

WORLDWIDE AIR TRANSPORT CONFERENCE: CHALLENGES AND OPPORTUNITIES OF LIBERALIZATION

Montreal, 24 to 29 March 2003

Agenda Item 2: Examination of key regulatory issues in liberalization 2.6: Dispute resolution

INSTITUTING MECHANISMS FOR DISPUTE RESOLUTION

(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)

SUMMARY

This paper highlights dispute mechanisms being developed in Africa to allow mediation or find a quick solution to conflicts. It also points out the need for a global approach to this problem and supports ICAO Secretariat Working Paper ATConf/5-WP/15 which gives action to be taken at global level.

Action by the conference is in paragraph 4.1.

REFERENCES

AT Conf/5-WP/15 Improving Dispute Settlement in a Liberalized Environment
Doc 9644, *Report on the World-wide Air Transport Conference on International Air Transport Regulation: Present and Future*

¹ French version provided by African States.

1. INTRODUCTION

1.1 Following air transport liberalization and resulting entry of new service providers (passenger airlines, cargo airlines, ground handling companies, maintenance workshops...) in the air transport sector in Africa coupled with new forms of product distribution (code sharing, franchising, commercial alliances, distribution intermediaries, etc), conflict possibilities and risks have increased.

1.2 For this reason, African States and their regional institutions such as the African Civil Aviation Commission (AFCAC), have always supported ICAO efforts aimed at setting up mechanisms for the resolution of conflicts in order to prevent or alleviate any forms of conflicts.

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 (including its mode of reference 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 Also, in Africa, the decision on the implementation of the Yamoussoukro Declaration relating to the liberalization of air transport market access in Africa known as the Yamoussoukro Decision of 1999, has provided for in Article 8 - Dispute Resolution, which favours negotiation. In the event negotiation fails, an arbitration procedure has also been provided for in Annex 2 to the aforementioned Decision.

2.3 Given that the implementation of the Yamoussoukro Decision is being conducted through regional economic groupings such as the Maghreb Arab Union, Economic Community of West African States (ECOWAS), Central African Economic and Monetary Community (CEMAC), Southern African Development Community (SADC), and Common Market for Eastern and Southern Africa (COMESA), the existing dispute, settlement mechanisms as applicable to the air transport sector stem from the general dispute settlement mechanisms in force within these States' groupings. These are being improved for specific application in air transport industry taking into consideration the advent of liberalization and the need for uniformity throughout the African region. SADC, COMESA and East African Cooperation (EAC) are in the process of instituting uniform if not same competition regulations and dispute mechanisms.

3. CONCLUSION

3.1 Liberalization is an established fact. Therefore, it implies increased competition, resulting in accrued disputes/conflicts. These must be resolved as a matter of priority through consultations and negotiations.

3.2 African States do need an efficient, secure and durable air transport and consequently they approve the conclusions in Working Paper ATConf/5-WP/15 summing up most of the provisions of dispute settlement mechanisms as applicable within the Regional Economic Groupings in Africa and aimed at:

- a) creating a trustworthy environment;

- b) fostering liberalization with the participation/involvement of least developed countries; and
- c) ensuring transparency to interested parties directly involved in a dispute and allowing them timely access on time to any relevant information.

4. **ACTION BY THE CONFERENCE**

4.1 The Conference is hereby invited to:

- a) take note of the content of this paper; and
- b) examine and adopt the draft model of provisions on dispute resolution/settlement included in working paper ATConf/5-WP/15 Improving Dispute Settlement in a Liberalized Environment.

— END —