



***Aviation in Transition:  
Challenges & Opportunities of Liberalization***

**Session 1: The Liberalization Experience**

**The COMESA Air Transport Liberalization Experience**

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### **Aviation in Transition: Challenges and Opportunities of Liberalization**

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**The COMESA Air Transport Liberalization Experience**

**Presented by:      *COMESA Secretariat***

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## AVIATION IN TRANSITION: CHALLENGES AND OPPORTUNITIES OF LIBERALIZATION – COMESA'S EXPERIENCE

### INTRODUCTION

1. It is indeed my singular honour and privilege to have been invited to present and share with you COMESA's experience in the field of regional air transport liberalization. It is my hope that COMESA's experience will add value to the discussions at this historical seminar that should set the tone for the forthcoming ICAO 5<sup>th</sup> Worldwide Air Transport Conference.

2. In my presentation to you I shall give you an overview of what COMESA is, its objectives and its programmes in the air transport liberalization within the context of the economic integration programme of the African Union .

### MAP OF COMESA



3. COMESA is the Common Market for Eastern and Southern Africa and as the names suggests it is a regional economic community composed of twenty countries in the Eastern and Southern Africa. These countries are Angola, Burundi, Comoros, D.R. Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Namibia, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia and Zimbabwe.

## **BACKGROUND INFORMATION**

4. The origins of COMESA can be traced as far back as the late fifties and early sixties. At the first and second conferences of independent African States, held in Accra, Ghana, in April 1958 and in Addis Ababa, Ethiopia in June 1960, respectively, economic problems to be faced by independent Africa were discussed. There was a consensus that the smallness and fragmentation of post-colonial African national markets would constitute a major obstacle to the diversification of economic activity and it was, therefore, agreed that African countries, which had gained political independence, should promote economic co-operation among themselves.

## **FORMATION OF COMESA**

5. In October 1965, the United Nations Economic Commission for Africa (ECA) convened a ministerial meeting of the then politically independent states of Eastern and Southern Africa to consider proposals for the establishment of a mechanism for the promotion of sub-regional economic integration. The meeting, which was held in Lusaka, Zambia, recommended the creation of an Economic Community of Eastern and Southern African states.

6. After the preparatory work had been completed a meeting of Heads of State and Government was convened in Lusaka on 21st December 1981 at which the Treaty establishing the PTA was signed. The Treaty came into force on 30th September 1982 after it had been ratified by more than seven signatory states as provided for in Article 50 of the Treaty.

7. The PTA Treaty envisaged its transformation into a Common Market and, as such, the Treaty establishing COMESA was signed on 5th November 1993 in Kampala, Uganda and was ratified a year later in Lilongwe, Malawi on 8th December 1994.

8. The process of economic integration in Eastern and Southern Africa has, therefore, not been episodic, but rather systematic, following a logical progression on a step by step basis. Firstly, a Preferential Trade Area was established and operated for over a decade, which was then transformed into a common market. The third phase will involve the eventual establishment of an Economic Community.

## **VISION, AIMS AND OBJECTIVES OF COMESA**

### **Vision of COMESA**

9. COMESA's vision is to attain a fully integrated internationally competitive regional economic community with high standards of living for its people and where goods, services, capital and labour move freely across borders

10. The aims and objectives of COMESA have been designed so as to remove the structural and institutional weaknesses in the member States by pooling their resources together in order to sustain their development efforts either individually or collectively.

### **THE DECISION MAKING PROGRESS**

11. There are four organs of COMESA which have the power to take decisions on behalf of COMESA, these being: the Authority of Heads of State and Government; the Council of Ministers; the Court of Justice; and the Committee of Governors of Central Banks. The Intergovernmental Committee, the Technical Committees, the Secretariat and the Consultative Committee of the Business Community make recommendations to the Council of Ministers, which in turn make recommendations to the Authority.

12. Within this hierarchy of decision making the Transport and Communications Committee is charged with the preparation of comprehensive Air Transport Liberalization Programme among others, and monitoring their implementation and making recommendations to the Council of Ministers.

### **COMESA IN CONTINENTAL CONTEXT**

13. It is important to underline the fact that the establishment of PTA and its transformation into COMESA, was in conformity with the objectives of the Lagos Plan of Action (LPA) and the Final Act of Lagos (FAL) of the Organization of African Unity (OAU) now African Union (AU). Both LPA and FAL envisaged an evolutionary process in the economic integration of the continent in which regional economic communities (RECs) like COMESA, would constitute building blocks upon which the creation of an African Economic Community (AEC) would ultimately be erected.

14. The Air Transport Liberalization programme like other COMESA programmes is guided by the COMESA Treaty and is in line with the provisions of the Abuja Treaty establishing the African Economic Community.

15. Article 61 of the Abuja Treaty, Transport and Communications, in part, provides that member States shall harmonize their air transport policies, promote proper integration of air transport in Africa and co-ordinate and harmonize their air transport policies at regional and community level in order to eliminate non-physical barriers that hamper the free movement of goods, services and persons.

16. In terms of the Abuja Treaty, the sub-regional economic groupings, as the building blocks of the African Economic Community, provide the institutional framework for implementation of the air transport and other programmes within the meaning of Article 88 of the Treaty.

17. It was on the basis of the Abuja Treaty that the Yamoussoukro Decision, whose official title is "Decision on the Implementation of the Yamoussoukro Declaration concerning the Liberalization of Access to Air Transport Markets in Africa" was adopted by a conference of African Ministers responsible for Civil Aviation convened under the auspices of the United Nations Economic Commission for Africa in Yamoussoukro, Cote d'Ivoire in November 1999. The Decision entered into force on 12 August 2000.

18. The Yamoussoukro Decision provides for a continent-wide aviation agreement to liberalize the African Skies with the aim of realizing full liberalization by year 2002. The main thrust of the Decision is to liberalize gradually the liberalization of scheduled and non-scheduled intra African air transport services in order to facilitate access to air transport markets in Africa.

19. The Yamoussoukro Decision provides for:

- (i) the removal of restrictions on traffic rights including 5<sup>th</sup> Freedom;
- (ii) the fixation of tariffs without requirement for government approval;
- (iii) removal of restrictions on capacity and frequencies between city pairs;
- (iv) removal of restrictions on multiple designations;
- (v) criteria for eligible airlines to comply with the requirements of the operation; and
- (vi) standards for safety and security.

20. However the main guiding instrument for the COMESA is the COMESA Treaty. The Policy on Air Transport is contained in Articles 84 and 87.

21. Article 87 of the COMESA Treaty, in part, stipulates that Member States shall in particular:

- (a) adopt common policies for the development of air transport in the Common Market in collaboration with other relevant international organizations including the African Civil Aviation Commission, the African Airlines Association, the International Air Transport Association and the International Civil Aviation Organization;
- (b) liberalize the granting of air traffic rights for passengers and cargo operations with a view to increasing the efficiency and profitability of their airlines;
- (c) harmonize civil aviation rules and regulations by implementing the provisions of the Chicago Convention on International Civil Aviation, with particular reference to Annex 9 thereof;
- (d) establish common measures for the facilitation of passenger and cargo air services in the Common Market;

- (e) consider ways to develop, maintain and co-ordinate in common, their navigational, communications and meteorological facilities for the provision of safe air navigation and the joint management of their air space;
- (f) agree to take common measures for the control and protection of the Common Market air space;

## **COMESA' S AIR TRANSPORT LIBERALIZATION PROGRAMME**

22. In line with the Treaty, COMESA in May 1999 introduced the "COMESA Regulations for the implementation of Liberalization of Air Transport Services – Legal Notice No. 2 of 1999". As part of the liberalization programme COMESA introduced a two-phased timetable. Phase One started in October 1999 and ended in October 2000. Phase 2 started in October 2000 and ended in October 2001.

### **Phase 1 provides for:**

- (i) free movement of intra-COMESA cargo and non-scheduled passenger services;
- (ii) free movement of intra-COMESA scheduled passenger services with frequency limit of up to two daily frequencies between any city pairs (beyond the two daily frequencies BASA will apply);
- (iii) adoption of multiple designation;
- (iv) elimination of capacity restrictions; and
- (v) granting of fifth freedom traffic rights restricted to 30% on routes where third and fourth freedom traffic rights are provided and unrestricted where there are no 3<sup>rd</sup> and 4<sup>th</sup> freedom traffic rights services.

### **Phase 2**

23. Phase 2 provides for free movement of intra-COMESA air transport services.

24. The legal Notice also defines condition for market access, licensing of COMESA air carriers, airline alliances, trans-national investment, ownerships and control of air carriers and technical, safety and security issues. Of particular note is the widening of the ownerships and control of air carriers from the narrow National/State ownership to the broader COMESA ownership i.e. ownership by any combination of COMESA member States Governments and/or its citizens or private institutions. Another important aspect is the relaxation of intra-COMESA cross-border investments by States and/or COMESA citizens/private institutions in air transport services and infrastructure such as airports, aircraft maintenance facilities; air carriers, and ground handling.

## **STATUS OF IMPLEMENTATION OF LEGAL NOTICE NO. 2 OF 1999**

25. To ensure the successful implementation of the air transport liberalization programme, COMESA established an Air Transport Regulatory Board (ATRB). The Board is charged with advising COMESA on all matters relating to air transport, formulating and enforcing air transport rules and regulations in accordance with Council Decisions, setting standards and guidelines and promoting safety and security and development of air transport in the COMESA Region.

26. Twelve States in COMESA have implemented Phase 1 of the programme, these being Burundi, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Madagascar, Rwanda, Uganda, Sudan, Zambia and Zimbabwe.

27. Other States expressed difficulties in implementing the Air Transport Liberalization Programme and were allowed to seek derogation in accordance with the COMESA procedures/guidelines for Request and Grant of Derogation.

### ***Phase 2***

28. In December 2001, Council decided that the implementation of Phase 2 be put in abeyance pending the formulation and implementation of the COMESA Air Transport Competition Rules.

29. Pursuant to the Council Decision and Article 55 of the COMESA Treaty, COMESA developed draft Air Transport Competition Regulations through a consultative process involving all stakeholders in the air transport industry. The draft regulations were also developed jointly with other sub-regional organizations i.e. EAC and SADC. The Draft Regulations were considered by the Joint Meetings of Civil Aviation Directors/Chief Executive Officers of Aeronautical Authorities and adopted by a Joint Meeting of Ministers responsible for Civil/Aviation from COMESA, EAC and SADC in Pretoria, South Africa in September 2002.

## **THE WAY FORWARD**

30. The Draft Regulations are now awaiting consideration by the Legal Committee before they are submitted to the Council for approval and promulgation.

31. Once adopted by Council a Joint Monitoring Unit (JMU) for COMESA, EAC and SADC will be formed to monitor the full implementation of air transport liberalization programme in the three sub-regions in line with the provisions of the Yamoussoukro Decision. The JMU will replace the COMESA ATRB and the SADC Yamoussoukro Decision Monitoring Unit.



32. However, a lot of work still has to be done in order to successfully complete this regional air transport liberalization agenda. The issues to be addressed include:

- (i) adoption of a COMESA Air Transport Policy;
- (ii) drafting of implementing provisions under the air transport competition rules;
- (iii) creation of a joint institutional and monitoring mechanism for the liberalization and competition rules;
- (iv) the drafting of a memorandum for the Court of Justice and Tribunal on the jurisdiction and enforcement of decisions under the competition rules;
- (v) drafting and putting in place standardized mechanisms for entry into the market and for enjoying the rights enshrined in the legal Notice No. 2 and the Yamoussoukro Decision;
- (vi) sensitization of airlines and other key stake holders on the implementation of the Legal Notice and Yamoussoukro Decision and the Competition Rules;
- (vii) drafting of a comprehensive regulation on consumer protection in the air transport sector;
- (viii) regulatory harmonization; and
- (ix) incorporation of all council regulations into individual State legal and administrative procedures.

33. There is also need to expand the programme and activities to cover other areas like aviation safety oversight and security.

## **IMPACT OF PHASE 1**

34. Implementation of Phase I has so far yielded a positive impact on the air transport industry of the countries implementing the Legal Notice No. 2.

- (i) Those countries implementing the air liberalization programme have experience increases in the frequency of flights between city pairs. For example, air traffic frequencies between Nairobi, Kenya and Entebbe, Uganda have increased from two flights per week before liberalization to about thirty-four flights per week. Furthermore, between Nairobi and Cairo flights have increased from twice a week to eight and between Harare and Nairobi from two a week to twelve. With this increase in frequencies one of the main benefits is that it is now possible to make a return trip within a day between parts of the region.
- (ii) There are indications that with the implementation of air liberalization passengers are benefiting from considerably cheaper fares on certain routes. For example the fare between Nairobi and Entebbe has dropped by nearly half. The lower prices are as a result of heightened competition on these routes.
- (iii) There has been an increase in commercial co-operation between COMESA air carriers in terms of code sharing and other mutual arrangements. These agreements often give carriers access to a bigger pool of customers. The code-sharing agreements enable the airlines to place their two-letter codes on flights operated by their partner. This means that airlines can fly passengers to one city and then offer them onward flights to destinations they do not serve but which their partners do.
- (iv) Airports have increased their revenue inflows as a result of the increase in the number of landings, from parking fees, navigation charges and other airport facilitation charges.
- (v) There has been an increase in the establishment of new privately owned airlines. These start up airlines have been able to access the market through the policy of multiple designation. This has greatly improved competition and increased consumer choice.

## **CO-OPERATION WITH OTHER SUB-REGIONAL ECONOMIC GROUPINGS**

35. COMESA has already started co-operating with other RECs as evidenced by the drafting of the Joint Air Transport Competition Rules in conjunction with EAC and SADC. COMESA is currently exploring ways of extending co-operation to other RECs e.g. ECOWAS, CEMAC etc so that the air transport Liberalization Programmes can be harmonized as provided for under the Yamoussoukro Decision.

36. This concludes my presentation and I wish to thank you for your attention.