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Liberalization of Air Transport in Africa: Case of Kenya's Air Transport

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Declaration

I, Margret Njeri Munene hereby declare that this research project is my original work and has not been presented for a degree in any other University.

Signed………………………………………… Date…………………………………………

Margaret Njeri Munene

This project has been submitted for examination with my approval as University Supervisor;

Signed………………………………………… Date…………………………………………

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Abstract

The air transport industry plays a major role in world economic activities and remains one of the fastest growing sectors of the world economy. Liberalization of air transport has therefore become a worldwide challenge and more especially in the African Continent. The project sought to determine and assess the challenges to the full implementation of liberalization of air transport in Kenya.

The target population comprised 110 key senior officers drawn from the Ministry of Transport, Kenya Civil Aviation Authority (KCAA) and the airlines. The study was descriptive in nature involving the administration of a self-administered survey questionnaire. The stratified sampling technique was adopted for selecting a sample of 55 respondents which comprised 50% of the entire population. A questionnaire was used to collect data. The analysis of the collected data involved descriptive and inferential statistics and the results are presented by use of tables, graphs and charts.

The study revealed a lack of proper understanding of liberalization of air transport meaning that the implementation legal instruments such as COMESA Legal Notice No 2 and Yamoussoukro Decision are not fully understood and the stakeholders have not been sensitized. Airlines believe that the beneficiaries of liberalization are only consumers and foreign airlines whereas the regulators think that the beneficiaries of liberalization are airlines and consumers. Market forces such as tariffs, costs of operations, customer preferences and characteristics, fuel prices and focus on security influence liberalization. The study also revealed the existence of political interference when it comes to market access. Most (70%) respondents believe that competition is an issue in a liberalized air transport sector and it is likely to cut down their business.

Regulation was also found to be a major issue in liberalization of air transport in Kenya; personnel competencies, lack of proper institutions, and rigid regulations. The airlines are not familiar with the regional instruments that govern liberalization with a perception that the Civil Aviation Act, CAP 394 is adequate in dealing with liberalization and competition whereas there is no local legislation on liberalization. The study concluded that market factors had an influence on liberalization of the air transport industry. There is an overlap between the functions of the Ministry of Transport and KCAA which poses conflict of interests and confusion. Fear of competition among airlines is real and has hindered them from appreciating the benefits of liberalization.

The study recommends that regulators sensitize the operators on the concept of liberalization to create understanding and avoid the myths surrounding the concept. Further KCAA and the Ministry of Transport should immediately formulate and enact relevant policies and guidelines to liberalize the air transport in Kenya to the general benefit of the industry. The KCAA should create a platform bringing together all stakeholders in the air transport industry to speed up liberalization. It is also recommended that airlines form alliances to enable them compete with foreign airlines favourably in a liberalized market. The Government of Kenya should clearly define the roles key stakeholders in the liberalization efforts of the air transport industry in Kenya.

Operational Definition of Terms

Liberalization: The act of making less strict; liberty to establish any kind of economic activity at any time anywhere without anticipating any kind of so called private or public restrictions;.

Implementation: the act of implementing (providing a practical means for accomplishing something); carrying into effect; carrying out, execution, or practice of a plan, a method, or any design for doing something. As such, implementation is the action that must follow any preliminary thinking in order for something to actually happen.

Air transport: The use of aircraft, predominantly airplanes, to move passengers and cargo; transportation by air.

Acronyms

AACO	Arab Air Carriers Organization
ACAC	Arab Civilian Aviation Commission
AEC	African Economic Community
AFCAC	African Civil Aviation Commission
AFRAA	African Airlines Association
AU	Africa Union
COMESA	Common Market for Eastern and Southern Africa
CREW	Club of the Ready and Willing
EAC	East African Community
ECA	Economic Commission for Africa
ICAO	International Civil Aviation Organization
KAA	Kenya Airports Authority
KCAA	Kenya Civil Aviation Authority,
OAU	Organization of African Unity

Dedication

This project is dedicated to my parents who have supported me since I began my education.

Also, it is dedicated to my sisters who have been a great source of motivation and inspiration.

Finally, this work is dedicated to all those who are interested in the field of international studies.

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CHAPTER ONE: INTRODUCTION

1.1 Background to the Study

Commercial aviation owes its existence to the rapid development and application of technology (KAA, 2001). Aviation and the globalization movement of which it is an integral part promised to transform domestic and global economies by linking distant communities in an event shrinking, complex web interaction. As flow increase so does the income, standard of living and general welfare of the people connected to this great web. This is the promise of globalization and aviation, but the reality is that there are a number of countries and regions around the world that have yet to collect on the promise. (Rhoades, 2008)[1]

As the air transport industry plays a major role in world economic activities, it remains one of the fastest growing sectors of the world economy. It therefore, represents the greatest achievement of technology and organization in the twentieth century over the past decade airline transport has undergone. There are various factors that have contributed to this, according to (Rhoades, 2008)[2], the aviation industry has long been treated as a special case in international business, subject to different rules and held to different standards. International aviation has been a serious Problem in international relations, affecting the way governments view one another, the way individual citizens view their own and foreign countries, and in a variety of direct and indirect connections the security arrangements by which we live[3]. The push for Liberalization in the airline industry would raise various issues for policy makers and the people they represent. Free markets are about access, not success and neither of these commodities is equally distributed, in a free market the opportunities of large, wealthy nations are greater than those of small, poor nations. The chances of success are also greater for the wealthy. Equity is about fairness, impartially and justice. Free markets are about competition and winner-take-all. Governments intervene in the market to provide opportunity and equity. All governments intervene to some extent.[4]

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[1] Rhoades L. Dawna '*Evolution of International Aviation*' Phoenix Rising 2nd ed. pp 203
[2] Ibid pg 3
[3] Ibid pp 4
[4] Rhoades L. Dawna 2008 '*Evolution of International Aviation*' Phoenix Rising 2nd ed. pp 44

According to Kotaite (2000), Former President of International Civil Aviation Organisation "civil aviation can help to humanise the seemingly irreversible globalisation process that the planet has embarked upon. By continuing to bring people together, air travel can create a necessary counter balance to the isolating effects of electronic communications. It can help achieve worldly pursuits while caring for humans and the planet that supports us." Air transport holds tremendous promise and potential for eliminating physical barriers to trade and economic co-operation in Africa. Given the high transaction costs of doing business in the region a functioning air transport system is an important and necessary condition for regional integration.[5]

Air transport allows African products to reach the most distant markets within the shortest time possible. It links land locked and Small Island and small island states to the mainstream of development opening up opportunities for enhanced intra African trade and tourism and other economic activities. According to (Philips, 2002), in Africa where poor roads, ports and railway infrastructure often constrain the rapid and efficient transportation of goods earmarked for export as well as passenger, air transport provides both a potential for growth and a role for the economic development of the continent by fostering trade and foreign investments.[6]

Globalisation has improved efficiency and brought economies of scale in umpteen industrial sectors. But despite the effects of globalisation, the key factor that has stopped the aviation industry developing like other sectors is the use of nationality restrictions covering ownership and control of carriers, the link that exists in the minds of many between aviation and national pride achievement and pride. International airlines "carry the flag" around the world. An example of the bankruptcy and subsequent grounding of the Swissair fleet forced the Swiss football team to fly the Russian carrier Aeroflot to qualifying match in Moscow, this was reported as "a further humiliating for the Swiss flag carrier"[7] International air transport has traditionally been governed under the framework of bilateralism, which generally involves authorization or permission to operate international scheduled air transport into and out of the territory of another State, granted through formal agreement following negotiations. The legal

[5] Kotaite Assad, (Sydney, 5, June, June 2000) President of the council, international Civil Aviation Organization, Session '*Aviation Regulation; New Millenium – New Direction' 56th IATA Annual General meeting.*
[6] Philips, E.H. (2002), 'Africa Leads in Hull Losses: FSF Cites Challenges to Flying,' *Aviation Week and Space Technology,* April 22, pp. 44-5
[7] Hall, W., Grant, J., Done, K., and Cameron, D. (2001), 'Swissair Grounding Causes Travel Chaos', October 2.

basis of bilateralism is provided for in Article 1 and 6 of Chicago Convention (1944) to which Kenya is a Contracting Party. The articles imply that exclusive sovereignty of states requires each and every state to obtain permission or authorization before engaging in international air transportation. Traditionally states have given authorizations to other states restrictively, however, with globalization this trend has changed and liberalization has set in.

Africa is the second largest continent in the world and possesses the population base and the geographically challenging terrain to make it ideal for air transportation. Unfortunately, these advantages are outweighed by a number of factors that have prevented the development of a viable civil aviation industry in Africa, according to (Rhoades, 2008) One is the underdeveloped state of the national economies of most of Africa.[8] The level of poverty in Africa means that most of these nations cannot afford the necessary level of investment in aviation infrastructure to create an aviation system competitive on the international level. According to the World Bank group over 50 percent of the population live under US$2 a day. [9] Second there is not a substantial internal demand for air transportation due to the level of poverty and the increasingly competitive global market has not been kind to African airlines. The traffic patterns of African airline careers reflect Africa's colonial past running north to south, unfortunately placing African airlines at the wrong end of the route, that is, principle flows originate in the northern, wealthy nations of Europe where passengers tend to fly on European national carriers.[10]

Given the lack of domestic demand, the need to compete globally with larger better established carriers, and the limited funding for aviation development, African nations have attempted to join together. In 1961, ten African nations signed the treaty on Air Transport in Africa, popularly known as the Yaounde treaty[11] Under Article 77 and 79 of the Chicago convention which provides for joint or international operating organizations, these nations established Air Afrique to operate international service between contracting states and other nations and to provide

[8] Graham, B. (1995), *Geography and Air Transport,* John Wiley & Sons, New York
Taneja, N.K. (1988), *The international Airline industry: Trends, Issues, and Challenges,* Lexington.
[9] World Bank Group (2002), 'Making Monterrey Work for Africa: New Study Highlights Dwindling Aid Flows, Mounting Challenges', Press Release no. 2002/273/S.
[10] Ibid Graham, B. (1995)
[11] Ibid Rhoades (2008), pp. 207

domestic service within the territories of contracting states.[12] The second major event in African aviation was the Yamoussoukro Declaration on a new African Air Transport policy (1988) or commonly known as "open skies" started when African Ministers responsible for civil aviation met in Yamoussoukro, Republic of Cote D'Ivoire from 6th – 7th October 1988. The convention came up with the Yamoussoukro Declaration (1988) which addressed the issue of integration of airlines, flexibility in grant of traffic right, costs and tariffs. After ten years there were no tangible gains; experts argued that the declaration lacked effect since there was no legal framework to making it binding to its member states. The Ministers realized the approach was not feasible and they went back to the drawing board in order to address the shortcomings of the declaration and came up with the Yamoussoukro decision of June 2000; which is referred to as "*The Decision Relating to Liberalization of Access to Air Transport Markets in Africa'*. It was given a new legal framework under the provisions of the Abuja Treaty of 1978 that would be binding to member states.

In essence, the Yamoussoukro Decision is a multilateral agreement among most of the 54 African States. It allows the multilateral exchange of up to fifth freedom air traffic rights between any member African states on a simple procedure of notification. Yamoussoukro Decision became fully binding on 12 August 2002 following its endorsement by the Heads of States and Governments of the Organization of African Unity (OAU) in July 2000. According to the treaty, it became enforceable continent-wide since it was endorsed by the Heads of States of the African Union under the African Economic Community Treaty framework in 2000 under article 10 of the Treaty. It established the African Economic Community (AEC), which became known as the "Abuja Treaty".

The Abuja Treaty provides that the Assembly of the African Economic Community shall act by decisions, and that these decisions shall be binding on member States and organs of the Community, as well as regional organizations. The legal basis for ratification of the Yamoussoukro Decision is therefore considered to be the treaty of Abuja, which was adopted by most of the 54 African States. However, twenty years after the initial Yamoussoukro Declaration, and over eight years after the Yamoussoukro Decision became fully binding, only a few cases

[12] Ibid (2008), pp 209

have been observed of the exercise of new air traffic rights granted by applying the principles and mechanism of the Yamoussoukro Decision. This is evident in the number of liberal bilateral agreements signed by member states.

The Kenyan Aviation Industry consists of the following bodies and organizations namely the Aeronautical Authority, Kenya Civil Aviation Authority, Kenya Airports Authority and all airline organizations. The Aeronautical Authority according to CAP 394 of laws of Kenya is the Minister for the time being responsible for aviation in Kenya, whereas KCAA is an agency of the government which is both a regulator and service provider. It is charged with economic and safety regulation, security and provision of air navigation services. The Airports Authority is responsible for ownership and development of all the aerodromes in Kenya.

In Kenya the first commercial operator was Wilson Airways which was established in 1929 by Florence Kerr Wilson the carrier operated regional into and out of Kenya to Tanganyika, Rhodesia and South Africa and it ceased operations on the eve of the World War II in 1939 (King, 1984). Wilson Airport was later named after this pioneer aviator (Irandu, 1995). In 1946 the regional airline *East African Airways* was formed within the East African Community (EAC). The airline established flights in East and Southern African destinations and intercontinental routes. The carrier ceased operations in 1971 and Kenya started its own carrier Kenya Airways taking up from East African Airways (Irandu, 1995) and Alliance Air, jointly owned by South Africa, Uganda and Tanzania, which ceased operations in 2000[13]. Kenya has a vibrant aviation industry with approximately 200 licensed carriers which are vital for the country's economic development.

The Government of Kenya recognises the transport sector as a facilitator of rapid economic growth and reconstruction, poverty eradication and wealth creation. In the "*Economic Recovery Strategy Plan for Wealth and Employment Creation 2003 – 2007*", the transport sector was identified as a third pillar of the economic recovery effort. According to the Integrated National Transport Policy (2004), the industry is a facilitator for tourism and a source of foreign exchange through the provision of air transport services to other countries. The industry has shown steady

[13] BBC News (2002a), 'Air Afrique Finally goes Bust', www.bbc.co.uk, February 7.

growth, and therefore, to enhance and maintain the vital role played by the aviation industry in the national development of Kenya, efforts should be made to eliminate all constraints to its growth.

It is therefore worth noting that aviation worldwide is governed by international law due to its international nature. Air transport in Kenya is governed both by international air law and national law which is mainly derived from the ICAO Legal instruments. The liberalization framework is derived from regional and sub regional legislation.

1.2 Statement of the Problem

In a liberalized regime airlines have free market access meaning an airline of one state can fly into and out of another country without restrictions on the frequencies (number of times they fly in/out) and capacity (number of passengers/ cargo) carried. An open sky policy is referred to as the liberal granting of at least 3rd, 4th, and 5th freedom traffic rights without any restrictions of frequency, capacity or type of equipment used. Whereas in the traditional concept of bilateralism, market access is highly restricted and any increase of frequencies by an airline requires negotiating and agreeing upon.

Liberalization of air transport is therefore important and can galvanize Kenya's participation in the global economy. However, the implementation of liberalization of air transport through Yamoussoukro Decision initiative has dogged Africa including Kenya for the past 18 years. Despite the merits of liberalization of air transport, the full implementation in Kenya has been a challenge.

The historic Yamoussoukro was well intentioned but proved to have several short comings as a result the issue of liberalization has been a constant feature since 1988 in all African Aviation meetings up to the summit level. Africa Union (AU), Economic Commission for Africa (ECA), regional and sub regional bodies have taken keen interest and have held numerous conferences to address the slow pace of liberalization of air transport. ICAO (2007) document on the AFI plan reports that "unfortunately, despite several efforts including the current Yamoussoukro decision strategy there is obvious reluctance to engage in this undertaking. However, there has been proliferation of meetings, spanning a period of eight years to date, to devise competition rules the efforts of the meetings have resulted in no tangible results.

Out of fifty-three African States none have fully liberalized their air transport sector. There is an obvious lack of political will among the States concerned with clear leadership, guidance and financial support if necessary. Liberalization of the industry has been cited as the key to breaking the above-mentioned vicious cycle to turn many routes into profit –centers to find operations and to finance infrastructure development and maintain the industry. This therefore requires sensitizing the highest authorities in the States to the benefits of implementing the Yamoussoukro Decision.

AFRAA (2007) expressed its concerns about the lack of progress in the liberalization of market access within Africa at its 38th Annual General Assembly. It stated that procrastination in the implementation was inhibiting the growth and competitiveness of African carriers. The reasons for not applying the Yamoussoukro Decision range from non-implementation of certain elements of the decision (e.g. establishing competition rules, dispute settlement mechanism, and an operational monitoring body) to simply ignoring it by continuing to agree to traditional restrictive bilateral. The COMESA legal Notice No. 2 is a regional initiative for liberalization of air transport and was signed by member states including Kenya in 1999 and the final phase of implementation which was targeted for October 2000 has never been achieved despite many meetings.

Kenya has approximately 80 bilateral air service agreements concluded and only about 25 percent of the agreements are liberal. Kenya Airways the flag carrier is unable to get increase in frequencies into a number of African destinations due to the restrictions on market access in those States who happen to be signatories to both COMESA and Yamoussoukro liberalization Treaties. Kenya on the other hand also denied Ethiopian Airlines the right to exercise fifth freedom operations between Nairobi and Kigali, in breach of the Yamoussoukro decision compliant bilateral between Ethiopia and Kenya. The issue is still a subject of negotiations, which is a clear indication of the lack of implementation of liberalization air transport despite States being signatories to the Treaty.

The foregoing is indicative of the fact that like most African states, Kenya has also experienced challenges of fully implementing the Decision. It therefore against this background that purpose of this study was premised to assess the factors that influence the full implementation of liberalization of air transport in Kenya.

1.3 Research Objectives

1.3.1 General objective

The general objective of this study was to assess factors influencing the full implementation of liberalization of air transport in Kenya.

1.3.2 Specific Objective

The study was guided by the following specific objectives:

1. To determine the extent to which competition affects the liberalization of air transport.
2. To examine how political-will influences the liberalization of air transport.
3. To assess the influence of regulators on the implementation of liberalization of air transport in Kenya
4. To establish the how the existing legislation affects liberalization of air transport

1.4 Research Questions

The sought to answer the following questions;

1. How does competition affect the liberalization of air transport in Kenya?
2. What is the influence of political will on the liberalization of air transport in Kenya?
3. How do regulators affect implementation of liberalization of air transport in Kenya?
4. What is the effect of the existing legislation on liberalization of air transport in Kenya?

1.5 Significance of the Study

The incremental benefits of liberalization of air transport are enormous. It will expedite regional cooperation while enhancing trade, tourism/transportation and manufacturing by opening up market to both potential and actual competition between airlines and between airline alliances.[14] The findings of the study are significant to the Ministry of Transport, KCAA and other African states in sharing Kenya's experience to take the necessary steps to deal with their challenges and to fast-track the full implementation of liberalization. It will help the Government to develop practical policy on liberalization and get required assistance from development partners to facilitate liberalization of air transport.

The Regional and sub regional bodies mandated to deal with liberalization issues will benefit since the study will also help in identifying challenges and the solutions thereof. This will make it easier to devise solutions on the way forward. Kenya was nominated President of African Civil Aviation Commission (AFCAC) in July 2007 for a period of three years. Their principle responsibility is to provide leadership in Africa on matters related to civil aviation; such a study is therefore useful to AFCAC since it plans to commission consultants to conduct a study on the same for Africa. It will therefore act as a reference for such consultants. The study will stimulate further studies and academic discourse as no scholarly research work have been done in this area in Kenya. Customers of airlines will benefit if full liberalization is implemented, as this will enhance connectivity and lower airfares in the region.

1.6 Scope of the Study

The scope of this study was limited to the aviation industry in Kenya with the main focus on Ministry of Transport, Kenya Civil Aviation Authority and commercial airlines. The study concentrated on the air transport departments both at the Ministry and KCAA. The focus of the

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[14] Button, K.J.(ed) (1991) *Airline Deregulation: International Expiriences. Fulton, London* –(2002) 'Debunking Some Common Myths about Airports Hubs', *Journal of Air Transport Management,* 8, 177-88.

study was on liberalization of the air transport industry in Kenya and the concern was on factors affecting full liberalization.

CHAPTER TWO: LITERATURE REVIEW

2.1 Introduction

Today, the forces of globalization have posed significant challenges for airlines as the world moves towards greater liberalization of the world economy. This change in circumstances has, in turn called into question the conventional wisdom that views the airport industry as an example of a natural monopoly industry not capable of sustaining competition and thus requiring regulation.[15] With the emergence of powerful trading blocks such as the European Union, the North American Free Trade Association and by extension, the Free Trade Area of the Americas as well other regional economic groupings, Africa is not different in principle, the Yamoussoukro multilateral agreement among most of the 54 African States, allows the multilateral exchange of up to fifth freedom air traffic rights between any member African States on a simple procedure of notification.

This chapter reviews what work has been done in others regions of the world and the significant challenges in African States, towards liberalization of air transport, particularly in Kenya.

2.2 The Concept of Liberalization

According to Clarke (1994), the term Liberalization refers to a relaxation of previous Government restrictions, usually in areas of social or economic policy, it is a term used for economic liberalization especially trade liberalization or capital market liberalization. In the context of air transport liberalization means the opening up of the market access to airlines of other nationalities, and hence the theory behind 'open skies'.

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[15] Starkie David (2008), ' Aviation Market: Studies in Competition and Regulatory Reform': Ashgate Publishing, pp. 138

The term ‘open skies’ refers to a bilateral or multilateral Air Transport Agreement, which liberalizes the rules for international aviation markets and minimizes (or eliminates) Government intervention: the provisions apply to passenger, cargo and combination air transportation on scheduled and charter services[16].

A recommendation by aviation scholars in Findlay, Sein and Sigh’s (1997) book demonstrates that open skies agreements allow air carriers designated by signatories to make decisions on routes, capacity and pricing, and fully liberalizes conditions for charters and other aviation activities, including permitting unrestricted code sharing rights, allowing air carriers unlimited access to points in the signatory countries and allowing unlimited access to intermediate and beyond points. Such agreements provide maximum operational flexibility for airline alliance partners.[17]

Further, an open skies environment promotes a system based on competition, where air transport is run like any other business, and which facilitates the expansion of the air transport industry. It eliminates the abuse of a dominant position, offers the public better services at lower prices, and eventually creates new economical opportunities and helps to achieve economical growth, provided that the highest degree of aviation safety and security remains in place, and that possible abuses and market instabilities, such as capacity dumping and cutthroat competition, are avoided. Competition is generally accepted as being good for economy because it encourages firms to be cost-efficient; it drives down prices and leads to expanding output.[18]

[16] Abeyrante, R.I.R (1998), ‘The Future of African Civil Aviation’, *Journal of Transportation World Wide,* vol. 4, pp. 55-66

[17] Findlay, C., Sein, C.L., and Sigh, K. (eds), (1997), *Asian Pacific Air Transport: Challenges and Policy Reform.* Institute of Southeast Asian Studies, Singapore.

[18] Starkie David (2008), ‘*Aviation Markets; Studies in Competition and Regulatory Reforms*’: Ashgate Publishing, pp. 135-7

2.3 Liberalization of Air Transport

Recent studies, by Doganis and Rigas (2001), indicate that states regard their national carriers and transport rights as strategic and national resources, as part of their sovereignty, and as part of their de facto and de jure control over all land, sea and air space within defined territorial boundaries. Further, a large number of airlines are still state-owned, or state-supported, and consequently Governments have resorted to imposing various degrees of protectionism to defend their airlines.

Extensive research by Alamdari and Morrell (1998), attests to the importance of commercial aviation to nations in all states of development. Air service liberalization, which replaces a set of strict and arcane rules with the primacy of the market, has repeatedly proven a decisive influence in expanding the industry, and making its benefits available to more people.

The past two decades have seen significant and beneficial changes in airline regulation. The United States began pursuing open skies agreements in 1979, and by 1982, it had signed 23 bilateral air service agreements worldwide, mainly with smaller nations. That was followed in the 1990s by agreements with some individual European States. The creation of a single European market for air transport services between 1987 and 1997 contributed to a surge in air transport within Europe. It is expected that the Arab market, which ranks among the fastest growing in the world, will benefit enormously from easing restrictions on air transport (Brueckner, 2000).

2.3.1 The United States and the World

The United States, like other States, adopted the bilateral model with a strictly balanced trade of rights with its partners. In 1978, the liberalization of the domestic air transport market in the United States removed barriers to market entry (Brueckner, 2000). By eliminating protected domestic markets, liberalization in the United States also prompted airlines to seek new opportunities for growth in international markets (Hansson et al, 2001).

This involved route rights, as well as charter operating rights and other commercial opportunities concerning pricing freedom. In 1995, the United States conducted a broad review of its aviation goals and strategies, and by the end of 1995, it concluded nine open skies agreements with European countries. The United States continues to seek to conclude open skies agreements and its policy revolves around the following (Hansson et al, 2001):

(a) Direct and one-to-one contact with each country based on the particulars of each country, allowing code-sharing, including third party code-sharing: to date, the United States has concluded open skies agreement with more than 76 countries around the world, including agreements with seven Arab countries, namely, Bahrain, Jordan, Kuwait, Morocco, Oman, Qatar and United Arab Emirates;

(b) Multilateral agreements to liberalize international air transport: the first such agreement, the Multilateral Agreement on the Liberalization of International Air Transportation (MALIAT), entered into force on 21 December 2001, and includes Brunei Darussalam, Chile, New Zealand, Samoa, Singapore and Tonga, as well as the United States. The Cook Islands joined the Convention, on 23 July 2006.

The agreement includes open traffic rights, including the seventh freedom and is aimed at creating new investment opportunities for airlines, and launching new airlines in concerned markets, particularly through the elimination of many restrictions regarding foreign ownership stipulated in the bilateral agreements (Brueckner, 2000).

(c) Euro-American talks to liberalize skies across the Atlantic in March 2008 saw the wrapping up of the biggest open skies accord in the history of the air transport industry between the European Union and the United States. This agreement will draw on a market of 750 million inhabitants and 56 Multilateral Agreement on the Liberalization of International Air Transportation.

Negotiations between Europe and the United States began in June 2003 with a view to reaching an agreement on the liberalization of air transport across the Atlantic, and lasted until mid-2004. Following a lull, negotiations between the European Union and the United States were revived in October 2005. At that time, the United States rejected the request of the European Union to award the right of cabotage within the United States to European airlines (Hansson et al, 2002).

Other issues involve American laws of airline ownership and control that are partly designed to protect American carriers but also to satisfy the United States military, which maintains the Civil Reserve Air Fleet by drawing on commercial fleets for airlift during national emergencies (Cooper and Smith, 2005). The airlines, as a quid pro quo, benefit with priority over the carriage of military and Government personnel. Other issues include the tax free position of European Union-United States aviation and the harmonization of antitrust policies to protect against predatory behavior (Hansson et al, 2002).

Studies by Hansson et al, (2002), further indicate that the parties agreed on the principle of the liberalization of airspace between them, and began negotiations on a draft agreement. It is also worth noting that on 5 December 2006, the United States Department of Transportation withdrew a proposal regarding the International Investment Rule and expressed its commitment to working on an open skies agreement. This proposal would have changed rules governing international investment in United States airlines (Brueckner, 2000). The withdrawal came after the Department reviewed a multitude of public comments, including those from the United States Congress.

The original proposal, first issued by the Department in November 2005, and later amended in May 2006, would have allowed international investors more input into the marketing, routing and fleet structures of United States airlines while at the same time retaining current domestic ownership and labour protection (Hansson et al, 2002).

Talks between the Europeans and Americans were aimed at accomplishing a final agreement by the end of 2006. However, the Americans decided to postpone the review of restrictions on foreign ownership. Still, both parties were hopeful that they would be able to reach an early final agreement, and roll it out in the summer of 2007. However, an agreement was only reached in March 2008 and final settlement was anticipated by 2010.

2.3.2 Regulatory Developments within the European Union

In November 2002, the European Court of Justice ruled against national ownership in existing bilateral agreements between any country in the European Union and a third country. Consequently, the European Union sought an amendment of bilateral agreements between the states of the European Union and other countries, including Arab States. Despite the fact that the basis for this request is legal; the implications are undoubtedly economic (Dargon, 1988 and Man, 2001).

2.3.3 Arab-European Talks

AACO and ACAC initiated several rounds of discussions with the European Commission on bilateral agreements between the European Union and Arab States. Accordingly, ACAC drafted the collective Arab mechanism for negotiations with regional or sub regional blocs to negotiate collectively with their European counterpart. Thirteen Arab States signed the agreement, four countries have ratified it and two are currently in the process of ratifying it (Warnock-Smith and Morrell, 2008).[19] This agreement came into effect on 15 June 2006.

2.3.4 Arab Air Transport: Regulatory Environment

A study by O'Connell (2006) shows a gradual change has been taking place in the Arab air transport environment towards increased liberalization of market access. National agendas for Arab countries still determine Governments' policies on traffic rights[20] (Cooper and Smith, 2005). However, this goes hand in hand with initiatives from ACAC, particularly a programme to liberalize air transport gradually, on the basis of bilateral agreements, and at a later stage, through multilateral agreements.

ACAC is pressing for the gradual liberalization of air transport between Arab States, and aimed to liberalize the fifth freedom by 2007 on bilateral basis. In addition, ACAC adopted an agreement at a ministerial level for a multilateral Arab accord to liberalize air transport: 12 Arab States have signed the accord and three ratified it, while five are in the process of ratification (O'Connell, 2006). This accord needs the ratification of five States to come into effect. It comprises 31 crucial protocols on monopoly, capacity dumping, and governmental subsidy.

[19] Warnock-Smith D. and Morrel P. (2008). Air Transport liberalization and traffic growth in tourism-dependant economies: *A case history of some US caribean markets.* A journal of Air Transport. Management 14(2): pp 82-91, March 2008

[20] O'Connell J.F (2006) '*The changing dynamics of the Arab Gulf based airline and an investigation into the strategies that are making Emirates into a global challenger'* Review of international Transportation Research 19(1): pp 94-112, 2006

Those protocols are an integral part of the accord because the actual implementation depends on the presence of laws that regulate doing business according to these protocols.

This agreement includes clauses on the following issues, including the call to liberalize the movement of goods and passengers between Arab States, scope of application and general rules:

(a) Granting traffic rights;

(b) Implementing air traffic rights;

(c) Operating licenses and permits;

(d) Commercial requirements of airlines and cooperation;

(e) Government subsidies to airlines;

(f) Taxes and charges;

(g) Flight safety and civil aviation security;

(h) Protecting the environment and consumer interests;

(i) Consultations on the interpretation and implementation of the agreement and resolving disputes;

(j) Relationship with regional blocks and organizations.

It remains that the national policy of each Arab State is the determinant of the extent of liberalization in that State and other related issues (O'Connell, 2006).[21] In view of this, airspace liberalization varies from one State to another. Such States as Bahrain, Lebanon, Oman and the United Arab Emirates have adopted open skies policies.

Seventeen open skies agreements have been signed between ACAC States namely: Bahrain, Egypt, Jordan, Lebanon, Morocco, Oman, Qatar, Syrian Arab Republic, Saudi Arabia and United Arab Emirates. In other cases, some Arab States have implemented liberalization with regard to third and fourth freedoms (O'Connell, 2006). At the same time, many major Arab States are in the early stages of liberalization

AACO is pressing on with its coordination work with ACAC, representing Arab civil aviation authorities, and Arab airlines, stressing the importance of developing an Arab regulatory

[21] Ibid O'Connell J.F (2006); pp 94-114

environment towards more liberalization of market access, coupled with the need to do the following (O'Connell, 2006):

(a) Reduce restrictions on movement of people and goods, in preparation for lifting them completely between conceding States;

(b) Ensure equal economic opportunities in operations, whereby States ensure that operators within their markets operate within the framework of the economic conditions of national airlines, safeguarding long-term economic competition;

(c) Draft laws to protect consumers and airlines from uneconomic dumping of capacity and predatory prices in a manner that would drive out market competitors;

(d) Reconsider laws on national ownership and control without jeopardizing the strategic interests of concerned States, and embark on privatization programmes in countries that prioritize the importance of a bigger role for the private sector in the aviation business.

The foregoing indicate the efforts of liberalization in the various parts of the world

2.4 Liberalization of Air Transport in Africa

Studies by Pederson (2000) indicate that the issues of air transport liberalization and market access continue to be among the greatest challenges facing airlines around the world, especially in African region.[22] The way in which stakeholders deal with this issue will serve as the foundation for how airlines plan their future, the role they want to play, or how they identify their competitive advantage against others (Pederson, 2000). Overall, Government protection of airlines through limiting capacity, setting prices and defining flight frequencies is coming to an end around the world, including in the African region. This issue, however, remains a matter of national policy and is an integral part of the economic agenda of each State.[23]

A study by Wells (1994), points that an overriding motivation of the history of the economic regulation of air transport in Africa has been the desire to ensure the protection of national flag carriers. African aviation policies have been based more on the concern of protection of the

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[22] Pederson, P. O (2000) '*The changing structure of transport under Trade liberealization and Globalization and it's impact on African development'* CDR Working paper center for development research, Copenhagen, Denmark.
[23] Ibid

interests of national airlines rather than the interests of the consumers; passengers and shippers (Irandu, 1995). The desire for protection of flag carriers explains much of the attitudes of African countries vis-à-vis air transport liberalisation.

The current economic regulation of intra-African air transport is based primarily on a complex regime of protectionist bilateral air service agreements through which decisions on market access and related issues are made by States in the exercise of sovereignty over their air space (Rietveld and Brons, 2001).[24] Traditionally, such agreements include *inter alia;* State control over traffic rights and limitations on the exercise of 3rd and 4th freedoms of the air and reluctant to authorise technical landing for a flight continuing to other destinations; curtailment of the exercise of fifth freedom traffic right. In the face of very limited point-to-point traffic movement within Africa, the support of fifth freedom traffic is most crucial in ensuring the sustainability of any service and expansion of the intra-African network; restriction on frequencies and capacity and double approval of tariffs. Others are restriction on routes to be served, limitation on the number of designated carriers; usually the designated flag carriers enjoyed exclusive and monopolistic rights in these markets.

The need for a continental consensus and solutions were discussed at length under the auspices of ECA by African ministers responsible for civil aviation which led to the adoption in October 1988, of Yamoussoukro Declaration on a new African civil aviation policy which came with a big bang heralding a new era for African air transport, full of bold ideas to revamp the African airline industry (Rhoades, 2003). Although ambitious, it included comprehensive proposals for a general framework for air transport reform in Africa and the unification of the fragmented African air transport market.A supplementary step was taken in Mauritius in 1994, which established guidelines on the granting of traffic rights and the liberalisation of non-schedule and cargo air services (Rhoades, 2003). The Mauritius arrangement advocated liberalization on an incremental and sub-regional basis.

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[24] Rietveld p. & Brons M., (2001) ' *Quality of hub-and-spoke networks; the effects of timetable coordination and waiting time and rescheduling time*' Journal of Air Transport Management, vol. 7, pp. 241-249

A further important step forward in the move towards intra-African air transport liberalisation was taken in November 1999 at a conference of African Ministers responsible for Civil Aviation held under the auspices of the United Nations Economic Commission for Africa in Yamoussoukro, Côte d'Ivoire.

After intensive discussions, the Ministers adopted a Decision relating to the Implementation of the Yamoussoukro Declaration concerning the Liberalization of Access to Air Transport Markets in Africa. The Decision was subsequently endorsed by the Assembly of Heads of State and Government of the African Economic Community in July 2000 under Article 10 of the Abuja Treaty. The Decision was published in the Official Journal of the African Economic Community on 12 July 2000.In terms of Article 10 of the Treaty, the Decision entered into force on 12 August 2000 among 44 African countries who have ratified the Abuja treaty.

The framework provided for a continent-wide aviation agreement which was to liberalise the African skies and had the aim of reaching full liberalisation by the year 2002. It removed all restrictions on traffic rights including the fifth freedom, capacity between city pairs, on-regulation of tariffs by government, multiple designation, complete liberalisation of cargo and non-scheduled air services. The monitoring body is established to oversee the implementation process.

The decision, when fully implemented, will replace the current fragmented regulatory regime by a unified system that gives airlines commercial opportunities on an equal basis and ensures that their activities will be governed by a common body of aviation rules.

2.4.1 Sub-regional Arrangements

Among the positive impacts of the 1988 Yamoussoukro Declaration is the pressure it has exerted on the African sub-regions for the implementation of liberalisation. As a result, a number of sub-regional consultations and arrangements for the economic regulation of African air transport at the wider sub-regional level or among states with a community of interest have been or are being developed (Taneja, 2003). The following are some of these initiatives;

2.4.2 The Banjul Accord

The Banjul Accord for an accelerated implementation of the Declaration among six African States (Cape Verde, Ghana, Guinea Bissau, Sierra Leone, Nigeria and the Gambia) was concluded in April 1997. It covers a wide range of co-operation relating to airline operations, infrastructure, traffic rights, aviation safety and security.

2.4.3 Arab Council on Civil Aviation

The Arab Council on Aviation, which is a specialised agency of the Arab League, reached agreement to liberalise intra-Arab air services over a period of five years gradually ending restrictions on 3^{rd}, 4^{th} and 5^{th} freedom traffic rights for carriers of its member states. This plan was adopted by the Arab Ministers responsible for civil aviation in November 1998. The plan was to achieve total liberalisation by the year 2005.

2.4.4 CEMAC

Member states of CEMAC adopted in March 1999 an agreement for the conditions and modalities for the operation of intra-community air services with full third and fourth freedom traffic rights while designated airlines are allowed to carry 40% of the traffic of the preceding year as 5th freedom rights. There is no capacity restriction and complete liberalisation of non-scheduled services.

2.4.5 West and Central Africa

The Ministers responsible for civil aviation of the West and Central Africa sub-region reached agreement to achieve liberalisation with two years. A Memorandum of Understanding was signed on 14 November 1999 reaffirming their commitment to fully liberalize scheduled and non - scheduled air transport services within the West and Central Africa (WCA) as laid out in the Decision of the Conference of African Ministers responsible for civil aviation and approved by the OAU summit. They are also taking other measures to ensure the successful implementation of the Decision in the sub-regions.

Some of these sub-regional initiatives described aim at greater flexibility of rules which go beyond the existing bilateral regulatory framework (Clancy and Hoppin, 2005). They involve the adoption of regional regulation of air traffic, either complementing or superseding the bilateral structure. The study by Clancy and Hoppin (2005) show that these initiatives seem to indicate a trend towards sub-regionalization of air transport in Africa, mostly undertaken as part of the construction of common markets or economic integration processes which imply close economic integration between member countries of a sub-region.

2.4.6 COMESA

The 21 states from the Common Market for Eastern and Southern Africa (COMESA) reached agreement in May 1999 to phase-in liberalisation of scheduled and non-scheduled air services within the sub-region. The first phase which ended in October 2000 allowed free movement of intra-COMESA air cargo and non-scheduled passenger services between any city pair with no capacity restrictions and multiple airline designation. Full liberalisation was targeted for October 2000.

2.4.7 The COMESA Air Transport Liberalization Programme

COMESA's policy on air transport was already well established in the COMESA treaty. Article 84 of the treaty urges member States to develop coordinated and complementary transport and communications policies. For the facilitation of movement of inter-State traffic and for the promotion of greater movement of persons, goods and services within the Common Market. Member States are further urged to maintain, upgrade, and rehabilitate the roads, railways and harbors in their territories.

The essence of the air transport policy is outlined in Article 87, which seems to be drafted in line with the Yamoussoukro Declaration of 1988. The main focus of Article 87 is cooperation between operators of the Common Market: the establishment of joint ventures for co-operation in the use of equipment, in the pooling of aircraft maintenance and training facilities, in the acquisition of spare parts, use of fuel and, in insurance schemes, in the coordination of flight schedules and the improvement of managerial techniques and skills.

However, it goes on to engage the member States to liberalize the granting of air traffic rights for passengers and cargo operations, to harmonize civil aviation rules and regulations by implementing the provisions of the Chicago Convention of 1944, to establish common measures for the facilitation of passenger and cargo air services, to develop and maintain a common navigation and communication infrastructure for air space management, and to harmonize rates, rules, and regulations on scheduled air transport services to be applied equally among all participants.

In 1999, practically in parallel with the African Economic Communities' initiated agreement of the Yamoussoukro Decision, COMESA's Council of Ministers issued the "Regulation for the Implementation of the Liberalised Air Transport Industry". The regulation was issues as a directive titled "Legal Notice No.2", which became binding on the member States and on all subordinate organs of the Common Market. Legal Notice No. 2 aims at liberalizing air transport services as a step of the creation of a free trade area guaranteeing the free movement of goods and services produced within COMESA, as well as the removal of all tariff and non-tariff barriers. However, despite of the fact that Legal Notice No. 2 will go beyond the scope of liberalization of the Yamoussoukro Decision, it does not mention the Yamoussoukro Decision as basis or inspiration of COMESA's new air transport policy. According to Legal Notice No. 2, air transportation within COMESA was to be liberalized in two phases. Phase I, which was initiated in October1999, introduced;

(i) Free movement of intra-COMESA air 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 pair, and adopted
(iii) Multiple designations and the elimination of capacity restrictions.

Especially fifth freedom rights, which were seen as essential in many liberalization policies such as the Yamoussoukro Decision, were already granted in Phase I of COMESA's liberalization. In Phase I fifth freedom rights were limited to 30 percent of the carrier's capacity on routes where third and fourth freedom traffic were provided, but no restrictions were put on fifth freedom traffic on routes were no third and forth traffic existed by another operator. The main liberalization of air transportation within COMESA's Common Market was reached one year after commencement of Phase I, when in October 2000 Phase II became the new policy, which in essence introduced free movement of intra-COMESA air transport services. Phase II of the Legal

Notice No. 2 has liberalized air services far beyond the scope of the Yamoussoukro Decision, by implementing the following elements:

i. Market Access (Yamoussoukro Decision Article 6): Any air carrier is eligible provided it is substantially owned and effectively controlled by a COMESA member State or their nationals. It must demonstrate financial, managerial and technical ability to perform the services, which is also a condition for receiving an air operator’s certificate.However, in contrast to the Yamoussoukro Decision where traffic rights are notified on a bilateral basis between two or, in cases of fifth freedom flights, three countries, COMESA carriers are able to operate between any destination within the COMON market. Carriers can also use aircraft registered in, and owned by any COMESA State, or its nationals.

ii. Traffic rights (Yamoussoukro Decision Article 3): There is the principle of free movement of intra-COMESA air transport services. This explicitly includes Cabotage rights, which are only excluded during Phase I.

iii. Tariffs (Yamoussoukro Decision Article 4): No specific regulations are made in regard of air services. However, the preamble of Legal Notice No. 2 mentions the fact that all COMESA member States have agreed on the removal of all tariff and non-tariff barriers in order to facilitate the establishment of a full free trade area, it can be implied that free movement of air services would also be free of any tariff

iv. Capacity and Frequency (Yamoussoukro Decision Article 5): No restriction of capacity shall be imposed in Phase II. This is explicitly mentioned in the case of fifth freedom rights despite the fact that traffic in the Common Market is free including Cabotage. In terms of equipment, there is another explicit rule that states that no restriction on type and capacity of aircraft shall be made.

Nevertheless, similar to Article 11.4 of the Yamoussoukro Decision, COMESA carriers are encouraged to establish intra-COMESA airline alliances and commercial arrangements, as long as these arrangements do not undermine the COMESA rules and regulations of competition. Despite the very clear and concise liberalization program contained in Legal Notice No. 2, its adoption was stalled in 2001 when the Council of Ministers of COMESA decided to “defer the implementation of Phase 2 awaiting the preparation of competition regulations”. Subsequently, the implementation of liberalized air services within COMESA, as specified in Phase II, remained pending for several years. In 2004 only twelve member States in fact were noted to have at least implemented Phase I, and only Djibouti at the time opened its airspace to COMESA carriers in line with Legal notice No 2.

The Legal Notice No. 2 did indeed not mention issues of fair competition and the procedure for dealing with disputes resulting from liberalization of international air traffic in the region. In addition to the missing competition regulations, several other elements were subsequently identified in order to "successfully complete this regional air transport liberalization agenda". These elements included:

i. The adoption of a COMESA Air Transport Policy;
ii. The implementation provisions for the air transport competition rules;
iii. The 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. The drafting of a standardized mechanism for entry into the market and for enjoying the rights enshrined in the Legal Notice No. 2 and in the Yamoussoukro Decision;
vi. The sensitization of airlines and other key stakeholders on the implementation of the Legal Notice and the Yamoussoukro Decision;
vii. The drafting of a comprehensive regulation on consumer protection in the air transport sector;
viii. The harmonization of the regulatory framework; and Common Market for Eastern and Southern Africa (COMESA) Secretariat. The COMESA Air Transport Liberalization Experience;
ix. The incorporation of all council regulations into individual State legal and administrative procedures.

The key issue is the question if the implementation of the above mentioned regional air transport liberalization agenda can be seen as a condition precedent for the application of the liberalization according to the Legal Notice No. 2. In application of the fact that the Yamoussoukro Decision it-self does not dispose of detailed competition regulation or of the various above mentioned regulations, it can be stated that the application of a liberalized air transport policy may benefit, but does not need to exist *a priori*. As outlined in chapter on the Yamoussoukro Decision, air transport and its liberalization in Africa is still mainly regulated on a bilateral basis between member States of the Yamoussoukro Decision. There is no reason why the principles of Legal Notice No. 2 could not be applied by agreeing to new bilaterals that conform with both, the elements of Legal Notice No. 2 and of the Yamoussoukro Decision. Nevertheless, the COMESA began with the preparation of the specialized competition regulations for the air transport sector, despite the fact that it already had general competition rules.

2.4.8 Liberal bilateral Agreements

At the bilateral level, a number of African countries have signed or amended bilateral agreements to introduce a more open and liberalised regime: lifting restriction on traffic rights, capacity, frequency, tariffs, designation etc. In parallel, a number of African countries have signed or initialled open skies agreement with the United States (Kenya, Morocco, Nigeria, Ghana, Senegal, Tanzania, Namibia, Burkina Faso, Gambia, Benin). Other countries are reported to be negotiating with the United States

2.4.9 Liberalization of Air Transport in Kenya

Today's aviation market in Kenya is experiencing unprecedented challenges triggered by world events, turbulence and uncertainty (Shaw, 2004). The implementation of liberalization of air transport through Yamoussoukro Decision initiative has dogged Kenya for the past 20 years.

Despite the merits of liberalization of air transport, the full implementation in Kenya has been a challenge (Ministry of Transport and Communications, 2003); The Yamoussoukro Decision and COMESA Legal Notice No 2 of 1999 govern Kenya on Liberalization. These are international laws; however through the framework of the Abuja treaty they became binding to Member States therefore there is no need for domestication. Despite their binding status there is a lack of effective applicability of the laws in Kenya.[25]

There is a strong need of domesticating these rules to give them effect .a critical review of CAP 394 Civil Aviation Act which is the national legislation governing air transport services in Kenya indicate that of market access is highly regulated and is subjected to the decisions of the licensing Authority and Bilateral Air Services Agreements. The Integrated National Transport Policy of Kenya has made an attempt to support liberalization of air transport services taking cognizance of both the Yamoussoukro Decision and COMESA legal notice No. 2 unfortunately this document has not yet been passed by Parliament and does not give effect to implementing of liberalization. The implementation of liberalization in Kenya to a large extent has been left to the Political good will and discretion of the Regulators and the Aeronautical Authority.

Studies by Clancy and Hoppin (2005) show that to date few governments including Kenya, have focused their energies on passenger liberalization and, for the most part, have not recognized either the important difference between passenger and cargo services or the importance of air cargo liberalization to world trade and economic development.

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[25] Ministry of Transport and Communications (2003). Integrated National Transport Policy Workshop, Nairobi, Kenya January 8 2003.

2.5 Benefits of Liberalization

The Convention on International Civil Aviation of 1944 (also known as the Chicago Convention) was signed in Chicago to serve as a framework for the development of civil air transport. It introduced freedoms of the air for States that adopted the Convention, allowing them to enter into bilateral treaties capable of granting rights or privileges for scheduled international air services. The Chicago Convention gave rise to the bilateral system we have today, with negotiations conducted on a one-on-one basis with each trading partner.

Studies by Gaudry and Mayes (2002) shows that while the benefits of liberalisation are not perhaps different from those in other parts of the world, in respect to Africa the benefits of regional liberalisation will have the added economic importance of strengthening the African market and ultimately enhancing the participation of African airlines in international air transport and integration of the continent. The following are some of the potential benefits derived from liberalisation:

(a) Efficiency

The efficiency of air transport is enhanced by allowing more open markets (Harbison and Peker, 1998). Freer markets in air transport would also allow sectors that make use of its services to become more efficient. For example modern supply-chain management techniques rely upon high quality cargo transport to optimize inventory holdings and to provide reliable services to their customers

(b) Increased frequency

Liberalization enables the offer of wider ranges of destinations and more frequent services, thus improving the African network (Holloway and Stephen, 1997).

(c) Stimulation of Traffic

Liberalization tends to encourage in most cases traffic developments. This is what happened with countries that have adopted liberalization. For example frequencies between Kenya and Uganda increased from seven to twenty flights per week, between Kenya and Ethiopia to 11 flights per week due partly implementing COMESA. It appears that with this substantial increase in frequency, the load factors have not declined indicating an overall increase of traffic.

(d) Improvement of Quality of Service

Liberalization offers significant benefits to the consumer. It can serve to increase the range of options and choices available to the travelling public; improves the standards and quality of services (Doz and Hamel, 1998).

(e) Enhancement of Competitive Position

Liberalisation may also improve the competitive position of African airlines by positioning them to be more competitive (Cramer, 1989). Liberalisation has the potential to enable them to create new services and increase efficiency for the benefit of the travelling. This will result in increased competitiveness of national enterprises, greater amounts of foreign direct investment, and expanded trade, thereby leading to greater prosperity for their economy.[26]

(f) Tariffs and cost

As a result of freer market and reduction of cost more competitive fares will be offered to the consumer. Already there are some indications that where a more liberal approach has been adopted, fares have gone down by more than 30% in Eastern Africa as well as between East and Western Africa (Gujarati and Damodar, 1999).

[26] World Bank Group (2002), 'Making Monterrey Work for Africa: New Study Highlights Dwindling Aid Flows, Mounting Challenges', Press Release no. 2002/273/S.

(g) Benefits to Governments/Private Sector

The expected increase in traffic will result in increased revenue to the governments since more airlines will be operating, thus optimizing the utilization of the facilities (Hogenauer, 1975). Such incremental revenue could be ploughed back to further improve infrastructure and aviation safety and security. Such increased traffic will stimulate private sector participation in the development of air transport industry.

(h) Cost of Liberalization

Liberalization would probably have an adverse effect on those African airlines that have not been able to improve their overall competitiveness through higher standard of services, better frequency, better yield management and competitive fares (King, 1984). These airlines will have little chance of remaining in business.

(i) Encouragement of Tourist Traffic

Liberalization has the potential to encourage the development of tourist and cargo traffic (WTO, 2002a).[27] This encouragement will come through better access of the country, opening new markets as more airlines will be operating that offer more competitive pricing, creating the opportunity to attract more business into the country. For example, a tourist destination country that relies exclusively on charter operations could attract high income from tourists who are seeking quality products and price combination.

2.6 Factors that Affects Liberalization of Air Transport

The factors that affect the implementation of liberalization are political will; restrictive legislation, fear of competition, lack of airport and air navigation infrastructure among others, the issue of political will and legislation are based on sovereignty of the air space.

[27] WTO. (2002a) Compendium of tourism statistics. World Tourism Organisation, Madrid.

2.6.1 Sovereignty in the Air Space

According to Kamau (2008) at the start of aviation, the problem of state sovereignty in superjacent air space also arose. At the turn of the century, various theories were propounded regarding states sovereignty in its air space and corresponding freedom of air navigation and rights of over flight.

In addition to the theory based on the “cujus est solum, ejus inferos” (the owner of the land ought to be taken to own right up to sky) doctrine i.e. the sovereignty of the subjacent State extends in the air space to an in finite height;. There were two other theories namely that the airspace is free, subject only to the rights of states required in the interests of their self-preservation (championed by Fauchille and was adopted by the Institute of International Law in 1906). The second theory is based upon the analogy of the maritime belt, there is over the land and waters of each state a lower zone of territorial air space and a higher and unlimited zone of free air space which is similar to the cujus est solum with the additional of servitude of innocent passage for foreign non-military aircraft, akin to the right of innocent passage of merchant’s ships through territorial waters. However, the First World War put at test the theoretical controversy and states realized the significance of air transport and potential dangers from the unauthorized use of the air space to their security.

In the Paris Convention (1919) for the Regulation of Aerial Navigation for the Regulation of Aerial Navigation was concluded which accepted a States, “Complete and exclusive sovereignty over the airspace above its territory” including its territorial waters. It did not limit this right only to the contracting parties (Art 1) of the convention. The Chicago Convention on International Civil Aviation 1944 further reaffirmed this position and reflected the customary law international law rule with regard to rights of subjacent state in the air space. The state enjoys unfettered sovereign right in its space, whose extent is now governed by the law on outer space. Not withstanding the outward extent of the airspace of a state, it is now well established that no foreign aircraft can enter into the airspace of a state without the express authorities or agreement of the subjacent state.

In practice, through conventions and agreements, states have restricted their power to exclude foreign aircraft form their superjacent airspace and they are designed for reciprocal rights in the conduct of air transport operations. But these restrictions are confined to state which are parties to these conventions and agreements. On the basis of sovereignty international aviation restrictions make it difficult for airlines to operate like other businesses. International aviation differs from most other industries because of the special nationality-based restrictions placed on the ownership and control of airlines (Hoekman and Holmes 1999). These legislative restrictions, and the web of bilateral air services arrangements in which they are placed, were originally founded on the basic principle that a nation State retains sovereignty over its airspace.

With few exceptions States require that airlines which are established in their own territory, and which they license, should be owned and controlled by their own nationals. The primary aim of this restriction has been to limit the benefits of bilateral air services agreements to citizens of the Contracting Parties (Feketekuty, 2000). This has underpinned the development of national airlines, through which many States have chosen to establish air transport services. Nationality-based restrictions on the ownership and control of airlines also ensure that the beneficiaries of trade in bilateral air services rights are clearly identified, which greatly reduces the possibility of an inadvertent trade in unreciprocated benefits (Feketekuty, 2000). Substantial ownership and effective control rules have also provided a convenient link between the State and an airline for identifying those responsible for safety and security matters and avoiding “flags of convenience” (Hoekman and Holmes 1999).

Finally, national defense and economic development considerations are continuing factors in some cases. However, as the airline industry has developed and matured, an increasing number of States are finding these legislative restrictions to be anomalous, particularly in a broader context of increasing economic globalization (Hanlon, 1996).[28] The pressures that have prompted firms in other industries to expand internationally through merger or take-over of foreign companies, or to establish themselves in foreign States in order to achieve efficiency gains, also apply to aviation (Hoekman and Holmes 1999).

[28] Hanlon J. P (1996) ‘Who Really Most from Airlines Alliances?’ Travel Trade Gazette 2217, 54. (publication No. 000938)

Indeed aviation is by its very nature an international business. An increasing number of States are responding to this pressure by exposing their airlines to market forces, and in many cases, privatizing them. Airlines themselves are also responding through seeking increased efficiency and extending their global reach through alliances. Airlines are, however, prevented from responding to this pressure in the same way as other businesses by the aviation-specific inward investment legislations and rules applied by most States. At its broadest level, therefore, the purpose of liberalizing airline ownership and control provisions is to place aviation on the same footing as other industries, and to enable an efficient allocation of resources across the whole economy (Hanlon, 1996).[29]

2.6.2 Risks of Liberalization of ownership and Control

Liberalizing ownership and control carries its own risks that need to be addressed as States consider their options for change to full liberalization (Pederson, 2000).[30] Some of the risks involved are; The injection of foreign capital may lead to less stable operation of airlines as it tends to be more mobile, flowing in and out of particular sectors of the global economy as it seeks the best return; There is a risk that, with a diffusion of international airline ownership and increasing emphasis on commercial outcomes, safety and security standards may potentially deteriorate and the potential for "flags of convenience" may increase; The promotion of mergers and acquisitions on a global level has the potential to lead to global market concentration, which will lead, particularly in the absence of competition policy, to reductions in consumer benefits and to a reduction in the ability of national airlines to operate on the basis of equality of opportunity.

2.6.3 Competition

[29] Ibid Hanlon J. P (1996)

[30] Pederson, P. O (2000) . "The changing structure of transport under trade liberalization and globalization and its impact on African development" CDR Working paper center for development research, Copenhagen, Denmark.

Michael Porter (1985) identified five forces of competition that determine the intrinsic long run attractiveness of a market as industry competitors, potential entrants, substitutes buyers and suppliers his model is portrayed in the figure below.

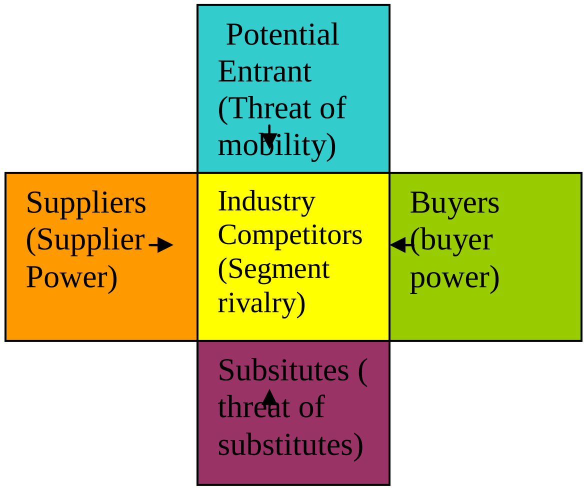


Figure 2.1: Five Forces Determining Segment Structural Attractiveness (Michael E Porter, 1985).

One such force is the threat of intense segment rivalry. According to Kolter (2007) a segment is unattractive if it already contains numerous strong or aggressive competitors. The other force is the threat of new entrants. A segment‘s attractiveness varies with the height of its entry and exit barriers. The most attractive segment is one in which has low entry and exit barriers. The Airline industry in a liberalized environment would have low entry barriers high exit barriers, leaving all companies competition struggling during economic downturns such as the current fuel crisis that the world is facing. The most obvious barrier to entry is government which refuses to license competition for its national carrier. Airlines under protectionist environments operate under monopolistic conditions and this has given them the right to charge high prices.

Liberalization has introduced a difference in the airline industry’s competitive structure airlines in Europe have continued to consolidate in alliances and merges and have turned from monopolistic ventures to differentiated oligopolies.

Proponents of liberalization agree in part that anticompetitive practices may arise but conclude that the public is better served rather than badly served. By this free interplay of market forces services will adjust to demand, the more efficient will survive William O'Connor (1995)

2.6.4 Substantial Ownership and Effective Control

At the other end of the spectrum, ownership of some large airlines has become increasingly diverse, and some are approaching the point where homeland nationals hold a bare majority of shares (Pederson, 2000).[31] This also raises the question of whether the ownership criterion, as distinct from some other form of control, remains universally relevant.

The researcher observes that air carrier ownership and control vested in a single State or its nationals is an anachronism in the global economy and liberalization of ownership and control provisions a necessary precursor of widespread liberalization. This is a matter that can only be resolved through political will and changes in national Law.

Within the European Union (EU), the links between ownership, the regulatory home of the airline and internal traffic rights have been broken with the creation of "community carriers". These are airlines that are majority owned by the Economic Commission (EC) nationals and which hold an aeronautical operational control (AOC) from the EU Member State in which it has its principal place of business. An agreement extends this system to cover Norway and Iceland in addition to the 15 EU member states.

Study by Pederson (2000) indicates that changing the legislation on ownership and control to a liberal one does open up opportunities, for international airlines and the governments that designate them, that are currently unavailable, and identified two related effects[32]. Firstly, it has the potential to improve the economic efficiency of the airline industry by:

i. Strengthening competition in international aviation markets by increasing, both in terms of numbers and variety, the pool of possible competitors in any given market. This in turn

[31] Ibid Pederson (2000)
[32] Ibid Pederson (2000)

has the potential to lead to efficiency gains feeding through into consumer benefits and improved global economic welfare;

ii. Permitting airlines to build global networks through mergers, acquisitions or alliances as they see fit, subject only to normal competition policy. This may provide a more secure base for airlines to exploit their strengths in the longer term;
iii. Providing greater scope for in-depth integration of activities and effective management control which may be superior to the potentially unstable alliance arrangements presently observed; and
iv. Providing airlines with wider access to capital markets that ought to result in their being able to obtain capital more cheaply;
v. The potential for reducing reliance on government support while enhancing safety and security.

This last point leads to a second potential effect of liberalizing ownership and control:
The potential for reduced industry reliance on debt or subsidy; In a notoriously cyclical industry, debt is a risky method of financing over the longer term. This risk also increases the cost of the capital that is available to airlines as investors put a premium on capital they are willing to provide to an industry with systematically high levels of debt. As a result, governments are frequently called on to step in and bail out their airlines (Hoekman and Holmes 1999) as a result most Governments adopt a protectionist tendency when dealing with market access to other airlines

The aviation industry is technically advanced, capital intensive and requires continuing investment to maintain its capital base. As the cost of operating international airlines continues to rise, governments are less and less able to mount this sort of investment without adversely affecting other objectives for government spending, like health and education (Hoekman and Holmes 1999). A pool of under-capitalized, debt-dependent operators with limited commercial flexibility and access to international capital markets in an industry that is notoriously cyclical, places increasing burdens on States (Pederson, 2000).[33]

[33] Ibid Pederson (2000)

Enforcement of *de jure* barriers to cross-border investment contributes to this under-capitalization and an inefficient allocation of resources. This may have serious consequences, not only for participation, but potentially also for safety and security and could jeopardize important ICAO initiatives as under-capitalized airlines will find it harder to meet higher safety and security standards (Hoekman and Holmes 1999).

2.7 Critical Review and Gaps

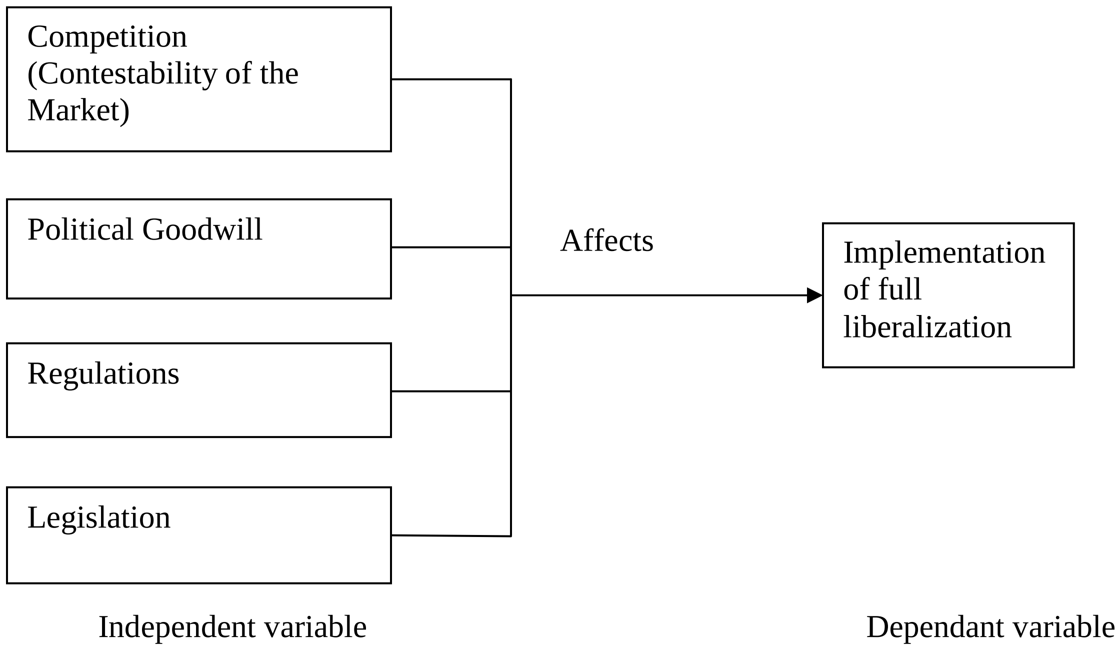
Many airports, airlines, academic institutions, governments and private organizations have documented the relationship between liberalization and economic growth, and also studies on liberalizing ownership and control of airlines. These efforts have contributed greatly to our knowledge of liberalization. However, most research has been narrowly focused in one or a very few specific markets. Most of the work has been *ex-poste* and retrospective; contrasting a situation before and after liberalization. The data and models have been very situation-specific, and could not be quickly and simply applied to other markets.

This study establishes a framework to assess the economic benefits of international air service liberalization in the Kenyan market. Its approach is *ex-ante*; it assesses the factors that affect liberalization of air transport in the Kenya. Its applicability depends on the use of data generated from all players in the Kenyan market. The various statistical relationships that form the model not merely accommodate, but, indeed, require this diversity. This study acknowledges the lack of implementation of the liberalization of air transport in Kenya as most researches continue to concentrate on the benefits of liberalization and open skies in Europe but no studies have been done in Africa taking cognizance of Africa’s uniqueness and peculiarities, hence the need to identify and assess the factors that affect air transport liberalization in Kenya.

2.8 Conceptual Framework

The liberalization process in Kenya will, in part, on initiation in response to immediate economic demands, such as the need to attract new capital to the air transport industry, promote economic efficiency. Ideally, economic efficiency is achieved by fostering a well-functioning competitive market, coupled with good political will, regulations and legislations. This study demonstrates that air service liberalization can promote traffic growth. The sheer scale of the largest airports, and the global reach of the industry, and its technological innovation, supports the often cited statistic that the travel and tourism industry drive 12 percent to 15 percent of the world output of goods and services (Baltagi and Badi, 1999). The study is based on the premise that implementation of full liberalization (dependent variable) is affected by competition and contestability of the market, political goodwill, regulations and legislation (independent variables), either individually or in combination (Figure 2.2).

Figure 2.2: The conceptual framework showing variable relationships



Source: Researcher, 2012

2.8.1 Interpretation of Variables

Competition

The literature on contestability of markets points to the importance of the threat of competition, as distinct from actual competition, in enforcing good behavior and conduct among players in the Kenyan market (Hanlon, 1996).[34] This kind of market is characterized by the following:

(a) There are no barriers to entry (i.e., no extra cost borne by new entrants that are not borne by the incumbents;

[34] Ibid Hanlon J. P (1996)

(b) There are no sunk costs (i.e., costs that cannot be recouped when a firm withdraws from the industry);

(c) The time it takes for the incumbents to change their price in response to the entry is longer than the length of time it takes for a new entrant to make profits. According to this theory, firms in oligopolistic industries will still price at the same level as they would in a perfectly competitive market so long as the threat of competition exists. In other words, under this market, the incumbents can protect themselves from new competition only by behaving well.

A contestable market offers to consumers and the society similar benefits from a perfectly competitive market (Baumol and Lee 1991). Because of the threat of competition, players cannot charge higher-than-competitive prices or earn excessive profits; any attempt to do so would invite new entrants to undercut the incumbents' prices to a level that could still give them attractive returns. Waste and inefficiency beyond what is allowed by the current state of technology and level of knowledge are also avoided, as these would be reflected in higher costs and prices, the presence of which would invite the entry of efficient firms.

Likewise, predatory pricing and cross-subsidy pricing are prevented (Hanlon, 1996).[35] Predation becomes unattractive, since it can only be done if there is a prospect for making future profits large enough to recoup losses made when prices or profits are kept low to drive competitors or new entrants away; but then excessive profits would invite entry. Cross-subsidy occurs when a firm charges a price below cost to particular groups of customers and the loss is made up for by charging excessive prices to other customers. This is not feasible under a contestable market, as the excessive price would invite new entrants who can sell at a lower price level. In effect, the new entrants are capturing from the incumbents the earnings that were previously used for cross-subsidy.

[35] Ibid Hanlon J. P. (1996)

Politics

As in many other parts of the world, the Kenyan civil aviation, under the Ministry of Transport, is being run by the Kenyan government and has suffered the associated problems of mismanagement, lack of technical skill due to political involvement as well leading to lack of commitment in implementing airline liberalization. In order to align Kenyan Aviation with policies of deregulation and liberalization already implemented in North America and Western Europe, the most practical strategy for Kenya would be for airlines to join alliances, or unify on a regional basis, such that even though the expansion of the airline industry is political, the government involvement should be limited to creating a framework for liberal market access and to negotiate routes and airline service agreements.

Within the current regional political and economic landscape, there is the increased threat of marginalization of developing states. Therefore, in order to protect the interests of developing states such as Kenya, there must be the establishment of safeguards and safety nets in the aviation industry so as to enable national airlines to have sustained participation in international air transportation and to have access to the global market place (Serafica, 2002).

There is no doubt that the international community must assist countries facing economic, political, social or financial difficulties in order for these countries to put in place workable economic strategy where air transport can play an important productive role. There is surely a need for greater liberalization but it is understandable that gradual approach may be adopted to ensure fair involvement of those countries willing to liberalize but require breathing time.
Ownership and control must be liberalized, but governments should liberalize their relationships with their national airlines at first and then restructure their aviation authorities in order to meet world challenges. ICAO must remain always the sole aviation international regulator and should work with all international organizations in order to protect the aviation movement towards liberalization.

Regulations

The aviation industry is a highly contestable market in the absence of government regulations. The common argument for the need to regulate liner aviation is based on the supposed danger of chronic instability due to inherent tendencies to ruinous competition and monopoly (Renardet Sauti Consulting Engineers 1986). That is, the industry is highly vulnerable to price and capacity fluctuations, which lead to ruinous competition and eventually to monopoly, after the weak firms are driven out (Fink et al. 2000).[36]

Legislation

Dualists emphasize the difference between national and international law, and require the translation of the latter into the former. Without this translation, international law does not exist as law. International law has to be national law as well, or it is no law at all. If a state accepts a treaty but does not adapt its national law in order to conform to the treaty or does not create a national law explicitly incorporating the treaty, then it violates international law. But one cannot claim that the treaty has become part of national law. Citizens cannot rely on it and judges cannot apply it. National laws that contradict it remain in force. According to dualists, national judges never apply international law, only international law that has been translated into national law.

[36] Fink et al (2000) '*Trade in international maritime services. How much does policy matter*? ' A paper presented at the APEC regional seminar on WTO issues Investment and competition policies, November 2000, Makari City, Phillipes, pp. 29-80

CHAPTER THREE: RESEARCH METHODOLOGY

3.1 Introduction

This chapter provides the methods used in carrying out the study and the operational framework within which data was collected and analyzed. It describes the research design employed, the target population and sample size and how it was selected. It also presents the methods of data collection and analysis.

3.2 Study Design

The study used descriptive research design in order to help make an in depth analysis of the underlying factors under study as supported by Ester et al, 1996.[37] It focused on both qualitative and quantitative aspects.

3.3 Target Population

The target population comprise of key decision-makers at Ministry of Transport and Kenya Civil Aviation Authority officials, and high-profile managers in the Government and Industry department of the airlines and Chief Executive Officers of Airlines.

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[37] Ester M., Kriegel H. P., Sander J., Xu, X., (1996). ‘A density-based algorithm for discouvering clusters in large spatial databases with noise, Inf: Conf. Second internat Conf. on knowledge discovery and data mining, pp 226-531

Table 3.1: Target population

Organization	Population
KCAA	20
Kenya Airways	10
East African Safari Express	10
Safari Express Ltd	11
Jet link Ltd	10
AirKenya Aviation	12
Safarilink Aviation	8
ALS Limited	10
Ministry of Transport	20
Total	110

Source: Researcher 2012

3.4 Sampling Design

The stratified sampling technique was adopted for selecting a sample of 55 senior officers from the total population using a sample ratio of 0.5 (Table 3.2). The sample was selected using stratified random sampling. Tsoukalas (1991) contends that stratification enables the study achieve greater precision provided that the strata have been chosen so that members of the same stratum are as similar as possible in respect of the characteristic of interest.38 Further, it is often administratively convenient to stratify a sample as the results from each stratum may be of intrinsic interest and can be analyzed separately. It also ensures better coverage of the population than simple random sampling (Tsoukalas, 1991)[39].

[38] Tsoukalas, M.Z., Duran, J. W. & Ntafos, S.C. (1991) on some reliability estimation problems in random and partition testing. Proceedings of the international symposium on software reliability engineering (Austin, Texas May 1991) IEEE Computer society Press Los Alamitos, CA, pp 194-201

[39] Ibid Tsoukalas, M.Z., Duran, J. W. & Ntafos, S.C. (1991)

Figure 3.2 Sampling Frame

Organization	Population	Sample Ratio	Sample Size
Ministry Of Transport	20	0.5	10
KCAA	20	0.5	10
Kenya Airways (KQ)	20	0.5	10
Astral Aviation Ltd	10	0.5	5
Safari Express Ltd	10	0.5	5
Safari link Ltd	10	0.5	5
EASAX Express	10	0.5	5
ALS Ltd	10	0.5	5
Total	110	0.5	55

Source:Researcher, 2012

3.5 Data Collection Instruments and Procedures

Data was collected using survey questionnaires which were self-administered. The questionnaire had both closed and open-ended questions. Before the administration of the questionnaire, it was pilot-tested with selected respondents with similar characteristics as those of the actual respondents with results used to improve the instrument in order to improve its quality in collecting reliable and valid data.

3.6 Data Analysis

Data was analyzed qualitatively and quantitatively by use of descriptive statistics. Descriptive statistics namely measures of central tendency were used to appropriately analyze data and describe the results. Correlation analysis was conducted to determine the relationship between the variable under study as supported by (Keith et al, 1992).

CHAPTER FOUR: DATA ANALYSIS AND PRESENTATION OF RESULTS

4.1 Introduction

This chapter presents and describes the results of the study. The results of analysis are presented in tables and figures. The presentation of the results is structured and presented following the research objectives.

4.1.1 Response Rate

Out of the 55 respondents 50 completed the questionnaires that were useful for encoding and analysis as tabulated in Table 4.1. The response rate was derived from the quantitative relation shown below:

$$\text{Response Rate} = \frac{\text{Received Questionnaires} \times 100\ \%}{\text{Sample Size}}$$

Table 4.1: Response Rate by Employer

Employer	Circulated	Missing	Received	Response%
Ministry Of Transport	10		10	100
KCAA	10		10	100
Kenya Airways (KQ)	10	5	5	50
Astral Aviation Ltd	5		5	100
Safari Express Ltd	5		5	100
Safari link Ltd	5		5	100
EASAX Express	5		5	100
ALS Ltd	5		5	100
Total	55	5	50	91

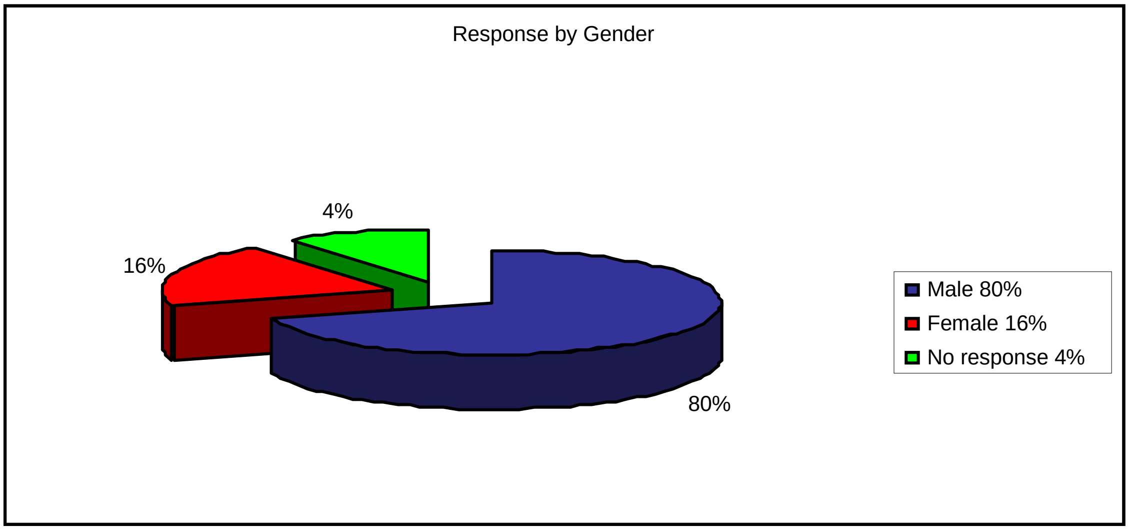
Source: Research Data, 2012

As shown in the table, 91% of the respondents who received questionnaires responded, while 9% questionnaires were not returned. This was a successful response from all the aviation stakeholders which is a pointer to the fact that liberalization of air transport is a subject that interests the aviation stakeholders.

4.1.2 Response by Gender

As presented in Figure 4.1, 80% of respondents were male while 16 % were female, with a non-response of 4%. The result is an indication that aviation industry is dominated by male employees.

Figure 4.1: Response by gender

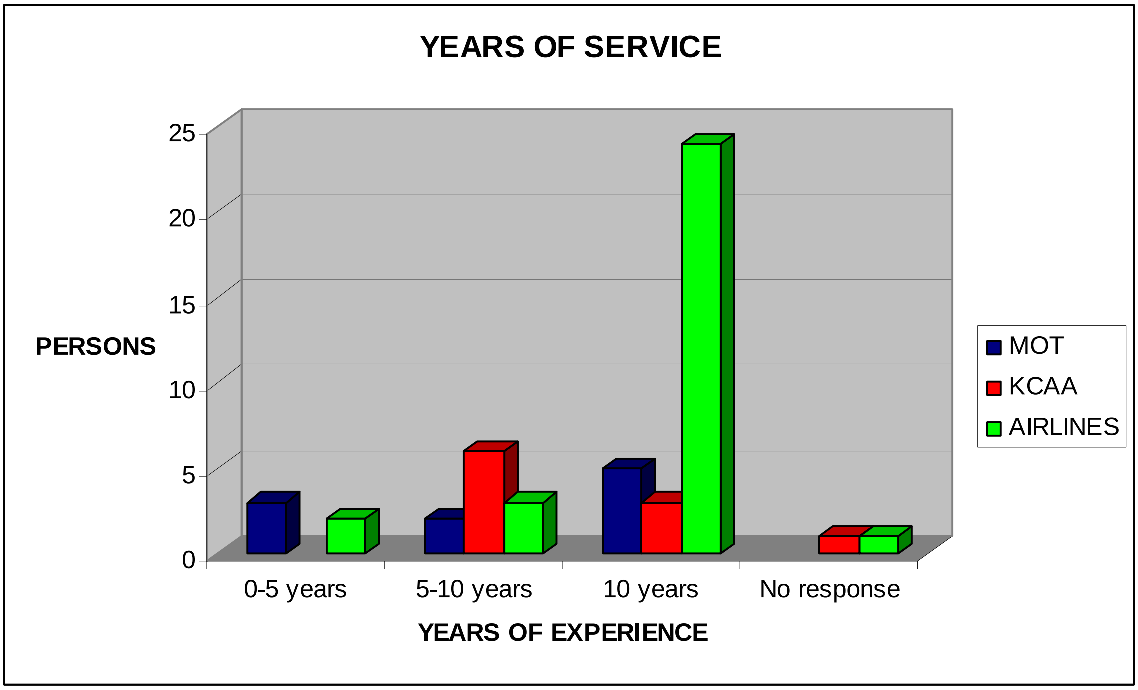


Source: Research Data, 2012

4.1.3 Length of Service in the Aviation Industry

The respondents who participated in the study were asked to specify the duration of service in the organization. This item was to verify whether most of the employees had worked in the organization for a long period of time. The results (Figure 4.2) revealed that 15% of airline staff have worked for less than 5 years. 20% have worked for between 5 to 10 years while those with more than ten years experience were 51%. The combined airline staff product life cycle is in its maturity stage. Over half the numbers of airline staff are mature. As much as aviation requires experienced personnel because of the technical issues that it deals with and therefore takes a long time to train, it also appears that when new ideologies evolve there is some resistance in adopting them because of the difficulty in adopting a paradigm shift. This finding tends to point out that the length of service in the organizations' might influence the implementation of liberalization of air transport in Kenya since the older generation may not be adept at handling changes and changing their mindset on issues that they hold dearly in the olden days.

Figure 4.2: Length of service in aviation service employment



Source: Research Data, 2012

4.1.5 Level of Education

This item in the questionnaire was meant to determine whether the employees in the aviation industry have the necessary qualification in their areas of specialization. The question on educational level was answered by 33 respondents. The study (Table 4.2) revealed that 24% of the respondents had certificate and diploma qualifications respectively. 42% had higher diploma and degree qualifications while 9% have postgraduate qualifications. These results suggest that most of the employees have acquired specialized technical skills in their respective areas of operation. Review of related literature showed that factors that inhibit effective management regime of air transport liberalisation in Kenya were a complex phenomenon that had multiple causes, some of which include education and specialized training.

Table 4.2: Level of education

Level of Education	Frequency	Percentage %
Certificate	8	24%
Diploma	8	24%
Higher Diploma/Degree	14	42%
Post graduate	3	9%
Total	33	100%

Source: Research Data, 2012

4.2 Liberalization of Air Transport in Kenya

4.2.1 The Concept of Liberalisation

Irrespective of respondent category, majority (90%) of the respondents indicated their familiarity with liberalization of air transport; to a great extent (54%) and to some extent (36%). However, 4% indicated that they were familiar with liberalization to a small extent with 2% indicating that they were not sure and 4% non-response (Table 4.3). This means that there is a general perception both from government and industry that is a high level of awareness on liberalization. This does not mean that the respondents fully understand liberalization as is evident in some of their responses especially on the benefits and beneficiaries of liberalization.

Table 4.3: Familiarity with liberalisation of air transport

Response	*Frequency*				*Percentage %*
	MOT	KCAA	AIRLINES	Total	Combined
To a great extent	3	4	20	27	54
To some extent	6	6	7	19	36
To a small extent	1		1	2	4
Not at all	0	0	0	0	0
Not Sure	0	0	1	1	2
No response			5	5	4
Total	10	10	30	50	100

Source: Research Data, 2012

The study also sought to determine the respondents’ views on the organization responsible for implementing liberalisation air transport in Kenya. 80% of the airline respondents indicated that KCAA is responsible for implementation of liberalization of Air transport while 20% were of the opinion that the Ministry of Transport is the organization responsible (Table 4.4). This is true since the civil aviation Act allocates the role of regulator to KCAA, However. Only 20% said it was the role of the Ministry of Transport which is the parent Ministry. As would be expected, no respondent said that airlines were responsible liberalization of air transport.

Table 4.4: Responsibility for air transport liberalization

Category of Respondents	*MOT*	*KCAA*	*AIRLINES*	*Total*
MOT	7	3	0	10(20)
KCAA	0	9	0	9(18)
AIRLINES	3	27	0	30(60)
AVIATION EXPERTS	0	1	0	1(2)
TOTAL	10 (20%)	40 (80%)	0 (0%)	50 (100%)
Percentage				

Source: Research Data, 2012

Interestingly, 7 out of the 10 respondents in the Ministry of Transport category believed that it is the Ministry that is responsible for air transport regulation, whereas in actual role is that of policy formulation. This inaccurate perception can be attributed; in part to the fact that most of the respondents drawn from the Ministry had only been on the job for a short duration of time and therefore, did not have adequate knowledge on the functions of the various agencies of the aviation industry.

iii. Participation in Seminars and Conferences on Liberalization

The study revealed that irrespective of their underlying category, 52% of the respondents in the study had attended at least one meeting on liberalization. The results also reveal that nearly another one half of respondents (48%) had not attended any conference and therefore may not be in a position to comprehend the scope of the liberalization issue and its impacts on the air transport industry. In this category of respondents who had not attended any conference, 90% were from the airlines, indicating that most airline staff had not been educated on the concept of liberalization

4.2.2 Aspects of Liberalization

As shown on Table 4.5, majority of the respondents (76%) indicated that they were conversant with the benefit of air transport liberalization. Similarly, 88% of respondents, irrespective of category, rated the benefits drawn by operators from liberalization between some extent and great extent. Three in every five respondents (76%), were positive about the statement that liberalization is beneficial to customers.

On the impact of liberalization on passenger volumes in the market, less than one half of the respondents (46%) believe that liberalization can actually result in increased passenger volume. This result can be attributed to the observation that up to 70% of respondents drawn from the airlines was of the view that liberalization would not have a positive impact on passenger volumes in the industry. However, a closer look at the expected possible impact of liberalization on passenger volumes suggests that the position taken by airlines could only hold in the short term where liberalization leads to a sudden increase in number of airlines without a proportionate increase in the number of air travelers. A long term projection would otherwise suggest that with the entry of more airlines comes a pricing based competition that eventually leads to lower fares and tariffs. In the end, liberalization potentially increases demand through lowered fares and tariffs hence higher passenger volumes.

Table 4.5: Aspects of liberalization

		Not Sure	*Not at All*	*To a small extent*	*To some extent*	*To a great Extent*	*Total*
1. Are you conversant with the benefits of air transport liberalization?	MOT	0	1	0	6	3	10
	KCAA	0	0	1	8	1	10
	AIRLINES	2	6	2	17	3	30
Total		2 (4)	7(14)	3 (6)	31(62)	7(14)	50(100)
2. Liberalization concept is beneficial to operators	MOT	0	0	1	2	7	10
	KCAA	0	0	0	1	9	10
	AIRLINES	1	3	1	1	24	30
Total		1(2)	3(6)	2(4)	4(8)	40(80)	50(100)
3. Liberalization concept is beneficial to customers	MOT	0	0	1	3	6	10
	KCAA	0	0	0	8	1	10
	AIRLINES	5	2	2	15	6	30
Total		5(10)	2(4)	3(6)	25(50)	13(26)	50(100)
4. Liberalization of air transport can increase passenger volumes in the market	MOT	0	0	0	2	8	10
	KCAA	0	0	0	1	9	10
	AIRLINES	5	21	2	1	2	30
Total		10(20)	21(42)	2(4)	4(8)	19(38)	50(100)

Source: Research Data, 2012

4.2.3 Benefits of Liberalization of Air Transport

When respondents from the different categories were asked what they considered as the main benefits of liberalization, the responses were diverse. They include increased market access for airlines (67.4%), greater service options for the customers (76%), increased connectivity (100%), and competitive prices to the customers (85%). Whereas increased market access means airlines would be able to access otherwise presently restricted destinations or increasing their daily or weekly frequency of access to an erstwhile restricted market destination, greater service options for the customer refers to the variety of service providers at the disposal of clients. With improved liberalization comes increased connectivity to destinations that other airlines would not viably ply but can be traded by home airlines or traditional names in such routes, this makes it possible for an airline to increase its passenger volume by carrying on transit passengers to be passed on to a trading partner. Increasing the number of airlines and route frequency being fundamental principles of the liberalization concept means there would increase supply hence a natural downward adjustment of prices.

4.2.4 Demerits of Liberalization of Air Transport

The study revealed a number of demerits of liberalization of the air transport industry (Table 4.6). While the concerns of local airlines were concentrated on potential loss of market share due to stiff competition (70%) and a possible demise of local operators (20%), loss of business by Kenya Airways (20%) and demise of weaker local operators (64%). The respondents drawn from the Ministry of Transport seemed more concerned with future of the national carrier KQ which they felt could lose out to the competition. Respondents from the regulator, KCAA, on the other hand were both concerned about the demise of weaker local operators and compromised air safety that potentially comes with the drive by most airlines to cut on operations costs in order to remain afloat in the face of stiff competition.

Table 4.6: Demerits of liberalization of air transport

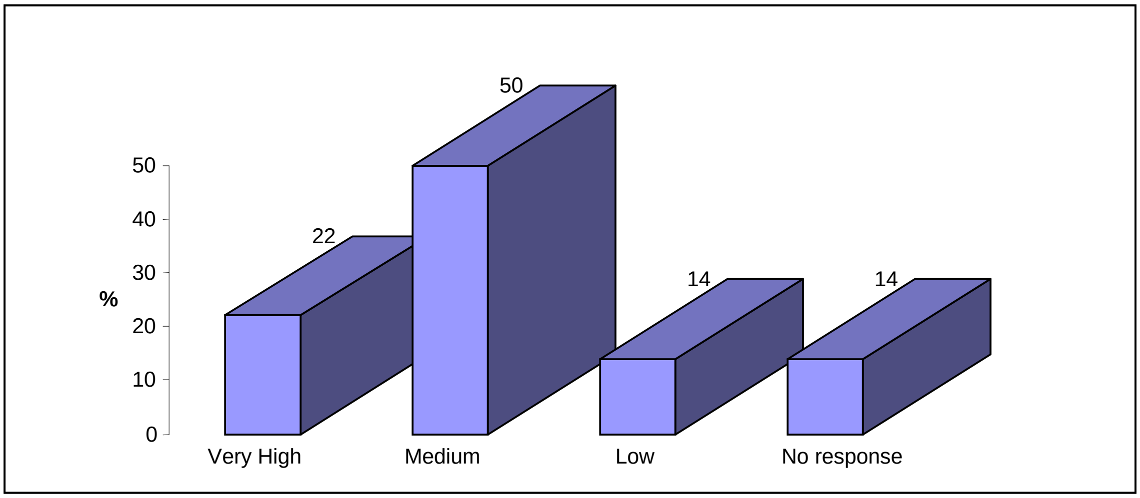
Demerit	Frequency	Percentage
Loss of market share	35	70
KQ could lose out to the competition	10	20
Demise of weaker local operators	32	64
Compromised air safety	10	20

Source: Research Data, 2012

4.2.5 Level of Implementation of Liberalisation in Air Transport

The results in Figure 4.3 indicate that the majority (86%) of the respondents participating in the study rated the level of liberalization between medium and low, with 14% non-response. Only 22% percent of the respondents felt that the level of liberalization is very high while 50% rated the level of implementation as medium. However, 14% rated the implementation as low. An analysis of the results clearly indicates that though full implementation of liberalization of air transport has not been achieved, the level of implementation is satisfactory.

Figure 4.3: Level of implementation of liberalisation



Source: Research Data, 2012

4.3 Market influences on Liberalization of Air Transport

4.3.1 Perceptions on Influence of Market Forces on Liberalization

According to the findings of the study, 86% of the respondents hold the view that market forces influence liberalization (Figure 4.4). 6% of the respondents felt that market forces do not have any influence on liberalization of air transport. The question had a non-response of 8%. This result can be attributed to the assertion that the air transport industry faces newly emerging market forces such increases in fuel costs, changes in consumer preferences, and changes in technology that impacts both the efficiency in operations and costs. When some of these forces impact negatively and heavily on some airlines in a way that significantly challenges their hold on the market and at times completely pushing out airlines operating in monopolized routes, the need to liberalize the sector becomes urgent and real to regulators and state agencies that preside over regulation.

Figure 4.4: Influence of market forces

Source: Research Data, 2012

A number of aspects of the market can be expected to impact on liberalization either positively or negatively. This section discusses study results on how participants perceived the influence of given aspects of the market on liberalization (Table 4.7). 86% of the respondents indicated that market access by other players has an influence on the full implementation of air transport liberalization by rating this influence between to some extent and to a great extent.

A majority of respondents (60%) also indicated that the influence of the introduction of new competition by other players on full implementation of air transport liberalization between some extent and great extent. 66% of respondents were however averse to the assertion that liberalization is important to the growth of airlines by rating this influence as being of a small extent or lower. When respondents from the airlines were asked to rate the impact of the implementation of liberalization of air transport on increase in profit margin of their airlines, 77% indicated that they were either not sure or believed liberalization could not lead to an increase in profit margins for their airlines at all. This result suggests that most airlines still hold the view that liberalization of the sector can greatly erode their profits. Conversely, 97% of all respondents from the airlines indicated that implementation of liberalized air transport can lead to losses to their airlines a result that attests to the foregoing deduction.

Table 4.7: Aspects the market and their impact on liberalization

Aspect	*Response*					
	Not Sure	Not at All	To a small extent	To some extent	To a great Extent	
1. Market access by other players has an influence to full implementation of air transport liberalization	2(4)	1 (2)	4(8)	22(44)	21(42)	50(100)
2. Introduction of new competition by other players has an influence to full implementation of air transport liberalization	13(26)	5(10)	7(14)	20(40)	5(10)	50(100)
3. Liberalization concept is important to the growth of airlines	8(16)	10(20)	15(30)	14(28)	3(6)	30(100)
4. The implementation of Liberalization of air transport can increase profit margin of my airline	5(16.7)	18(60)	4(13.3)	2(6.7)	1(3.3)	30(100)
5. The implementation of liberalized air transport can create a loss to my airline	0(0)	0(0)	1(3.3)	6(20)	23(76.7)	30(100)
6. The implementation of liberalized air transport has an influence to the economics of my airline	1(3.3)	1(3.3)	1(3.3)	7(23.3)	20(66.7)	50(100)
7. The concept of liberalization has an influence to the choice of consumers	3(6)	1(2.0)	10(20)	11(22)	25(50)	50(100)
8. The concept of liberalization has an influence on profits and market to airlines	3(6)	1(2.0)	10(20)	16(32)	20(40)	50(100)
9. The concept of liberalization is based on the integration of a common market	3(6)	1(2)	6(20)	20(40)	20(40)	50(100)

Source: Research Data, 2012

Up to 90% of respondents drawn from the airlines were categorical that the implementation of a liberalized air transport has an influence to the economics of their airlines. Drawing from the observations of this group of respondents on the influence of liberalization on profit margins, it can be concluded that in the view of most airlines, liberalization would have a negative impact on the economics of their operations. A majority of respondents (71%) from all categories concurred that liberalization has an influence on customer choice. Another 72% of respondents indicated that the concept of liberalization has an influence on profits and market to airlines.

Most of the respondents (80%) also concurred that the concept of liberalization is based on the integration of a common market.

4.4 Political Goodwill and Liberalization of Air Transport

4.4.1 Knowledge on the Aviation Regulator

As shown in Table 4.8, majority (92%) of the respondents, irrespective of category correctly identified the aviation regulator as KCAA. Only 4% thought the regulator of air transport is the Ministry of Transport. The 4% is comprised of the relatively new staff at the Ministry who are yet to learn how the Ministry and KCAA operate and their respective roles in the industry.

Table 4.8: Knowledge on the aviation regulator

Category	Frequency	Percentage
MOT	2	4
KCAA	46	92
AIR LINES	1	2
Don't Know	1	2
Total	50	100

Source: Research Data, 2012

4.4.2 Independency of the Regulator

According to the findings of the study (Table 4.9), 86% of the respondents who participated in the study do not believe that the regulator of air transport in Kenya has the leverage to operate independently. On the other hand, 10% of respondents believe that the regulator was independent in executing its functions. The general perception of lack of independence on the part of the air transport sector regulator is attributable mainly to fact that in Kenya, KCAA is a government parastatal created under the state corporations act, exposing it to all forms of state machinations including the seconding of political appointees to its board and management. With such levels of state presence at KCAA, even if indirect, a commensurate impact on its operations can be expected.

In extreme cases where political appointees have no expertise in the management of such a body, it is not uncommon to find policy decisions with far reaching implications being made at the behest of cabals with vested interests in the industry. From the foregoing, absence of reasonable autonomy from the state compromises the ability of a regulator like KCAA to conduct reforms that advance the cause of liberalization.

Table 4.9: Views on independence of the Air Transport Sector Regulator

Response	Frequency	Percentage
Yes	5	10
No	43	86
Don’t Know	1	2
Non Response	1	2
Total	50	100

Source: Research Data, 2012

4.4.3 Financing to Sector Regulator

The financing of the sector regulator had mixed responses (Table 4.10). 54% of the respondents believe that regulator, KCAA is financed from state budget compared while 42% hold the view that the authority is financed from licence charges and other fees levied on airlines. This mixed view is reflective of the dual nature of funding to KCAA. Whereas the regulator receives its finances from licences and chargeable fees, the authority, being a state corporation, collects its revenues through Kenya Revenue Authority KRA) viewed in terms of operational autonomy, this administrative requirement in itself diminishes the levels of autonomy at KCAA.

Table 4.10: Sources of financing to Sector Regulator

Response	Frequency	Percentage
License and Fees	21	42
State budget	27	54
Don’t Know	2	4
Non Response	0	0
Total	50	100

Source: Research Data, 2012

4.4.4 Rating of the effect of Political will on liberalization

Results in Table 4.11 show that up to three in every four respondents (76%) agreed or agreed very strongly with the statement that decisions on air transport licensing and designation of airlines are influenced by politicians. Similarly, an absolute majority (94%) of respondents were positive about the view that access to the Kenyan market by foreign airlines is influenced by Government. In addition, 84% of respondents also agreed or agreed strongly with the position that the Government can help expedite the air transport liberalisation process. From the these results, it can be deduced that; indeed the airline licensing process is influenced by politicians with possibly favoured applications getting licensed even if they do not meet minimum requirements for such licenses.

Table 4.11: Rating of the effect of political goodwill on liberalization

Aspect	Strongly Agree	Agree	Not sure	Disagree	Strongly Disagree
1. Decisions on air transport licensing and designation of airlines are influenced by Politicians	15(30)	23(46)	8(16)	4(8)	0(0)
2. Access to the Kenyan market by foreign airlines is influenced by Government	13(26)	34(68)	1(2)	2(4)	0(0)
3. Government can help expedite the air transport liberalisation process	31(62)	11(22)	3(6)	1(2)	4(8)

Source: Research Data, 2012

4.4.5 Rating of the effect of the influence of Political Climate on Liberalization

As shown on Table 4.12, 88% of respondents disagreed with the statement holding that liberalization of air transport is workable in Kenya. On the other hand, a majority (72%) of the respondents agreed and strongly agreed with the statement that the implementation of liberalized air transport has legislative influences. Similarly, 90% of respondents were positive about the statement that the implementation of liberalized air transport has political influences. On the other hand 78% of participants in the study did not believe that the government would have a contribution to the sustainability of airlines upon liberalization. While one half (50%) of respondents believed Kenya has the capacity of implementing a fully liberalized air transport services in the region, another one half (50%) were either categorical that Kenya lacked this capacity or were not sure.

Table 4.12: Rating of the effect of the influence of Political Climate on Liberalization

Aspect	Strongly Agree	Agree	Not sure	Disagree	Strongly Disagree
1. Liberalization of air transport is workable in Kenya	2(4.0)	1 (2)	34(6)	23(46)	21(42)
2. The implementation of liberalized air transport has legislation influences	19(38.0)	17(34)	7(14)	2(14)	5(10)
3. The implementation of liberalized air transport has political influences	25(52.0)	19(38)	6(10)	0(0)	0(0)
4. The government has a contribution to the sustainability of airlines upon liberalization	2(4.0)	6(12)	3(6)	22(44)	17(34)
5. Kenya has the capacity of implementing a fully liberalized air transport services in the region	16(30.0)	10(20)	3(6)	16(32)	8(16)

Source: Research Data, 2012

4.4.6 Rating of Political Commitment to full liberalization

Most of the respondents (Table 4.13) who took part in the study (82%) rated the government's commitment to the liberalization between moderate and least committed. This finding suggests that lack political commitment could one of the biggest impediments to efforts to fully liberalize the air transport industry in the country.

Table 4.13: Rating of Political Commitment to Full Liberalization

Response	Frequency	Percentage
1. Least Committed	17	34
2. Not Committed	14	28
3. Moderate	10	20
4. Committed	8	16
5. Highly Committed	1	2
Total	50	100

Source: Research Data, 2012

4.5 Competition and Liberalization of Air Transport

4.5.1 The presence of competition in Kenya

Results on Table 4.14 show that, nearly half (48%) of the respondents were of the view that there is competition in Kenya while another half (50%) do not believe there is competition in Kenya's air transport sector. Based on near symmetric split in opinion on the status of competition in the industry, it can therefore be deduced that competition in the industry was nearly moderate. However, more importantly of the 48% that believed that there is competition in Kenya, the majority are from the airlines.

Table 4.14: The Presence of Airline Competition in Kenya

Response	Frequency				Percentage
	MOT	KCAA	AIRLINES	Total	Combined
Yes	3	3	18	24	48
No	6	7	12	25	50
Don't Know	0	0	0	0	0
No response	1	0	0	1	2
Total	10	10	30	50	100

Source: Primary Research Data, 2012

4.5.2 Extent of Competition

When respondents were asked to rate the level of competition in air transport in Kenya, 60% indicated that it is moderate compared to 32% and 8% who indicated that the level of competition is high and low, respectively. This result indeed lends credence to the earlier deduction that the level of competition in the industry is moderate. In terms of liberalization, this result suggests low to medium level of liberalization of the industry because high to very high levels of liberalization would invariably lead to a highly competitive environment for the airlines (Table 4.15).

Table 4.15: The level of competition in Kenya

Response	Frequency				Combined (%)
	MOT	KCAA	AIRLINES	Total	
High	2	2	12	16	32
Moderate	7	5	18	30	60
Low	1	3	0	4	8
Total	10	10	30	50	100

Source: Research Data, 2012

4.5.3 Impact of liberalization on competition

Three in very four respondents (74%) were of the view that liberalization impacts on competition. On its own, this result suggests that with increased liberalization, comes increased number of airlines hence full fledged competition that is controlled almost entirely by market forces (Table 4.16).

Table 4.16: Perception on Impact of Liberalization on Competition

Response	Frequency				Percentage
	MOT	KCAA	AIRLINES	Total	Combined
Yes	7	6	24	37	74
No	1	3	5	9	18
Don't Know	2	0	1	3	6
No response	0	1	0	1	2
Total	10	10	30	50	100

Source: Research Data, 2012

4.5.4 Expectations from Competition

When respondents drawn from airlines were asked to project what the situation would be if Kenya were to fully liberalize its air transport, results on Table 4.17 indicate that; only one in every three respondents (33.3%) thought that more opportunities would arise for their airlines. Slightly more than one half of respondents (53.3%) believed that with liberalization, there will be increased competition hence better services offered by airlines. However, of this percentage the majority were from KCAA and Ministry of Transport. A greater majority (76.6%) of the respondents concurred with the contention that more competition means no business for existing airlines.

Table 4.17: Effects of liberalization

Response	Frequency	Percentage
More opportunities for my airline	10	33.3
More competition and therefore better services	16	53.3
More competition and therefore no business	23	76.7
Limited changes with usual business	15	50.0

Source: Research Data, 2012

4.5.5 The Impact of Liberalization on Passenger Numbers

As shown in Table 4.18, up to one in every three respondents (66%) estimated that full liberalization would lead to an increase in passenger and cargo tonnage of 50% or less. On the other hand one in every three respondents (34%) estimated that both the passenger population and cargo volume would increase by between 51-100%. The results clearly show a strong relationship with liberalization of air transport and passenger volumes, which is likely to increase.

Table 4.18: The Impact of Liberalization on Passenger Numbers

ESTIMATED INCREASE IN PASSENGERS	Frequency	Percentage
51-100 %	17	34
15-50 %	14	28
6-15 %	10	20
1-5 %	8	16
Negligible	1	2

Source: Research Data, 2012

4.5.6 Beneficiaries of liberalization

Rating of selected benefactors of liberalization using a scale of 1-5 (1= very low of agreement, 5=Very great level), respondents were asked to mark level for the selected items. Table 4.19 shows that 86% (very great and great) of respondents indicated that passengers were the beneficiaries of liberalization and 80% of respondents felt that foreign airlines stood to benefit with liberalisation and only 12 % felt that local airlines would benefit from liberalization this shows that local airlines feel very threatened by foreign airlines, affirming Shearman's (1994) contention that most Governments perceive the need to exercise some degree of control over business activities and this is achieved through regulation. Such regulation could be used to enforce entry controls to protect those firms that are engaged in activities perceived to be in the national interest and to protect government investments.

Table 4.19: Rating of selected benefactors of the air transport liberalization

Item (F=Frequency)	*1*		*2*		*3*		*4*		*5*	
	F	%	F	%	F	%	F	%	F	%
Local Airlines	15	30	25	50	4	8	3	6	3	6
Foreign Airlines	2	4	1	2	4	8	36	72	7	14
Regulators	5	10	5	10	30	60	6	12	4	8
Passengers	0	0	3	6	3	6	20	40	22	44
Service Providers	1	2	4	8	21	42	19	38	5	10

Source: Field Data (2012)

According to the same results, 60% of respondents indicated that regulators would be moderate beneficiaries. This view could be attributed to the expectation that with the liberalization of air transport comes more airlines that would seek licensing hence more fees to the regulator. The biggest beneficiaries of the liberalization as identified by 88% of respondents who rated them between great and very great level are the passengers. The main benefits likely to accrue to the passengers include reduced fares and a wide product range from which to choose based on preferences, and an overall improvement in the quality of service offered by airlines in an attempt to meet the ever rising consumer expectations.

4.5.7 Impact of additional Airlines on Business

When respondents from airlines were asked to forecast the results of a scenario where ten more airlines entered their most profitable route, 66.7% of the respondents indicated that perhaps they would remain in business with 20.0% projecting they will certainly be out of business (Table 4.20). This suggests that there are only a few strong enough airlines to with stand the market pressures of full liberalization.

Table 4.20: Impact of additional airlines on business

Impact of Competition	*Frequency*	*Percentage*
Definitely Yes	4	13.3
Perhaps	20	66.7
Definitely Not	6	20.0
Total	30	100

Source: Research Data, 2012

Most of the airline respondents believe that additional airlines on their profitable routes would drive them out of business; an indication of fear of competition among airlines. Whereas the respondents from the regulators felt that additional airlines would not necessarily drive the existing airlines out of business

4.6 Role of Regulators and Liberalization

On the role of regulators, respondents suggested a number of functions such as; oversight to ensure compliance, collection of information and data on airlines' operations, maintenance of uniform standards, and regulation to ensure safety.

Respondents were asked to suggest some of the aspects of regulators that affect full liberalization of the sector. The issues raised include; personnel competencies, lack of proper institutions, and rigid regulations. To minimize the negative impact of these aspects on liberalization, the respondents a number of options which include training of personnel, creation and operationalization of institutions and review of existing regulations.

4.6.1 Perception of Regulators in Granting Market Access

Virtually all respondents (94%) who gave their views on the status of presence policy restrictions on new airline entrants in Kenya indicated that such regulations existed. This result (Table 4.21) indicates that in the view of stakeholders in the sector, the Kenyan air transport market is still closely guarded by regulations.

Table 4.21: Perception on regulators in granting market access

Response	*Frequency*	*Percentage*
Yes	47	94
No	3	6
	50	100

Source: Research Data, 2012

4.6.2 Threat posed by Foreign Airlines to Local Airlines

In international terms (Shearman, 1994), government regulation is frequently aimed at ensuring the domestic industry is protected from foreign competitors through tariff barriers or import quotas, or it may ensure that national firms are well placed to compete effectively abroad. Encouragement for domestic firms and help for them to achieve competitive advantage is perceived by some governments to be an important part of their role.

A majority of respondents (86%), irrespective of category indicated that regulators should protect local airlines some time and most of the time (Table 4.22). Whereas 14% were of the view that protection should be all the time, 22% hold that it should be done most of the time with 50% of the respondents being of the view that protection should be provided some times. This suggests that there is widespread tendency among all stakeholders in the industry, especially the airlines towards protectionism.

Table 4.22: Views on protection of local airlines

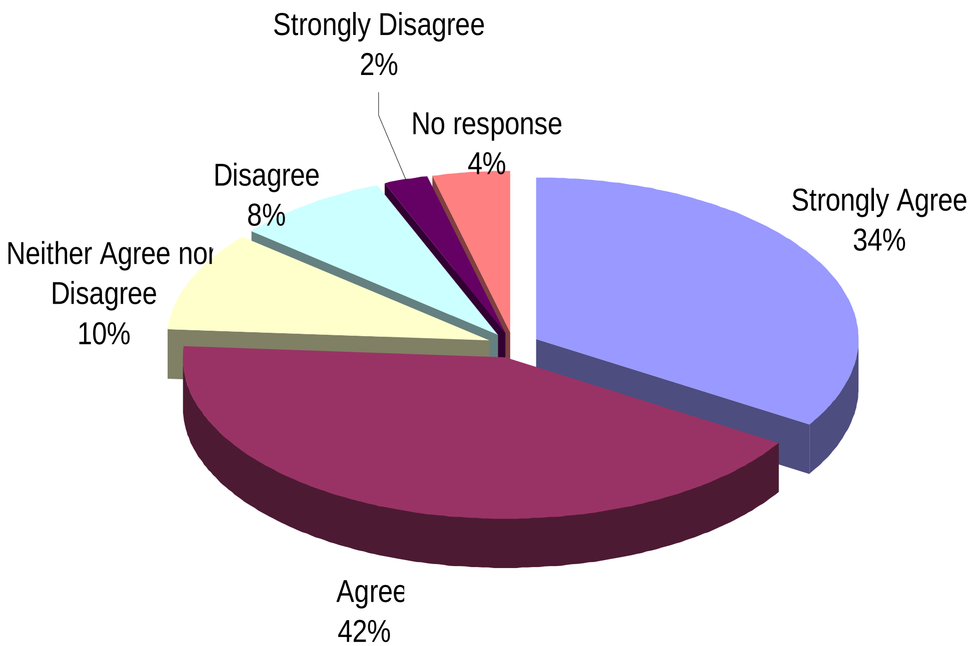
Frequency of protection	Frequency	Percentage
All the time	7	14
Most of the time	11	22
Some time	25	50
Not at all	7	14
Total	50	100

Source: Research Data, 2012

4.6.3 Liberalization on routes into/out of

As shown on Figure 4.5, 76% of the respondents were in agreement with the assertion that Kenya has liberally allowed airlines to fly to Nairobi and pick traffic between Nairobi and any other point. From this result it can be concluded that there is a relatively high level of access to the Kenyan market by foreign airlines.

Figure 4.5: Liberalization of Nairobi route



Source: Research Data, 2012

4.7 Role of Legislation on Liberalization of Air Transport

4.7.1 Kenya's Membership of Pluri-lateral / Multi-lateral Open skies Agreements

Results in Table 4.23, show that 92% of all respondents who took part in the study indicated that Kenya was a member of at least one plurilateral or multilateral open skies agreement group; while 8% indicated it is not. From the results, it is clear that Kenya is signatory and member to open skies agreements.

Table 4.23: Views on Kenya's Membership in Plurilateral/Multilateral Open Skies

Aspect	Response	Frequency	Percentage
Is Kenya a member of any plurilateral or multilateral open skies agreement group?	Yes	46	92
	No	4	8
Total		50	100

Source: Research Data, 2012

4.7.2 Enforcement of Agreements

Respondents cited a number of agreements that include; YD, COMESA, EAC, and the open skies treaty signed with USA. However, of the five existing agreements, only YD and COMESA were being enforced to a limited extent and were noted to be in existence only in theory. The open skies agreement with the USA is a newly signed treaty and is yet to be operationalized and domesticated.

Seventy percent (70%) of respondents highly rated current regulations as posing potential challenges to the implementation of full liberalization in Kenya. Other aspects of legislation though to pose challenges to full implementation are airlines protecting their interests (76%), lack of competition rules (76%) and the facilities and airport infrastructure (82%). However, 74% of respondents do not believe that disorder exists in the industry to a level that can impede the implementation of full liberalization of the air transport sector in Kenya (Table 4.24).

Table 4.24: Aspects of legislation as challenges to full implementation of full liberalization

Item (F=Frequency)	*1*		*2*		*3*		*4*		*5*	
	F	%	F	%	F	%	F	%	F	%
Current regulations	4	8	3	6	8	16	20	40	15	30
Airlines protecting their interests	2	4	4	8	6	12	27	54	11	22
They will be disorder in the industry	14	28	2	46	7	14	4	8	2	4
No competition rules to govern liberalisation	2	4	1	2	9	18	25	50	13	26
The facilities and airport infrastructure	3	6	3	6	3	6	21	42	20	40

Source: Research Data, 2012

4.7.3 Policy Instruments used to pursue Liberalisation

Most (70%) of the respondents did not seem to know any policy instruments in existence that provide for liberalization of air transport in Kenya. A significant proportion (25%) of respondents were however categorical by indicating that no such instruments existed in air transport. This result portends a worrying situation, because the existence of policy instruments are supposed to be in common knowledge of the people in the industry, an indication that such policies though in place have not been widely disseminated.

4.7.4 Deficiency in National Legislation

Three in every four respondents (76%) believe there is no well documented system of regulating liberalization of air transport in Kenya (Table 4.25). It can be deduced from this result that either most stakeholders do not know about the existence of the regulations.

Table 4.25: Presence of a well documented system of regulating Liberalisation of air transport in Kenya

Response	*Frequency*				*Percentage*
	MOT	KCAA	AIRLINES	Total	Combined
Yes	7	4	1	12	24
No	3	6	29	38	76
Total	10	10	30	50	100

Source: Research Data, 2012

4.7.6 Adequacy of the Current Regulations on Liberalization

Eight in every ten respondents (84%) felt the current regulations on liberalization were inadequate while the adequateness of the current regulations was supported by 16% (Table 4.26). This suggests that the regulatory framework in the air transport sector very inadequate.

Table 4.26: Adequacy of the Current Regulations on Liberalization

RESPONSE	FREQUENCY				PERCENTAGE
	MOT	KCAA	AIRLINES	Total	Combined
Yes	3	4	1	8	16
No	7	6	29	42	84
Total	10	10	30	50	100

Source: Research Data, 2012

4.7.5 Awareness of existing Legal Instruments

According to the results of the study, 60% of the respondents indicated that they were aware of regulations on air transport liberalisation of which 81%t were airline respondents (Table 4.27). Of the those 81% airline staff, 90% think that the regulations are in CAP 394 whereas in actual fact Kenya has no regulations as yet on liberalization and has not yet domesticated international and regional legal instruments on liberalization. This response from Airlines is indicative of that fact that industry is not familiar with the contents of the present regulations. 80% and 70% of the respondents from KCAA and MOT, respectively, said that there are no regulations on air transport liberalization which is the true position. This response brings to fore the fact that the level of understanding of liberalization between industry and the regulators is not at par.

Table 4.27: Industry's Familiarity with plurilateral on the existence of regulations on air transport liberalization in Kenya

Response	Frequency				Percentage
	MOT	KCAA	AIRLINES	Total	Combined
Yes	2	1	27	30	60
No	7	8	0	15	30
Don't Know	1	0	2	3	6
No Response	0	1	1	2	4
Total	10	10	30	50	100

Source: Research Data, 2012

4.8 *Other Factors affecting the Implementation of Liberalization in Kenya*

As presented in Table 4.28, the findings reveal that six factors of liberalization posed great challenges to implementation of liberalization of air transport in Kenya. While 72% of respondents felt lack of supportive regulations would affect greatly affect liberalization, 76% indicated that lack of supportive policy would present great challenges to the country in efforts to liberalize air transport. Other factors indicated as challenges to liberalization in Kenya included political interference (78%), airline resistance (82%) and lack of reciprocity (76%).

Table 4.28: Other challenges Kenya would experience in liberalizing its air transport

Item (F=Frequency)	1		2		3		4		5	
	F	%	F	%	F	%	F	%	F	%
Lack of supportive regulations	1	2	5	10	8	16	21	42	15	30
Lack of supportive policy	2	4	4	8	6	12	25	50	13	26
Political interference	5	10	2	4	4	8	17	34	22	44
Lack of political will	2	4	1	2	9	18	13	26	25	50
Airline resistance	3	6	3	6	3	6	21	42	20	40
Lack of reciprocity	1	2	0	0	11	22	17	34	21	42

Source: Research Data, 2012

4.9 Suggestion on improving the Full Implementation of Liberalization of Air Transport in Kenya

A number of strategies were suggested by the respondents as options in the efforts to improve the full implementation of liberalization of air transport in Kenya. At the regional front, stakeholders suggested a promulgation of the COMESA/SADAC competition rules in the African states to help with the full implementation of liberalization. Further strategies at full implementation of the creation of a regional monitoring body to ensure full implementation of the agreements

In efforts to attain full implementation of liberalization nationally, stakeholders suggested strategies such as; new legislation to hasten the liberalization process, Provision of competition rules, a change in government strategy in the implementation of liberalization of the sector and Improved political goodwill.

CHAPTER FIVE: SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

5.1 Introduction

This Chapter contains a summary of the research findings, conclusions made from the analysis of the result and recommendations made to improve the full implementation of liberalization of air transport in Kenya and elsewhere. The recommendations aim at mitigating on the major issues revealed as the main hindrances to the full implementation of liberalization from the quantitative and qualitative analysis of results.

5.2 Summary of Findings

5.2.1 Concept of liberalisation

There is a lack of proper understanding of liberalization with 40 % being fully conversant and 60 % not being fully conversant and out of the 40 % who seemed to comprehend the concept of liberalization, 85% are regulators. This means that the implementation legal instruments such as COMESA and Yamoussoukro are not fully understood and the stakeholders have not been sensitized. Seventy Percent (70 %) of the airlines interviewed believe that the beneficiaries of liberalization are only consumers and foreign airlines whereas 90 % of the regulators think that the beneficiaries of liberalization are airlines and consumers

5.2.2 Market and Liberalization

Study findings indicate that indeed market forces influence liberalization. This result can be attributed to the assertion that the air transport industry faces newly emerging market forces such increases in fuel costs, changes in consumer preferences, and changes in technology that impacts both the efficiency in operations and costs.

Findings further indicate that although most respondents indicated having a good grasp of the concept of liberalization, only 8% of all the respondents were able to cite some of the aspects of the market that they believed affected liberalization. In other terms up to 92% of respondents did not know of aspects of the market that affect liberalization. Some of the aspects of the market that identified by stakeholders as impacting liberalization include; tariffs, costs of operations, customer preferences and characteristics, the cost and pricing of oil and an emerging market focus on security.

5.2.3 Political Goodwill

Most respondents from the both airlines and regulators felt that there is a lot of political interference when it comes to market access. Most of the respondents from KCAA felt that the government interfered with decisions made. Whereas the respondents from the Government felt that there is no political interference in the process of carriers obtaining market access, respondents from other industry players feel the contrary.

5.2.4 Competition

It is evident from field data analysis that airlines think that competition is an issue that is likely to cut down their business a view held by 70% of the respondents.

5.2.5 Regulators

The most critical aspects of regulators that affect full liberalization of the sector and the issues raised include; personnel competencies, lack of proper institutions, and rigid regulations. To minimize the negative impact of these aspects on liberalization some of the strategies the need to be implemented include; training of personnel, creation and operationalization of institutions and review of existing regulations.

Virtually all respondents (94%) who gave their views on the status of presence policy restrictions on new airline entrants in Kenya indicated that such regulations existed. This result suggests that the view of stakeholders in the sector, the Kenyan air transport market was still closely guarded by regulations. Further, most stakeholders still believe that regulators should at least protect local airlines. This suggests that there is widespread tendency among all stakeholders in the industry, especially the airlines towards protectionism.

5.2.6 Legislation

The 80% of the respondents from the airlines are not familiar with the regional instruments that govern liberalization. Finally, the analysis of the results indicate that 95% of the respondents indicated that Civil Aviation Act, CAP 394 is inadequate in dealing with liberalization and competition. The domestication of international legal instruments is lacking and therefore the majority of the aviation stakeholders are not conversant with the provisions of the regional legal instruments governing competition and liberalization. Analysis indicate that in the absence of domestication of the legal instruments the implementation of liberalization governed by those instruments is not feasible.

5.3 Conclusions

5.3.1 Market and Liberalization

The main market factors that identified by stakeholders as impacting liberalization of the air transport industry include; tariffs, costs of operations, customer preferences and characteristics, the cost and pricing of oil and an emerging market focus on security.

5.3.2 Political Goodwill

The study has further determined that the overlap between the functions of the Ministry of Transport and the KCAA poses conflict of interests and confusion. However, due to institutional issues these matters can only be resolved if there is the political will to do so.

5.3.3 Competition

This study has established that fear of competition among airlines is real and has hindered them from appreciating the benefits of liberalization. However, this is mainly because there is no legislation that deals with airline competition and as such airlines believe that they must protect their own interests. It has also been determined that lack of local legislation on liberalization and competition affect the implementation of liberalization.

5.3.4 Regulators

The role of regulators is conflicting and their capacity inadequate. To diminish the negative impact of capacity and institutional deficiencies of the regulators on liberalization the following strategies need to be undertaken; training of personnel, creation and operationalization of institutions and review of existing regulations.

5.3.5 Legislation

There are no national legal instruments to implement and enforce liberalization as much as the regional instruments have been ratified by Kenya this could contribute to the laxity in implementation of liberalization in Kenya.

The study also revealed a number of other challenges to the liberalization of air transport. They include lack of supportive regulations (72%) and lack of supportive policy (76%). Other factors indicated as challenges to liberalization in Kenya included political interference (78%), airline resistance (82%) and lack of reciprocity (76%).

5.4 Recommendations

Based on its main findings and conclusions, the study recommends the following strategies for enhancing the implementation of the liberalization process in a way that makes it optimally beneficial to all players in the air transport sector:

1) It is recommended that the Regulators sensitize the operators on the concept of liberalization so that there are familiar with the merits and demerits of the concept to erode the myths surrounding the concept.
2) OECD (1988) Indicates that experience has demonstrated that deregulation and progressive liberalization produce substantial benefits for efficient air transport services and users. Competition policy approaches based on market oriented economic strategies constitute a dynamic factor of change as they challenge some underlying concepts f economic regulations.
3) According to OECD (1988) for deregulation to succeed care should be taken that government restrictions should not be replaced by restrictive business practices by airlines and therefore competition rules must be enforced in the air transport sector. Government or the regulators should remain with some residual authority to intervene in severe instances of market failure. It is suggested that Kenya should domesticate international and regional legal instrument to effect liberalization in Kenya as it is evident that the current legislation has serious deficiencies. The Government should give the regulator managerial autonomy to be able to deal with market access especially when it comes to implementing competition rules.
4) It is suggested that airlines form alliances to enable them compete with foreign airlines favourably. Although 90% of the airline respondents wanted government to protect them all the time when negotiating BASA .Face to face interviews reveal that this may not be sustainable because government must look at the wider economic interests of the country and not only airline interests.

5) It is suggested that KCAA management inculcate culture of disseminating information to industry by conducting seminars and workshops to educate industry on the developments in liberalization of air transport. This will bring the understanding of industry at par with government and regulators.
6) It is recommended that the inadequate legislation covering liberalization and competition be addresses by domesticating the regional and international legislation that Kenya has already ratified. This will deal with the implementation and enforcement of liberalization.
7) The current overlap between the Ministry of transport and KCAA should be eliminated to enable one body properly enforce the regulations without undue pressure or interference.

5.5 Suggestions for Further Studies

From the study findings and the limitations of its scope, this study recommends further research in the following areas:

1. A study to determine the effect of regionalism on liberalization of air transport.
2. A study can also be conducted to establish the possible implications of Liberalization of air transport on security.
3. Given the many non-operational treaties and open sky agreements a study needs to be conducted to assess and establish the exact factors that have impeded the operationalization of these past agreements.

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