturity of markets, the level of technological development, trade and technical capabilities as well as know-how. Gradual liberalization based on a legal concept that introduces among others, the notions of frank partnership and mutual assistance; establishment of regional supervisory bodies for the liberalization process and

financing of the accompanying measures is necessary to ensure the complete success of the liberalization exercise. It is also necessary to avoid the creation of regional blocks in the field of air transport.

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