

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**
2.2: Market access

MARKET ACCESS

(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

The paper reviews and recommends an approach to ensure effective and sustained participation of African States to the international air transport market.

Action by the Conference is in paragraph 5.

REFERENCES

Yamoussoukro Decision of 1999
ATConf/5-WP/8 – Liberalization of Market Access
Report of the AFCAC 16th Plenary Session (Cairo, 21- 26 April 2001)

¹ French version provided by African States.

1. INTRODUCTION

1.1 Air Transport is important for Africa for its role in forging economic, cultural and social links within the continent and with the rest of the world. It is an essential component in the physical and economic integration of the continent. It facilitates economic growth, trade and tourism to Africa.

1.2 It is vital therefore to ensure effective and sustained participation of African States in International Air Transport. The position of African States on the following subjects for examination by the Conference is guided by this policy objective.

2. DISCUSSION

2.1 Liberalization of market access and developments since ATConf/4

2.1.1 Market access is fundamental to participation in air transport services. The extent and nature of market access largely determines the success of air carriers. It follows therefore that any policy on the liberalization of market access must guarantee the participation of African carriers in air transport. Such a process must as a matter of imperative necessity take into consideration the disparities in economies, resources, size and competitiveness of African carriers.

2.1.2 It is in this context that African States have agreed on a liberalization policy that would not allow immediate complete liberalization of market access at the global level. Instead, African States have opted to continue to liberalize bilaterally with third parties and have put in place a regional policy to liberalize within Africa. This approach would achieve the twin objectives of liberalization while at the same time strengthening African carriers for them to be able to effectively compete in the new environment of heightened competition.

2.2 Bilateral arrangements

2.2.1 The above position is consistent with the conclusion of the 1994 World-wide Conference that each State should make its own choice as to the degree and pace of liberalization objective using bilateral, regional and global avenues according to circumstances.

2.2.2 African States have since 1994 endeavored to liberalize market access using all the above. At the bilateral level, significant progress has taken place among African States as most of them have relaxed bilateral agreements with each other allowing unrestricted access to 3rd and 4th Freedom Traffic Rights, and in some cases the fifth freedom. Further more, a number of African countries have signed "Open Skies" Bilateral Air transport Agreements with the United States of America and other third parties.

2.3 Sub-regional policy framework

2.3.1 Far reaching developments have also occurred at the sub-region level. In fact the sub-regions in most cases have set the pace by putting in place measures to liberalize market access within and across

sub-regions. This included the COMESA Programme and those of other sub-regions such as CEMAC, ECOWAS, EAC and SADC also adopted individual liberalization programmes whose implementation was later incorporated into the Yamoussoukro Decision.

2.4 Regional policy framework – The Yamoussoukro decision

2.4.1 The singular most important regulatory development in Africa at the regional level since 1994 was the adoption in 1999 of the Decision relating to the implementation of the Yamoussoukro Declaration of 1988. The Decision entered into force in August, 2000.

2.4.2 The Decision is an internal African Policy framework on the liberalization of access to air transport markets in Africa by eligible African carriers. The Decision among other things, provides for:

- a) free exchange of traffic rights including the 5th Freedom between African States;
- b) multiple designation by each state party on a city pair basis;
- c) no restriction of frequencies and capacity offered on air services linking any city pair combination;
- d) complete tariff liberalization;
- e) complete liberalization of cargo and non scheduled services; and
- f) encourages commercial and other forms of cooperation between and among African airlines.

2.4.3 The Decision provided for an interim period of two years in which States had the choice to partially or fully implement the measures adopted by the Decision. Accordingly, the deadline for full implementation of the Decision was 11 August, 2002, the end of the interim period of two years. However, implementation has been slow. The continental Monitoring Body together with sub-regional Economic Groupings are putting in a lot of work to realize full implementation.

2.5 World Trade Organization (WTO)

2.5.1 It is appreciated that the World Trade Organization and other organizations have set their rights in increasing their involvement in the liberalization of air transport. The intention is to extend the application of General Agreement on Trade and Services (GATS) principles beyond the three services (CRS, Maintenance, Sales & Marketing) in the Annex on Air Transport.

2.5.2 Apart from the problem with the Most Favored Nation (MFN) principle, the experience by African States and other developing countries is that GATS principles are applied for the benefit of developed and already well endowed countries. The subsidies on agriculture by European, American and Japanese Governments have at best impoverished African farmers and at worst driven them completely out of business. African States would therefore not support to add air services under the umbrella of GATS. Air Transport may be used by African Governments as a trade off for other benefits or concessions.

2.5.3 Given the already well established and documented problem, with the application of the GATS MFN principle, GATS is not the ideal vehicle for liberalization of air transport services. ICAO should remain the only agency to lead the liberalization process. It has the experience and relevant expertise.

2.6 **Airport constraints on access**

2.6.1 The lack of airport capacity and the attendant rationing of access to airports is not an issue at African airports. However, airport constraints on access to major airports in Europe are a serious impediment to market access for African carriers. In most cases lack of airport capacity has been advanced as sufficient grounds to deny African carriers access to European airports of choice in Europe. This has led to far reaching consequences for the operations of the concerned African carriers.

2.6.2 In view of the above, African States support a slot allocation system which should:

- a) be globally compatible;
- b) have as its sole objective the maximum effective and market use of airport capacity;
- c) be transparent, fair and non discriminatory; and
- d) be simple, practical and economically sustainable.

2.7 **Aircraft leasing in international air transport**

2.7.1 Aircraft leasing which is an important source for meeting capacity requirements for Africa has important market access implications for African carriers.

2.7.2 However, there are concerns particularly in respect to safety oversight. This arises as most often where the operator of the leased aircraft does not have the maintenance capability and the state also lacks the safety oversight capability. The other concern relates to the possible exercise of traffic rights, where the lessor is an airline which does not have traffic rights on the routes operated by the lessee. African States share these concerns particularly if the lessor is a carrier outside Africa and is not covered by the provisions of the Yamoussoukro Decision.

2.8 **Liberalization of air cargo services**

2.8.1 Air cargo operations are instrumental in facilitating imports/exports for African countries. Liberalization of air cargo services would therefore provide the opportunity for African exporters to reach otherwise unreachable important overseas markets.

2.8.2 It is in light of this that the Yamoussoukro Decision provides for complete liberalization of air cargo services.

2.8.3 It is appreciated that cargo operations have important distinct features from passenger services. However, at the global level full liberalization would have to take into consideration the asymmetry in the level of economic development and resources available to competitors in different countries.

3. CONCLUSIONS

3.1 Liberalization of market access

3.1.1 The principal conclusion to be drawn from the above developments is that African States have opted to start with gradual liberalization at the regional level, because time is not yet ripe for global liberalization; only after the African internal programme is achieved, could liberalization be expected to be extended to other regions of the world.

Further more:

- a) Since the 1994 World-wide Air Transport Conference, considerable progress has been made in liberalization with respect to market access in Africa at bilateral, sub-regional and regional levels.
- b) Given the inherent disparities and disadvantaged competitive position of African States vis-a-vis other regions of the world, appropriate air transport policy such as the Yamoussoukro Decision is the only tool that guarantees sustained and effective participation of Africa in international air transport.
- c) Africa will strive to achieve full market access within the continent while adopting the bilateral approach in liberalizing market access with Third countries or group of countries.
- d) Given the disparities and inequities of GATS in other sectors such as subsidies of agriculture in developed countries which have led to the impoverishment of African farmers, it would not be appropriate at this stage to add Air Transport liberalization under GATS.
- e) In these circumstances, full market access on the global scale would be to the detriment of African carriers in their present state and compromise their participation in air transport markets.

3.2 Liberalization of air cargo services

3.2.1 As for the ICAO Secretariat conclusions, African States are in general agreement with the overall conclusions that liberalization of air cargo services could be accelerated. In particular, African States support the adoption of the proposed draft Model Annex on Air Cargo Services as it takes into account the safety, security and traffic rights concerns.

4. **RECOMMENDATIONS**

4.1 **Liberalization of market access**

4.1.1 In light of the above African States concur with the conclusions in Para 4 of the Secretariat in WP/8 and propose their adoption.

4.1.2 Further to the above, African States wish to re-state their position as follows:

- a) Africa is committed to gradual liberalization of market access which it has already embarked on by the adoption and gradual implementation of the Yamoussoukro Decision.
- b) Do not support liberalization of market access on global basis that would include unrestricted granting of beyond third and fourth freedom traffic rights. This should continue to be based on bilateral air service agreements and other multilateral agreements to which individual African states may be a party to
- c) Underlying traffic rights to be the basis for the authorization of operations within the framework of a commercial agreement. Third country airlines should not be allowed market access through these commercial arrangements.
- d) The evolution of future regulatory arrangements on market access should be co-coordinated within ICAO as the only body with the broadest perspective on international air transport. Other organizations are not appropriate vehicle for liberalization of air transport.

4.2 **Airport constraints on access**

4.2.1 Meanwhile, while agreeing with the conclusion in Para 4.1(e) in WP/8, African carriers should be accorded preference in allocation of slots at congested airports. This will be in the form of the non reciprocal preferential measures designed to ensure effective participation of African carriers in international air transport.

4.3 **Aircraft leasing in international air transport**

4.3.1 The proposed model clause on the lease of aircraft to a large extent addresses these concerns. States should therefore support the adoption of the clause.

4.3.2 Accordingly, it is also proposed that States adopt conclusions in Para 5 of WP/9.

4.4 **Liberalization of air cargo services**

4.4.1 Any liberalization process in Cargo should therefore take into account the realities in economies, resources, size and competitiveness of African airlines limiting their effective participation in the air cargo business. Hence African States propose that liberalization of air cargo should be based on:

- a) gradual, progressive, orderly and safeguarded changes;
- b) differentiation between combined carriers, all cargo and integrated carriers as they operate under different regulatory regimes;
- c) liberalization of combined cargo and passenger services to follow the same principles as for passenger operations; and
- d) complete global liberalization of all cargo operations and specialized cargo operations.

5. **ACTION BY THE CONFERENCE**

5.1 The Conference is invited to:

- a) review and adopt the conclusions in paragraph 3; and
- b) adopt the recommendations in paragraph 4.

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