



**THE 8TH NAFISAT SUPERVISORY COMMITTEE MEETING
MAHE, SEYCHELLES, 25-26 MARCH 2013**

Agenda Item 7: Matters Arising

**7.3 Implementation of APIRG/18 Conclusions and Recommendations of relevance
to NAFISAT Network**

Sustainability of the NAFISAT Network

(Presented by the Secretariat)

SUMMARY

This working paper discusses the implementation of APIRG/18 Conclusion 18/27, taking into consideration the Memorandum of Understanding (MoU) between the NAFISAT States, Air Traffic and Navigation Services Company Limited (ATNS) and the International Air Transport Association (IATA).

References:

- NAFISAT Memorandum of Understanding
- APIRG/18 Meeting Report
- Manual on Air Navigation Services Economics

1. INTRODUCTION

1.1 In 2001, the NAFISAT States recognized that the lack or low reliability of aeronautical fixed service telecommunications network (AFTN) and air traffic services direct speech (ATS/DS) communications in the North Eastern part of the AFI Region and in the interface with adjoining regions constituted a major shortcoming and a main hindrance to the safety and efficiency of Air Transport Operations. To redress this major shortcoming, the Thirteenth Meeting of the AFI Planning and Implementation Regional Planning Group (APIRG/13) adopted its Conclusion 13/15, recommending the establishment of the North Eastern AFI VSAT Network (NAFISAT).

1.2 The objective assigned to the NAFISAT Network was to provide support for ATS communications between the participating States, including the following:

- Air Traffic Services Direct Speech (ATS/DS);
- Aeronautical Fixed Services (Aeronautical Fixed Telecommunications Network (AFTN), eventually offering a smooth migration support to the aeronautical telecommunication;

- network (ATN) applications (ATS Handling Message System (AHMS), ATS Inter-Facility Data Communications (AIDC));
- Computer-to-computer data exchange between ATS flight data processing systems (FDPS);
 - Operational meteorological data exchange;
 - Aeronautical administrative support;
 - ADS-B data exchange; and
 - Any other agreed aeronautical service.

2. DISCUSSION

NAFISAT Performance

2.1 ICAO and the APIRG had commended the signing by participating States of the Memorandum of Understanding (MoU) on the NAFISAT network in 2007, and noted that the implementation of this network had significantly contributed (and continue to contribute) to establishing a high performance telecommunication infrastructure, reducing the deficiencies affecting aeronautical fixed service, and improving air navigation safety in the AFI Region. Annual reviews which are being conducted by the NAFISAT Supervisory Committee report satisfactory performance of the network in most cases, in terms of carrier availability rates.

NAFISAT Sustainability

2.2 The APIRG/18 Meeting (March 2012) noted that the funding arrangements concluded between the participating States and the Network Provider to cover the cost of equipment, installation, maintenance, space segment and administration of the NAFISAT network would be terminated in 2015; and therefore called upon the participating States to establish administrative and funding arrangements in a timely manner in order to ensure that AFS requirements continue to be met (APIRG/18 Conclusion 18/27 refers). Articles 7 and 10 of the NAFISAT MoU contain provisions related to the applicable cost recovery and the terms and termination of this agreement.

2.3 Article 7 – *Cost Recovery, Paragraph 3* of the NAFISAT MoU provides that the period of cost recovery for each station shall be defined by the Supervisory Committee in agreement with the participating State concerned. At the end of the agreed cost recovery, the Network Provider shall transfer ownership of the equipment to the State. In accordance with its terms of reference, Paragraph 1.1, the Supervisory Committee is expected *to decide on the network concept including issues of ownership and control*. Article 7, *Paragraph 5* provides that the cost recovery mechanism will be defined in the bilateral agreement between the Network Provider and each State, taking into consideration that there is no duplicate charging related to NAFISAT to the international airspace users.

2.5 Article 10 – *Terms and Termination* provides that the MoU shall take effect on the date of its signature in respect of each Party and shall terminate in accordance with the terms and

conditions to be agreed upon bilaterally between the Network Provider and each participating State.

2.6 Notwithstanding their impact on the NAFISAT Network membership and cost recovery, the bilateral agreements between each State and the Network Provider are not transparent to other participating States and the Secretariat.

Recommendations

2.6 The Supervisory Committee should discuss the steps to be taken to implement APIRG/18 Conclusion 18/27, and make recommendations to the NAFISAT MoU signatories. It is expected that the Network Provider will present possible options for consideration by this meeting. It is also recommended to carry out a thorough analysis of the NAFISAT MoU against the *General guidelines on the establishment and provision of a multinational air navigation facility/service as contained in the ICAO Manual on Air Navigation Services Economics (Doc 9161)*. **Appendix** to this working paper provides a preliminary assessment of the NAFISAT MoU by the Secretariat; however, a more detailed analysis is required to identify areas needing improvement. The need to register

2.7 The ICAO Regional Office is available to facilitate a meeting of participating States Civil Aviation Authorities on this critical issue, the outcome of which would be presented to the Nineteenth Meeting of the APIRG (APIRG/19) scheduled for last Quarter 2013 (tentatively).

3. CONCLUSION

3.1 In light of the NAFISAT MoU, the Supervisory Committee is invited to:

- 1) Agree to implement APIRG Conclusion 18/27 calling for arrangements to ensure the sustainability of the NAFISAT network;
- 2) Define the end of the cost recovery for the NAFISAT network in accordance with Article 7, Paragraph 3 of the MoU;
- 3) In accordance with its terms of reference, Section 4 (Establishment and Dissolution of Contributory Bodies), establish a Study Group to:
 - a. Analyze possible solutions available in the short-term, the mid-term and the long-term, to ensure the continuity and sustainability of the NAFISAT network;
 - b. Analyze the NAFISAT MoU in view of States' challenges to meet their obligations in accordance with Article 28 of the Chicago Convention (1944) and regional air navigation agreements approved by the ICAO Council; and
 - c. Accordingly develop detailed proposals to assist the Civil Aviation Authorities (CAAs) of the participating States in making informed deliberations about the future of the NAFISAT network, including a suitable framework of cooperation.

Note: The Task Force should be completed by 30 April 2013, and its report should be submitted to the NAFISAT States through the Secretariat no later than 30 May 2013.

Appendix

**PRELIMINARY ASSESSMENT OF THE NAFISAT MEMORANDUM OF UNDERSTANDING
PROVISIONS AGAINST THE GENERAL GUIDELINES FOR THE ESTABLISHMENT AND
PROVISION OF A MULTINATIONAL AIR NAVIGATION FACILITY/SERVICE
(Reference: ICAO Manual on Air Navigation Services Economics, Doc 9161)**

REQUIREMENTS	STATUS
a) Objective of the agreement	Covered (Title, Preamble).
b) Obligations of States party to the agreement	Partially covered (Article 5). Obligation to observe ICAO policies and practices is not included.
c) Definition and description of the facility/service	Covered (Articles & 4).
d) Establishment and operation of the facility/service	Covered (Article 5).
e) Legal responsibility	Not covered.
f) Liability aspects	Not covered.
g) Managerial aspects:	
1) Governing bodies and decision-making arrangements	Partially covered (Article 6, Annex A). Decision-making arrangements are not covered, and oversight functions are not clearly established.
2) Organization and staffing	Not covered.
3) Consultation	Not covered.
h) Financial aspects:	
1) Pre-implementation considerations	Not covered.
2) Cost determination	Partially covered (Article 7). No stipulation that the approach towards cost determination should be based on that recommended in ICAO Doc 9161.
3) Cost sharing	Not covered.
4) Recovery of costs from users	Partially covered (Article 7). No stipulation of the charging formula the charging formula to be used, reductions and exemptions granted, etc.
5) Budgeting	Partially covered (Article 7). No specification of the basic format to be used for the presentation of the annual costs for approval.
6) Authority to approve the budget	Partially covered (Article 6).
7) Financial auditing	Not covered.
8) Taxation and other government levies	Not covered.
i) Procedures for settlement of disputes	Partially covered (Article 9). No the procedures for negotiation or arbitration for the settlement of disputes arising from different interpretations being given to the MoU. Such an agreement should be registered with the ICAO Council in accordance with Article 83 of the Chicago Convention.
j) Accessions, withdrawals, amendments to and termination of agreement:	
1) Subsequent accession by any additional qualifying State(s) after the agreement is in force	Not covered.
2) Procedure to be applied when a signatory State wishes to withdraw from the agreement as well as procedures to follow in the event of termination of the agreement	Not covered.
3) Procedures to be followed if amendments are to be made to the main text or to any annexes	Partially covered (Article 8). No amendment procedure specified in the MoU.