

**“MELTING DOWN THE BORDERS TO REACH THE FRONTIERS”
THE IMPACT OF THE YAMO USSOUKRO DECISION ON THE
LIBERALISATION OF AIR TRANSPORT IN AFRICA.**

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DECLARATION

This research project is my original work and has not been presented for a degree in any other university.

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This research project has been submitted for examination with my approval as a university supervisor.

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Above all, I glorify God for these modest sheaves, Praise be to GOD!

DEDICATION

I dedicate this research project to my brother Shadrack Kiarie for being a resilient soldier in the wars of the world.

ABSTRACT

The study investigates air transport liberalization in Africa. It notes that air transport liberalization in Africa is hinged on the 1988 Yamoussoukro Declaration and the 1999 Yamoussoukro Decision and focuses on the latter. Among the positive impacts of the two instruments is the pressure they have 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. However, as compared to other regional blocks such as EU and US the liberalisation process in Africa is seen as lagging behind due to several challenges that the study illuminates. The study therefore posits that despite the adoption of the Yamoussoukro Decision, the continent is still enmeshed in an intricate web of bilateral agreements and protectionist measures that have ensured a slow air connectivity rate. There is still the problem of heavy regulation with countries still unaware of the potential that is in having an industry that thrives on efficiency and competition than on political expediency and mediocre performance. In order to assess the contribution of this Decision, the study adopts these objectives; first of all it seeks to examine the extent of liberalization of air transport in Africa, to evaluate African regional efforts to liberalize and to investigate the impediments to the implementation of the Yamoussoukro Decision. To achieve these objectives, the study is guided by the liberal theory of liberal institutionalism which advocates for a greater role for non-state actors in spurring world development. In the contextual application of the theory to this study, it is imperative for Africa to embrace continental efforts to deregulate the air transport industry since it will be easier and faster if this process is done jointly by all countries than individually. Benefits, according to the liberal theory, will accrue to all countries and therefore there is need for co-operation to implement the Decision. The study utilizes secondary data to critically examine the research problem and comes up with the conclusion that the Yamoussoukro Decision of 1999 has to some extent facilitated closer air transport but there are still geographical, policy and political challenges that are hampering the full implementation of the process. To realize the benefits that come with liberalization, the study recommends a closer role to be given to regional and sub-regional mechanisms that are better equipped to harmonise and streamline the labyrinth of regulation measures that either duplicate or even hamper mobility across borders. More consultative forums and studies are needed to convince national policymakers and state bureaucrats on the merits of liberalization. The future for air connectivity is clearly bright though a lot needs to be done now to secure that future

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LIST OF ACRONYMS

ACAC	Arab Civil Aviation Commission
ADB	African Development Bank
AFCAC	African Civil Aviation Commission
AFRAA	African Airlines Association
AMU	Arab Maghreb Union
ASAs	Bilateral Air Service Agreements
ATAG	Air Transport Action Group.
AU	African Union
BAG	Banjul Accord Group
CASSOA	Civil Aviation Safety and Security Oversight Agency
CEMAC	Economic and Monetary Community of Central Africa
COMESA	Common Market for Eastern and Southern Africa
EAC	East African Community
ECOWAS	Economic Community of West African States
EU	European Union
IATA	International Air Transport Association
ICAO	International Civil Aviation Organization
JKIA	Jomo Kenyatta International Airport
MIA	Moi International Airport
NEPAD	New Partnership for Africa's Development
RECs	Regional Economic Communities
SADC	Southern African Development Community

SARPs	Standards and Recommended Practices
UNECA	United Nations Economic Commission for Africa
USA	United States of America
WAEMU	West African Economic and Monetary Union

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CHAPTER ONE: INTRODUCTION

1.1 Background to the Study

Air transport is a thriving industry that is increasingly defining how countries and people interact in this globalized world. This industry has emerged from its largely military expediency to now connect businesses to global markets and enable worldwide access to time-sensitive products, from medicines to fresh produce to emergency aid. Furthermore, more than half the world's tourists travel by air¹ while aviation is a prerequisite to global conferencing and even iconic major events, such as the Olympic Games which require fast travel capability.

Africa, with a population of more than 870 million and a large land mass (30.3 ml km²) presents a favourable environment for the flourishing of the air transport industry. Air transport is indispensable for many African countries since the service is the main corridor for the flow of international passenger and freight traffic. The absence of an extensive and reliable road and rail networks to link the countries and regions in Africa has meant that air transport which can sidestep the challenge of inaccessibility can provide a quick and efficient alternative. It is possible and indeed it does transport high value goods and fresh agricultural produce and offer numerous employment opportunities. Currently, the air transport sub-sector and associated activities employ around 470,000 people and it contributes more than US\$ 11.3 billion to African economies.²

Despite this potential and the relatively stable growth in the aviation industry over the last decade, there are still major challenges facing the industry which can be said to be caused by two related phenomena that are shaping and transforming the structure of global aviation business in a period of unprecedented change. These are: globalization by airlines; and liberalization of the industry.

¹ International Air Transport Agency (IATA) Annual Review for the year 2013.

² Air Transport Action Group, ATAG (2005) *The Contribution of Air Transport to Sustainable Development in Africa*. Geneva.

In order to effectively address these drawbacks and realize the potential this sector had on economic growth and development, Africa began its experiences in the practice of Air Services liberalization in 1988 with the Yamoussoukro Ministerial Declaration. This pronouncement set the stage for the integration of African airlines through the adoption of flexibility in the granting of 5th Freedom³; improvement of airline management; financing of airline activities; product distribution system; aircraft noise and monitoring mechanisms. In order to speed up the implementation of the Declaration, African Ministers responsible for civil aviation adopted in Mauritius in 1994, a series of measures including the relaxation of the granting of access to 5th Freedom. These measures helped to improve the African connections quite modestly and to facilitate the growth of the African airline industry.

In 1999 the African Ministers meeting for the second time in Yamoussoukro, took the decision to liberalize access to air transport markets in Africa. The Yamoussoukro Decision was later adopted in July 2000 by the Assembly of Heads of State and Government of the Organization of African Unity and thus gave the said Decision a legal dimension. It focuses on internal market liberalization and competition as a key development strategy while also addressing safety, security and environmental issues.

The total implementation of the Decision tends to gradually eliminate all non-physical barriers and restrictions to: The granting of 5th Freedom Traffic Rights, African airlines aircraft capacity, tariff regulation, designation by states of operating tools; and the operation of cargo flights. Complete implementation initially envisaged within two years and, subsequently, revised to 2006; To-date implementation target is yet to be attained.

³ This is the right to fly into the territory of the grantor state and take on or set down traffic to or from third states-this was one of the key “freedoms of air” agreed upon at the Chicago Convention of 1944.

1.2 Statement of the Problem

In the Yamoussoukro Decision, African countries have had a formidable instrument for the development of the air transport industry including the improvement of the infrastructure and services as well as the removal of physical and non-physical barriers. The liberalisation of air transport services and fair competition envisaged in the Yamoussoukro Decision would lead to the strengthening of African carriers, improve their capitalisation and minimise their operating costs.

Increased connectivity as a result of deregulation provides a clear positive spur to the tourist industry, triggering growth in other sectors of the service industry while also enhancing business efficiency and promoting foreign investment. It is evident that, despite the adoption of the Yamoussoukro Decision for the liberalisation of air transport services in Africa, economic aspects, market access and related issues are still regulated by a complex system of protectionist bilateral air service agreements. Some governments have integrated policies that promote the economic development that aviation brings. Other governments put roadblocks in the way in the form of onerous taxes, burdensome regulation, and tiresome bottlenecks in infrastructure development.

The reluctance to open up skies as well as lack of co-operation has narrowed the market share of African airlines even in the intra-African market thus making foreign carriers from the west to make inroads. As a consequence; the overall African share of the world airline traffic is yet to grow and is still negligible. This has put in jeopardy all efforts to liberalize air transport services in the continent including the prospects for a successful implementation of the Yamoussoukro Decision. In view of the afore-mentioned state of affairs and the international context influencing the development of the African air transport industry, it would be imperative to investigate and try to answer these questions: What has been the impact of Yamoussoukro Decision in the liberalization of air transport in Africa?

What impediments have been experienced in its implementation? What are the concrete proposals in the quest to liberalize air transport in Africa?

1.3 Objectives of the Study

The general objective of this study is to find out the impact of Yamoussoukro Decision on air transport in Africa. The study has the following specific objectives;

1. To examine the extent of liberalization of air transport in Africa,
2. To evaluate African regional efforts to liberalize air transport,
3. To investigate the impediments to the implementation of the Yamoussoukro Decision.

1.4 Hypotheses

The study aims at testing the following hypotheses:

1. Africa air transport has become more efficient following the Yamoussoukro Decision,
2. The Yamoussoukro Decision has not promoted a liberal air transport system in Africa,
3. National decision-making is still a major challenge to the liberalization of air transport in Africa.

1.5 Justification of the Study

This study is justified on both academic and policy grounds. The study is firstly an academic contribution to the literature on international law, international relations and especially in the area of international aviation; it will be consulted by students and scholars in their scholarly endeavors. Its valuable contribution in filling the gap in knowledge on the impact of the liberalization efforts on African aviation will facilitate a clearer understanding of this topic while providing useful insights to future research on the topic. Secondly, the study will make a significant contribution to policy making in the African aviation industry, the recommendations that the study will make would enrich the policy

decisions in the continent and beyond and therefore enhance the process of liberalizing the aviation industry, which will subsequently impact on many aspects of human life.

1.6 Literature Review

The literature to be reviewed is divided into two, literature on liberalization of air transport and literature on liberalization of air transport in Africa.

1.6.1 General Literature on Liberalization of Air Transport

Air transport liberalization is a process of gradual abolition of limits on designation, capacity, frequency and tariff setting in civil aviation. It aims to create an efficient air transport structure based on free market mechanism where all the decisions are taken as a result of a mutual interaction of supply and demand. The role of national governments, in this process, is limited to safety and security⁴ with the liberalization of Air transport now taking its course worldwide.⁵ Several arguments have therefore been advanced to demonstrate the futility of continuing with inward-looking measures in the form of restrictive national policies. Bofinger⁶ argues that protectionist taxes distort market forces and are responsible for setting exorbitant air fares and cargo charges. According to him, regulation also creates rival regimes that tend to favour inefficient national airlines that offer rigid services and do not quickly respond to global trends in the aviation industry. Such protectionist regimes also hinder innovation and impede the airlines' provision of seamless transport between various destinations. These rules and regulations often prevent fit, willing and able airlines from fully serving passengers and shippers who are completely willing and able to pay. By sheltering airlines from market forces, they reduce the incentives for them to pass the benefits of improved technologies

⁴Grancay, Martin. *The Economic Impacts of Air Transport Liberalization* July 2009 Online at <http://mpira.ub.unimuenchen.de/16590/MPRA Paper No. 16590>, posted 12 September 2012 / 14:28.

⁵ Rex S. Toh Seattle University, Seattle, "Toward an international Open skies regime; Advances, Impediments and Impacts", *Journal of air Transport World wide*, Vol.3 No. 1 - 1998

⁶Bofinger, Heinrich C. 2009. "Air Transport: Challenges to Growth." Background Paper 16, Africa Infrastructure Country Diagnostic, World Bank, Washington, DC.

on to passengers, shippers and investors. Air commerce today is still governed by a framework of rules laid down in the first half of the last century.

Despite today's growing internationalism of free trade, global capital markets, the Internet, and the economic integration of entire continents, one of the most globalized, technology-intensive industries remains fettered by rules that stifle competition and prevent airlines, communities, passengers, and shippers from benefiting to the fullest. From a strict theoretical point of view, the justification for liberalization comes from the desire to maximize benefits entailed in a competitive environment. To this end, Ehmer⁷ asserts that minimum government intervention and virtues of competition in the air transport market will ultimately lead to: optimum allocation of factors of production, consumer sovereignty and technical progress.

Air transport liberalization is especially considered to benefit consumers in two ways: First, the competitive environment created by opening up of the regulatory environment forces airlines to operate at lower costs in order to be efficient. Consequently, part of this efficiency gain can be transferred to consumers in the form of lower prices. Secondly, flexible route selection enjoyed by airlines as a result of doing business in open and flexible arrangements gives consumers a broader set of choices (product diversity)⁸. In a liberalized environment airlines will have the discretion of choosing the number of weekly frequencies, aircraft type and convenient routing based on market conditions. As a result, consumers will most likely benefit since airlines will vigorously compete to provide services tailored to the specific needs of their customers.⁹

From an airlines' point of view, their profitability and success largely depends on ability to build efficient networks which enable cost savings. However, restrictive regulatory environments prevent

⁷Ehmer, H. (2001). "Liberalization in German Air Transport - Analysis and Competition Policy Recommendations: Summary of a German study." *Journal of Air Transport Management* 7: 51-55.

⁸ See World Travel and Tourism Council, (2013), "*The Economic Impact of Air Service Liberalization*," p.6.

⁹Gillen, D., Harris, R., Oum T.H (2002). "*Measuring the Economic Effects of Bilateral Liberalization: Air Transport*." Transportation Research Part E 38: 155-174. See also Marin, P. L. (1995). "Competition in European Aviation: Pricing Policy and Market Structure." *Journal of Industrial Economics* 43(2): 141-159.

airlines from building optimal networks. In the air transport context, airlines have to sometimes serve multiple destinations to minimize cost in particular route operation. Accordingly, in a liberalized environment, airlines enjoy the freedom of choosing and building cost efficient networks to remain competitive¹⁰

This phenomenon is irreversible; Taieb¹¹ has argued that the global forces of privatization, globalization and liberalization that swept all industries and sectors in the 1980s and 1990s inevitably impacted on international air transport as well. Yet, the air transport's essentially national based industry structure and its bilateral regulatory control constraints to the opening up process that those forces bring to bear. It has been argued that the US has always favored the liberalization of international air transport through bilateral agreements, the US- contrary to Europe seems to have little faith in multilateralism in international air transport, although it had an exception in the context of APEC between the US, Brunei, Chile, New Zealand and Singapore, thus like-minded liberal aviation nations, which basically takes the form of a multilateral open skies agreement.¹²

Clancy dwells on the methodology of opening up the skies but is not forthcoming with an analysis of how his proposals would be implemented in view of the rigid bilateral air service agreements.¹³ Liberalization of air services between countries generates significant additional opportunities for consumers, shippers, and the numerous direct and indirect entities and individuals affected by such liberalization. Conversely, it is also evident that restrictive bilateral air services agreements between

¹⁰Smyth, M., and Pearce, B (2006). *Airline Networks Benefits*. IATA Economics Briefings No.3. Geneva.

¹¹Taieb Cherif, *Wings of Change in International Air Transport*, UN Chronicle online edition, p.1 available at <http://www.un.org/pubs/chronicle/2003/issue4/0403p15.asp>. Retrieved on 11/4/14.

¹²Haanappel, P. & Mendes de Leon, P.M. J, "International Aviation Framework and Implications for Canadian Policy", *International Institute of Air and Space Law*, Universiteit Leiden, Netherlands March 2001.

¹³ Clancy, M. "Globalizing the Skies: Domestic and International Sources of the Liberalization of Commercial Air Transport" at <http://www.hartford.edu> (Last accessed on 30th September 2012).

countries stifle air travel, tourism and business, and, consequently, economic growth and job creation.¹⁴

Assad¹⁵ notes that the most promising channel for further liberalization remains the air services agreements in regional as well bilateral form. He argues that the most likely scenario at present is for an expanding patchwork of phased in liberalization under the aviation umbrella, both through bilateral agreements and through new or geographically extended regional agreements, all of which may offer opportunities for coalesce.

Bederman,¹⁶ on the other hand examined the Framework of Air Ocean Transport and its effects on globalization. He suggested that a global activity like the international air transport should benefit from global regulation so as to maximize widespread effects on the development of trade and technology. He further suggested that the regulatory framework on international civil aviation extend beyond harmonization and standardization of operating practices. He was rather pessimistic that a much liberal framework would be realized soon because the control of national airspace has often been linked to national sovereignty.

It has been argued that liberalization is an essential tool for the development of air services and for the regional integration of countries and economies. It promotes cooperation among airlines and economic development. However it should be well regulated and governed by key principles. It should also be gradual and flexible so that all nations can take part and if possible, in partnership in the development of international air transport.¹⁷ Basically, liberalization of air transport is meant to maximize benefits associated with the direct and indirect gains from a competitive environment. In

¹⁴InterVISTAS – ga2 Consulting, Inc., *The Economic Impact of Air Services Liberalization* (Washington, DC 2006)

¹⁵ Assad Koitate, *Aviation Regulation: New Millennium- New Direction 56th IAT Annual General Meeting Sydney, 5th June 2000*

¹⁶ See Bederman, D J “*Globalization and International Law*” available at <http://www.georgetoen.edu/> (Last accessed on 3rd June 2013).

¹⁷ See Information Paper, *Background Experiences of Liberalization in Africa. Worldwide Air Transport: Challenges and Opportunities Liberalization in Africa* Montreal, 24-29 march 2003.

addition, Baltagi *et al*¹⁸ attributes the route structure effects of liberal policies as the most impressive of all due to the fact that air transport is a network industry. Thus, having flexibility in terms of route selection, frequency of operation and aircraft capacity choice allows an airline to operate in the most efficient network. One can find a lot of evidences for this assertion in matured markets of North America, Europe and Australia.¹⁹ But, for airlines in places like Africa with very small aircrafts, operating in a thin market and with limited infrastructural facilities, the practicability of such gains is yet to be tested.

As postulated by Lyle²⁰ a trend towards liberalization of international air transport is now well established, not only bilaterally, but increasingly through sub-regional and regional Agreements.” Besides the African regional liberalization efforts, air service agreements in other parts of the world indicate a general trend towards deregulation. For instance, the Caribbean Community was initiated in 1998 while the Andean Pact (1991) and the Fortaleza Agreement (1997) were South American connectivity plans. The Middle East also established the Arab Civil Aviation Commission in 1998 to facilitate a seamless transport sector in the region.²¹ We shall therefore examine privatization, deregulation and liberalization as well as the open skies concepts in order to establish the best ways of bringing about this gradual trend of air transport liberalization in the African continent.

To some States the pace of progressive liberalization globally has been too slow and the systemic obstacles to change in air transport too entrenched. Yet many other States continue to have concerns about the consequences and benefit of a liberalization agenda, the cost of participation

¹⁸Baltagi, B., Griffin H., James M. Rich, Daniel P. (1995). "Airline Deregulation: The cost Pieces of the puzzle. *International Economics Review* 36(1): 245-258.

¹⁹Oum, T. H., Stanbury, W.T., and Tretheway, M.W. (1991). "Airline Deregulation in Canada and its Economic Effects." *Transportation Journal* 30: 4-22.

²⁰Chris Lyle (2001), "Open skies for Africa." Technical Paper, African Aviation Conference, Washington.

²¹ See the University of Pretoria's report; *Strategies to Design a Cost-Effective Hub Network for Space Aerial Travel Demand in Africa*, p.1.

through a national airline and the long-term viability of that airline in a competitive, liberalized and global environment”.²²

Clearly articulated justifications against air transport liberalization are not very common in the literature. It seems that liberalization initiatives and policies at bilateral and regional levels are the order of the day for the industry. The case against air transport liberalization boils down to the protectionist rationales forwarded by countries which have an interest to protect their national. Further, Lyle²³ identifies protection of National Airlines interests, physical limitations on market access (airport congestion) and air space sovereignty and prestige as some of the underlying motives forcing countries to pursue restrictive policy regimes. Liberalization opponents are also concerned that an open skies policy for intercontinental transport, particularly to Europe, would drive African carriers from the intercontinental market, with adverse secondary effects for international and domestic services in Africa.²⁴

1.6.2 The League of Arab States

The air transport sector was dealt with by the Civil Aviation Council of the Arab States created in 1967. The original aim of this council was: to study the “principles, techniques, and economics relating to air transport”; to study international standards, practices and agreements; and, to recommend the adoption of such agreements which were in the interest of Arab States. The council further anticipated the preparation and adoption of a uniform advanced air law for Arab states, an English-French-Arabic lexicon of civil aviation terminology, and the conclusion of various agreements on air transport, transit rights, and search and rescue. The Civil Aviation Council even established a dispute settlement mechanism as provided for in Article 10 of the agreement. Despite the strong initial

²² Fifth Worldwide Air Transport Conference: *Challenges and Opportunities of Liberalization*, Montreal, Canada, 24 – 29 March 2003. ATConf/5.WP/4.p4

²³ Lyle, C. (1995). "The future of International Air Transport Regulation." *Journal of Air Transport Management*.2: 3-10.

²⁴ Abate, Megersa A. 2007. *The Economic Effects of Progressive Air Transport Liberalization in Africa*. School of Graduate Studies, Addis Ababa University, Ethiopia, p.23.

momentum of the Arab states aimed at unifying and harmonizing their air transport sectors, and eventually at the creation of a common Arab aviation market, there is little evidence that the Civil Aviation Council achieved major progress towards that objective.

In 1995, about thirty years after the creation of the council, a new initiative was launched when the Arab League States created a new entity called "The Arab Organization for Civil Aviation". The main objective of the new organization was to provide the civil aviation authorities of the Arab League Member States a joint framework for the development of air transport services between the Arab countries, and to ensure safety in the sector. It specifically aimed at promoting and developing cooperation and coordination between the Arab States²⁵ However, the objectives and mandate of the implementing unit (i.e., the Arab Organization for Civil Aviation) are very similar to those of the Civil Aviation Council of the Arab States, which, over the course of thirty years, did not achieve much progress.

1.6.3 Arab League Open-Skies Agreement

The Arab Civil Aviation Commission (ACAC), which emerged out of the Arab Organization for Civil Aviation, has continuously pushed for cooperation and liberalization of the civil aviation sector in the Arab world.²⁶ This initiative was based on a 1999 agreement of the Council of Arab Transport Ministers to liberalize intra-Arab air services over a period of five years by gradually reducing restrictions for carriers of the Member States of ACAC. This resulted the signing of seventeen "open skies" agreements among ACAC States, including Bahrain, Jordan, Lebanon, Morocco, Oman, Qatar, Syria, and the United Arab Emirates.²⁷ In addition, a multi-lateral agreement on the liberalization of air transport between the Arab States was signed by several Arab League countries on 19 December 2004,

²⁵Hassan Radhi, "The Arab Organisation for Civil Aviation" (1996) 11:3 *Arab Law Quarterly* 285 at 285

²⁶ACAC serves similar objectives as the former council and is based in Rabat, Morocco. It Acts as the specialized organization for of the Arab League and is based on a treaty.

²⁷See: Assad Kotaite, Address of the President of ICAO to the Eight Session of the General Assembly of ACAC, (Marrakech, Morocco, 2006).

under auspices of ACAC.²⁸ The preamble of the Arab League Open-Skies Agreement specifically seeks to achieve greater liberalization of air transport services between the Arab countries, by “coordinating Arab air transport policies in order to eliminate any obstacles to the development of Arab air transport”. The preamble encourages “the gradual liberalization of air transport within a regional and multilateral framework”.²⁹ The Arab League Open-Skies Agreement³⁰ has other provisions which fall in line with the provisions of the Yamoussoukro Decision.

Overall, the Arab League Open-Skies Agreement provides the same or, in the sense of potentially granting seventh freedom rights, even greater liberalization of air services than the Yamoussoukro Decision. It clearly defines the competition rules and the conflict resolution procedure. While the agreement goes much farther than the Yamoussoukro Decision in many aspects, its provisions generally do not stand in conflict with the Yamoussoukro Decision. Being potentially bound by two liberalization agreements (i.e., the Arab League Open-Skies Agreement and the Yamoussoukro Decision), African Arab States must recognize the market potential, rather than be concerned about the treat of competition to their own carriers.

1.6.4 Literature on Liberalization of Air Transport in Africa

African policy makers have recognized that the economic development of the continent depends on safe, affordable and reliable transport infrastructure and services that are planned at national, sub regional and regional levels. Provision of functioning transport services constitutes a necessary precondition for Africa’s economic growth as recognized by the New Partnership for Africa’s Development (NEPAD) and other initiatives for the development of the continent. The lack of an

²⁸These countries included Bahrain, Egypt, Iraq, Jordan, Lebanon, Oman, Palestine, Somalia, Sudan, Syria, Tunisia, and Yemen. Arab Civil Aviation Commission, *Agreement on the Liberalisation of Air Transport between the Arab States*, (Damascus, 2004) [*Arab League Open-Skies Agreement*].

²⁹Arab League, *Agreement of Arab Free Trade Area*, (Tunis, 1981) [*Agreement of Arab Free Trade Area*].

³⁰The agreement has been in force since 18 February 2007, when in accordance with Article 38, the required five countries deposited their instruments of ratification. In addition, several other countries have announced that their ratification process is underway

adequate transport infrastructure and services remains an impediment to the development of international and intra-African trade.³¹

The airline industry in Africa is in its infancy but, according to the African Civil Aviation Policy (AFCAP)³² “it needs to mature rapidly to make its proper contribution to the economic development of the continent and its people”. There are many ways to do this, and indeed many ways have already been tried. The aviation business is a global phenomenon and, therefore, Standards and Recommended Practices (SARPs) as stipulated by the International Civil Aviation Organization (ICAO) must be strictly adhered to.

Many arguments, political, legal and economic have been used to devastating effect against African airlines and therefore against the strong and steady development of a Pan African aviation system.³³ Alhaji G.V Kromah³⁴ argues that the Yamoussoukro initiative for a new African air transport policy through liberalization and integration of activities are indeed fundamental in the drive to attain maximum efficiency and bring about the economic benefits of civil aviation to the people. He posits that the challenges remain in building trust but most importantly capital through shared activities. Further he states that mutual and collective undertaking on the principles of prudent business management with appropriate government regulation portends a progressive future for Africa.

It has been argued that the continued pursuit of the ‘Holy Grail’ of continent wide liberalization of the air transport market has become more contentious and thus proposed an organized process of liberalization in regional pockets throughout that would make far better (as well as manageable and measurable sense). Like minded states in specific regions should move from the archaic bilateral air service agreements and seek modern day, well thought out liberalization protocols and practices to

³¹ NEPAD: *Communiqué of the African Ministerial Forum on Integrated Transport*, Abuja, Nigeria, 13 Mar. 2003: see also NEPAD: *A pledge by African leaders based on a common vision*, 13 Oct. 2003.

³² AFCAP: A Report presented to the AU ministers of transport, Addis Ababa, April 2013.

³³ See Makumi Mwangi, *Developing an African Policy on Fifth Freedom Traffic Rights: Some Conceptual Considerations*, unpublished article, p. 8.

³⁴ See Alhaji G.V Kromah “Aviation & Regional co-operation in Africa” *The Rise and Fall of Air Afrique*. Unpublished Article p. 12.

enhance the sorely- needed air transport services in Africa. Once regions have made material progress, there will be critical momentum that should support enhanced liberalization between African regions and states.³⁵

The African bilateral agreements have tended to focus on individual routes or small sets of routes, thus leading to difficulties in arriving at a high level of efficiency over intra African³⁶ networks of air services, a number of them are also restrictive. These impediments prevent carriers from planning their route networks purely on the basis of commercial considerations.

Liberalization of international air transport entails a shift in regulatory approach from detailed regulation to greater reliance on market forces. While a less regulated economic environment provides more commercial freedom and flexibility for airlines, it also increases the potential for anti-competitive practices. Consequently, how to prevent and control, abuse in a liberalizing environment has been a key issue for both government regulators and the industry. The sustainability of air carriers and assurance of service has also become an issue of increasing concern, particularly for developing countries.³⁷ There is a need to address these issues in order to ensure that liberalization in air transport result in fair competition for all participants, and that all States can participate in international air transport in an effective and sustained manner.

Constructing a liberalized intra-African air transport market is a difficult and evolutionary process.³⁸ An underlying principle of the Decision is safeguarded liberalization and the principle that liberalization is not *laissez faire* or the absence of regulations. A major concern is how to avoid the

³⁵Gunter Endres, *Reality Check: African Airlines. Focus on Overseas Competition*, (Airline Business 22/01/08).

³⁶ UN-ECA-Liberalization of Air Transport in Africa: The Road Forward for the Implementation of the Yamoussoukro Decision, 12-14 March 2001, Bamako Mali.

³⁷ Ibrahim DaudaIdrisu, *Air Transport Liberalisation And Open Skies Agreements in Africa- The Regulatory And Commercial Implication For Nigeria*. St Clements University, September, 2004.

³⁸UN Economic Commission for Africa: ECA Study on the Clarification of Issues and Articles of the Yamoussoukro Decision, in *IusCoeli: African Air and Space Law Association Journal*, 2 IusCoeli 1, p. 2-14, Leiden, 2002.

risk of larger airlines becoming so dominant that they prevent smaller carriers from benefiting from the liberalization process and present the danger of too high a concentration of business in the hands of a few.

The African Union (AU) is Africa's premier institution and principal organization for the promotion of accelerated socio-economic integration of the Continent. It is also the monitoring body established to oversee implementation of the Yamoussoukro Decision. Leadership in Continent wide air transport liberalization requires understanding of the prevailing situation, a commitment and adequate preparation to forge progress. With its objective to promote sustainable development and integrating the African economies, the African Union (AU) is best situated to provide the platform for steering the Yamoussoukro Decision and *inter alia*, the liberalization of the air transport industry in Africa.³⁹

To preserve high quality African air transport, it is essential to define the role of the AU in the implementation of the Yamoussoukro Decision, while adopting the regional approach as the most effective and coordinating it (definition of clear rules of competition). The implementation organ provided for under the Decision should be established and provided with real financial resources to enable it to fully assume its role, which will be defined concurrently with its competences and area of action.⁴⁰

1.6.5 Current Trends in Civil Aviation

The establishment of ICAO as provided for by the Chicago Convention led to the regional facilitative bodies mandated to run civil aviation namely African Civil Aviation commission (AFCAC), Latin American Civil Aviation Commission (LACAC), Arab Civil Aviation Commission

³⁹ICAO/ATAG/WB Development Forum Maximizing Civil Aviation's Economic Contribution Safe, Secure and Sustainable Air Transport in Open Skies Challenges and Potential Montreal, Canada 24-26 May 2006 Implementation of the Yamoussoukro Decision Progressing or stalled?

⁴⁰Meeting of African Ministers Responsible for Air Transport first Ordinary Session 16 – 19 May 2005 Sun City, South Africa. Overview of the State Of Air Transport in Africa Au/At/2 (I) Original: French.

(ACAC) and European Civil Aviation Conference (ECAC). During the Organization of African Union (OAU) Kampala Summit of 1975, AFCAC was adopted as the specialized Agency of African Union in the field of civil aviation. This set the framework for a shift from regulation to deregulation.

Traditionally the governments owned the airlines until the 1970s when USA initiated the ideology of de-regulation to remove restrictions and encourage competition in civil aviation. In the 1980s, many more countries embraced the idea of liberalization and privatization of air services and access to air transport markets and this attracted private sector participation with injection of further capital into the industry. Liberalization and privatization have catalyzed the emergence of mega carriers, and alliances among airlines thereby enhancing their capacity to compete favourably.⁴¹

It is worth noting that aviation influences and at the same time is dependent on trade, tourism, immigration, customs, ICT, energy and research and development. The growth of this industry and the emergence of new challenges to it such as insecurity due to terrorism, rising fuel costs and environmental protection have led to closer cooperation among various stakeholders to address these challenges. Air navigation service providers, pilots, engineers and security surveillance bodies have linked up with regional integration initiatives to foster common problem solving attempts. The Libreville Plan of Action of 2006 for instance set targets for accident rates and considered an African external policy for negotiation with third parties. The 2007 Addis Ababa Declaration on civil aviation security in Africa and the 2010 Abuja Joint Declaration are road maps to counter the new emerging threat to civil aviation adopted through collaboration of AU, AFCAC, ICAO and other non Africa ICAO member States.⁴²

⁴¹ *ibid*

⁴² AU, Ministerial Conference on Aviation Safety in Africa, 16-20 July 2012, Abuja Nigeria, p.3.

Furthermore, the Almadies (Senegal) and Gauteng (South Africa) Declarations adopted by African Air Traffic Services providers are providing the foundation for a Single Sky concept⁴³ while other initiatives developed for and implemented in Africa by other States and organizations, such as; ICAO African Regional Comprehensive Implementation Plan and COSCAPs, IATA IOSA and ASET, World Bank Project for Sustainable Air Transport in Africa, US Safe Skies for Africa Initiative , the EU provide for global unity in combating safety and security challenges. Globally, the ‘Bali Agreement’ is the Trade Facilitation Agreement that emerged from the World Trade Organisation (WTO) Ministerial Conference in December 2013, in Bali.⁴⁴ The Agreement contains significant trade facilitation obligations and recommendations for its signatories with regard to customs operations that require the worldwide liberalization of air transport.

This study notes that although there is numerous literature on developments in the aviation industry, the literature on the aviation industry in Africa is still nascent and there is need to fully examine the impact of the Yamoussoukro Decision on the liberalization of air transport in Africa.

1.7 Theoretical Framework

The study is guided by the theory of liberal internationalism, which avers that states are but one actor in world politics, and even states can cooperate together through institutional mechanisms and bargaining that undermine the propensity to base interests simply in military terms, states are deemed to be interdependent. The proponents of this theory who include Ernst B. Haas, Robert Keohane and Helen Milner and theorists such as Emmanuel Kant viewed the state as not the sole actor in international relations but just one among the many non-state actors.⁴⁵ Liberals argue that world peace and development can only be brought about by the symbiotic relations among supra-national entities

⁴³ This calls for less state interference in flight patterns across national boundaries.

⁴⁴ WTO, Bali Trade Agreement, December 31, Bali, Indonesia.

⁴⁵ Milner, H., (1998), *Resisting Protectionism: Global Industry and the Politics of International Trade*, Princeton University, Princeton, p.17. See also, Keohane, R., Nye, S.J., (1987) “Power and Interdependence Revisited,” *International Organisation*, 41,742.

that facilitate mutual ties and benefits to people across the world. From the prisms of the liberal theory it is to be expected that there would be cooperation among African states in the implementation of the decision.

From a strict theoretical point of view, the justification for liberalization comes from the desire to maximize benefits entailed in a competitive environment. To this end, Ehmer⁴⁶ reasserts that minimum government intervention and virtues of competition in the air transport market will ultimately lead to: optimum allocation of factors of production, consumer sovereignty and technical progress. However, liberalization initiatives in Africa have not been satisfactory.

Though it was expected to enter fully into force after adoption, many of the signatory countries of the 'YD' have been showing reluctance to enter into agreement based on its liberal provisions.⁴⁷ Unlike realism where the state is seen as a unitary actor, liberalism allows for plurality in state actions. Thus, preferences will vary from state to state, depending on factors such as culture, economic system or government type. Liberalism also holds that interaction between states is not limited to the political (high politics), but also economic (low politics) whether through commercial firms, organizations or individuals. Thus, instead of an anarchic international system, there are plenty of opportunities for cooperation and broader notions of power. Another assumption is that absolute gains can be made through co-operation and interdependence - thus peace can be achieved. The theory helped the researcher to analyze liberalization of air transport in the aviation industry.

⁴⁶Ehmer, H. (2001). "Liberalization in German air transport - analysis and competition policy recommendations: Summary of a German study." *Journal of Air Transport Management* 7: 51-55.

⁴⁷UNECA, (2003). *Report on the Implementation of the Yamoussoukro Declaration*. ECA/RCID/023/02/Rev.1. Addis Ababa, United Nation Economic Commission for Africa.

1.8 Research Methodology

The study relied on desk research where it utilized secondary data which was drawn from books, pamphlets, internet and journals. The data thus gathered was qualitatively analyzed and informed analyses and conclusions arrived at.

1.9 Scope and Limitations of the Study

This study examined the impact of the liberalization initiative on the African continent as frameworked in the Yamoussoukro Decision of 1999 and its precursor the Yamoussoukro Declaration of 1998 and their impact on air transport. The study primarily followed up the development of the aviation industry from 1998 to the present with the help of secondary data and offers an insight on how the YD has contributed to closer connectivity in air services.

The research however encountered challenges that threatened the achievement of the study objectives. The study had initially resolved to employ primary data. However, it was soon realized that it would be costly to conduct interviews and administer questionnaires. It could have been also costly to hire a research assistant whose remuneration could have drained the meager resources available for the research. It was also difficult to obtain positive feedback from respondents some of who were unavailable while others cited their busy schedule to decline answering questions.

The study therefore collected secondary data which formed the basis of its research.

1.9 Chapter Outline

The study is divided into five chapters, chapter one, is an introduction to the study and includes: background to the study; the statement of the problem; the objectives of the study; the research questions; the methodology used, theoretical framework, hypothesis and the literature review. Chapter two looks at the historical background of liberalization of Air transport. Chapter three examines African regional efforts to liberalize air transport. Chapter four is a critical analysis of the

impact of the Yamoussoukro Decision on the liberalization of air transport in Africa. Chapter five concludes the study and consists of conclusions and recommendations of the study.

CHAPTER TWO:

HISTORICAL BACKGROUND OF LIBERALIZATION OF AIR TRANSPORT

2.0 Introduction

This section gives a brief account of three cases of major importance, each representing a different type of liberalization regime, to understand how the liberalization process was initiated, how it developed and how it has performed so far in the USA, the EU and the Yamoussoukro system.

2.1 Background of Air Transport Liberalization

The initial importance of aviation was military in nature with the focus being on ensuring air superiority during the First and Second Wars. With scientific and industrial revolutions having been central to the technological superiority of Europe and North America, air transport developed in these regions first with the rest of the regions lagging behind. When the industry began taking on a civil and commercial dimension, the initial regulatory regime abhorred liberalization and there were few attempts to deregulate. Air transport was highly regulated and protected in this environment with the intention of it being used as a lever for larger political and economic objectives. In Europe, even with the signing of The Rome Treaty in 1957 and the establishment of a Common Transport Policy for the European Commission, air transport was excluded.⁴⁸

The result was that up to the 1980s European aviation was state-controlled. For instance, only one airline from each state was permitted to fly each international route while EC member states licensed airlines owned and controlled by their nationals. It was ordinary for states to license international services bilaterally while national carriers which were state-owned always received subsidies with operating losses being written off. Most international airlines were flag-carriers that

⁴⁸ Button, K., "Deregulation and Liberalization of European Air Transport Markets," *Innovations*, 14, 3(2001), pp. 255-278.

operated to fulfil, often vague, national objectives of prestige, as well as linking colonies. Internal markets within countries were regulated in similar fashions, and it was not uncommon for wealthier countries to have an airline to provide primarily domestic and short haul services, and one for long-haul, international markets. Furthermore fares were decided on a bilateral basis and revenues were equally shared between airlines of the two countries.⁴⁹

The Chicago Convention of 1944 confronted the new international potentials of civil aviation and initiated an institutional structure that laid common ground rules for bilateral air service agreements (BASAs) between nationals. The result, however, while providing a formal basis for negotiation, was essentially one of protectionism with pairs of countries agreeing on which airlines could offer services between them, the fares to be charged and, often, how the revenues could be shared. The breakdown of the domestic regulatory structure within the US from the late 1970s provided both a demonstration for other countries to follow in deregulating their own domestic regimes.

In 1978, President Carter signed The Airline Deregulation Act which restricted the authority of the powerful Civil Aeronautical Board (CAB) to regulate commercial aviation. The resulting economic benefits in terms of increased productivity, lower operating costs and overall industry growth impressed upon Europe the importance of deregulation. There began a conscious effort to bring about wider reforms in the European aviation industry. As the table below shows, deregulation in the aviation industry had an immediate impact on the superior competitiveness of the American airline industry with staff productivity 50% higher in the US than in its European counterpart.⁵⁰ The former was clearly benefitting from a competitive environment that encouraged innovation and allowed

⁴⁹ Armstrong, K.A., Bulmer, S.J., (1998), *the Governance of the Single European Market*, Manchester University Press, p. 178.

⁵⁰ Ibid.

market forces to dictate to whom these benefits were to go to based on sustainable and prudent business acumen.

Table 2.0: Staff Productivity of US and European Airlines.1978.

		Staff	Tonne Kilometers (millions)	Tonne Kilometers Per staff	Passenger Per staff member	Staff per aircraft
Eastern	US	35,899	4,151	116,000	1,099	156
American	US	40,134	5,358	113,000	762	158
TWA	US	36,549	4,788	131,000	665	156
United	US	52,065	7,008	135,000	657	156
Lufthansa	Europe	29,400	3,028	103,000	460	320
Alitalia	Europe	17,040	1,586	93,000	374	279
Pan American	US	26,964	4,899	182,000	358	355
Air France	Europe	32,173	3,423	106,000	333	314
KLM	Europe	17,812	1,957	110,000	231	326
British Airways	Europe	54,845	4,213	77,000	308	264

Source: House of Lords Select Committee on European Air Fares, 1981

There were more generic moves towards a withdrawal of government in market-oriented countries such as New Zealand and the UK that saw airports and air traffic control being privatized, or at least operated on a more commercial footing. The move to a Single European Market within the EU from 1992 represented a broader trend, both in terms of the sectors and the geography involved, towards market liberalization of air transport infrastructure, as did the collapse of the Soviet economic system.

Where there have been almost universal tightening of regulations that run counter to the market liberalizations, have been in what the US calls "social regulation" and Europe calls, "quality

regulation.”⁵¹ This concerns such matters as the environment, safety, security, and consumer and labour protection. More recently, regional or national actions have also taken international significance; e.g. the extension of carbon trading within the EU to embrace all air transport, and the USA's introduction of stricter security measures, such as the provision on passenger information, for all flights into the country.

2.2 Traditional Regulation System

To fully understand liberalization in the context of air transport, it is necessary to look at the institutional set-up and regulatory framework under which the service is rendered. The first attempt to come up with a general framework to coordinate international air transport service was the ‘Chicago Convention’⁵² of 1944. The main purpose of the Convention was to coordinate the regulation of international air services at a multilateral level. Nevertheless, since it was difficult to come up with a global scale regulatory mechanism, especially in the economic aspect of regulation, Bilateral Air Service Agreements (BASAs) came into existence to regulate air service between countries. Article one of this Convention gives every country a sovereign right over its air space. As Lyle⁵³ indicates, the consequence of the ultimate discretion over their air space by countries led to a need for an agreement or a mutual consent between at least two countries in the course of conducting international air transport services.

Air Transport liberalization must be analyzed through comparison with the traditional regulation system prevailing world-wide before the drive towards liberalization began about 40 years ago. This system was based on the principle of full sovereignty of States over their airspace, recognized in the Chicago Convention of 1944. The main implications of this principle were that: each State remains

⁵¹Dienel, H., and Lyth, P., (1998), eds, *flying the Flag: European Commercial Air Transport Since 1945*, Macmillan, p. 8.

⁵²The Chicago Convention of 1944 was signed during intergovernmental meeting to establish a global framework which guides all aspects including technical standards and economic regulation of air transport operations.

⁵³Lyle, C op.cit

free to regulate its domestic Air Transport services, each State is the “natural” owner and regulator of the right of foreigners to trade with this State, the development of international Air Transport services then requires that they should be regulated jointly by the States between which the services are provided, by way of reciprocal exchange of rights granted by each State to the other State’s carriers, through legal instruments called “Bilateral Air Services Agreements (BASA).⁵⁴

BASAs provide rules fixing on the nature of rights granted (the traditional 1st to 5th freedoms and further freedoms, the nature of operations authorized (carriage of passengers and cargo, scheduled and non-scheduled operations) and ownership rules regarding the eligibility of carriers for designation. These bilateral agreements also determine the method of regulating capacities and flight frequencies of the respective designated carriers between the two signatory parties, the method of regulating fares, the points which a carrier designated by a State is authorized to serve in the other contracting State’s territory and the rights to carry traffic between the other contracting State and third party States under the 5th freedom regime.

The BASAs had as their prime purpose, the control of the so called ‘hard rights’ which include market access (cities served and traffic rights), market entry (designation of airlines), aircraft capacity and frequency of departure. In addition, typical BASAs include provisions relating to currency conversion, avoidance of double taxation, air safety and security issues etc, which are meant to ease the business process of international air transport services.⁵⁵ The features of ‘traditional’ BASAs are protectionist in nature. As far as market access is concerned, entry points in the respective contracting parties’ territories are limited. Countries are generally reluctant to allow many intermediate and beyond points to be served by the designated airlines of the other country using fifth traffic rights.

⁵⁴ See ICAO (2003), *Template Air Service Agreements*, as agreed upon at the Fifth Worldwide Air Transport Conference.

⁵⁵ Doganis, R. (2001). *The Airline Business in the 21st Century*. London, Routledge, Taylor and Francis Group. See also Hubner, W., Sauvé P. (2001). "Liberalization scenarios for International Air Transport." *Journal of World Trade* 35: 973-987.

Furthermore, designation of airlines is usually limited to one and the airlines have to be substantially and effectively owned by the nationals of the designating countries.

2.3 The Modern Industry

The modern air transport industry is thus one that increasingly operates within a liberal market context. While government controls over fares, market entry, and capacity continue in many smaller countries, they are gradually and almost universally being removed or relaxed. International controls under the BASA structures are increasingly moving towards broad Open Skies formulations, allowing free provision of services between the countries involved, although progress on open market, whereby nationality of ownership of airlines is unrestricted, is coming more slowly. The EU area has effectively been the largest international free market in air transport services in the world since 1997, and this has grown as the Union has expanded geographically.⁵⁶

The air transport industry is now large – it accounts for about 1% of the GDP of both the EU and the US – and is vital in many industries such as tourism, exotics, and hi-technology. It is an important transporter of high-value, low-bulk cargo. IATA in its March 2014 world survey showcases the important contribution world aviation to global trade and development.⁵⁷ It notes that international aviation moves about 40% of world trade by value, although far less in physical terms. The market is served by a diversity of carriers, some specializing in long-haul international routes and others in short-haul markets. To handle the interface between land and air transport the world's major airports have grown to handle millions of international passengers and tonnes of cargo each year, and many have been significant catalyst facilitating, in particular, the growth of modern hi-technology industries and tourism about them. In 2008, passenger air services globally link around 15,500 airports; with the fastest growth in air services over the past two decades being in the Europe-Asian Pacific markets.

⁵⁶ Kawagoe, M., *Air Transport Deregulation in the EU: Study from the Europeanization Perspective*, September 2008.

⁵⁷ IATA, (2014), *Cyclical Gains but Structural Challenges*, can be accessed at www.iata.org/economics.

2.4 The US Case

As mentioned above, Air Transport liberalization started in the USA at the end of the seventies, under President Carter. But the Airline Deregulation Act (ADA) of 1978⁵⁸ was the result of a complex process involving the academic community, the industry and other business interests, public interest groups, Government and the regulatory body itself. As early as the early seventies, theoretical research began to challenge traditional theories and common sense assumptions about the benefits of protectionism. The main purpose of the Act was to remove government control and open the domestic passenger air transport industry to market forces. The Act was to let market forces to determine the pricing quantity and quality of domestic air services. The immediate gains of the ADA regime became the focal point for subsequent deregulation not just in the US and Europe but the rest of the world as a whole.⁵⁹

From 1978 to 1987, the benefits of American deregulation were evident; passenger enplanements were up 55%, employment rose from 340,000 to 450,000 while scheduled passenger revenue miles were up 62% and discount fares on all domestic routes rose by 70%.⁶⁰ This success drew the attention of the world to the merits of liberalization. It was felt that some of the basic assumptions, though valid at the time when the regulatory system was set up, were no more relevant since the growth of the market volume had made it possible to envision alternative, competition-based mechanisms to take care of most issues hitherto resolved through regulation.

During the nineties, the issue for major US carriers was to remain alive, with the US domestic market being the arena of the competitive battle. This defensive strategy somehow diverted these carriers from the international market, where they preferred to rely on alliances with foreign partners

⁵⁸See commentary on the details of the *US Airline Deregulation Act of 1978* in Paul Stephen Dempsey & Laurence E. Gesell, *Air Commerce and the Law* (Chandler, Arizona: Coast Aire Publications, 2004).

⁵⁹ Ibid.

⁶⁰University of Pretoria's report; Strategies to Design a Cost-Effective Hub Network for Space Aerial Travel Demand in Africa, p.13.

to feed international traffic into their hubs, to concentrate their own resources to retain and, if possible, gain domestic market shares.⁶¹The growth of this aviation industry contrasted sharply with the protectionist failures of the European market (see Table 2.0) which however still functioned largely in bilateral protectionist agreements. The US, in an attempt to create a niche for its industry globally, sought to secure bilateral concessions for its fledgling airlines. The Department of Transport began to negotiate agreements with European countries willing to permit US carriers' free access to their markets on an individual country basis. This initiative otherwise known as The Open Skies Initiative was intended to open entry on all routes, offer unrestricted capacity and frequency on all routes and establish liberal charter and cargo regimes.⁶²

The US has subsequently entered into Open Skies agreements with most countries in the world which have sought to secure economic benefits to its aviation industry. Its economic power capability and its almost unrivalled superpower status provided it with the leeway to advance its sector up to date with the only challenges coming from terrorism, rising fuel costs and economic depression in European economies.

2.5 The EU Case

Air Transport liberalization in the EU took a completely different path. It had not been accompanied by a public debate, and Governments were not eager to put it on the legislative agenda of the European Community (EC). European air transport liberalization was not the intentional product of political will, or of a dialogue between stakeholders, but rather the outcome of a sequence of events in which the judiciary branch of the EC institutions played a key role to resolve conflictive issues arising from the opportunities open to a bunch of innovative actors skilfully exploiting loopholes and

⁶¹Kassim, H., (1996), "Air Transport," in, Kassim, H., and Menon, A., (eds), *The European Union and National Industrial Policy*, Routledge, pp. 106-131.

⁶²University of Pretoria's report, op cit.

contradiction in the EC constitutive treaties.⁶³ The Governments' prime concern was to protect their interests in their flag airlines, most of which being fully or partially State-owned. Some Governments, however, had embarked on domestic liberalization that was of limited scope, under pressure from local interests (municipalities, local business representatives) complaining about the monopoly of the national carrier, claiming that "domestic airfares in their countries were the highest in the world."⁶⁴

A first step in Europe-wide liberalization had been initiated in the seventies, not by the Community authorities, but under the aegis of the European Civil Aviation Conference (ECAC, an autonomous institution with a membership of 44 States, different than that of the EU), regarding the liberalization of the grant of traffic rights to charter operators. In the first half of the eighties, the agenda of the European Community was primarily concerned with the consolidation of the single European market, with a broad scope covering the circulation of goods, services and capital, the unification of technical standards and competition rules, and elimination of customs controls between member States. This resulted in the negotiation and adoption of the Single European Act in 1986.⁶⁵

However, the States failed to agree on a common set of rules for Air Transport services, and the Act expressly excluded them from the scope of common policies. In the late eighties, domestic liberalization had generated number of new entrants in the Air Transport market, competing for domestic routes and designation for increasingly liberalized international routes. This situation led to growing litigation between member states and air carriers, mostly with new entrants. The European Commission eventually convinced the (generally reluctant) member States that the only solution to this stalemate was a Europe-wide liberalization. This was carried out in three successive stages (referred to as "liberalization packages").⁶⁶

⁶³Baltagi, B., et al, "Airline Deregulation," op cit.

⁶⁴Intervistas:(2013), *The Economic Impact of Air Service Liberalisation*, p.29, accessed at www.intervistas.us.

⁶⁵Bonin, R., (1993), *Regionalism in International Civil Aviation: A Reevaluation of the Economic Regulation of International Air Transport in the Context of Economic Integration*, 78.

⁶⁶ Ibid.

Full liberalization of the European market, structured so as to achieve equivalence with the United States domestic market, was created under the auspices of the European Single Aviation Market (SAM) in 1992. The creation of the single market has generated an enormous amount of traffic and competition. Between 1993 and 2007, the number of airline routes created increasing 170 per cent, the number of routes with two or more competitors increasing 300 per cent, and the increase of the market shares of low cost carrier from one to twenty-seven per cent.⁶⁷ Currently, the European Commission and its member states are undertaking a series of negotiations to allow for a “community” carrier clause in the bilateral air services agreements between member states of the European Community (EC) and third parties. The United States and the EC, representing the largest market in air transport, reached a horizontal “open skies” agreement, in effect from 30 March 2008, and talks for a further integration in the form of a Trans-Atlantic Open Aviation Area were concluded. This single market is now jointly controlled thereby removing all commercial restrictions for flying that was initially regulated by national governments.

European liberalization however differed from US liberalization in many respects. Its scope covered domestic (intra-State) as well as inter-state services and it was vested in the European Commission- a monitoring and regulatory authority. It is also accompanied by a set of measures aimed at regulating relationship between air carriers, infrastructure providers e.g. rules of fair treatment in the access to infrastructures and slot allocation travel agencies and computerized reservation systems, also aimed at standardizing the protection of consumer rights and promoting competition in ancillary services such as ground handling. It moreover sets objectives for dealing with third countries on a

⁶⁷All are available online: <<http://eur-lex.europa.eu/en/index.htm>>

coordinated basis, with the ultimate goal of transferring to the Union the authority for contracting BASAs on behalf of the member States.⁶⁸

2.6 The African Case

Whereas the international example changed significantly, leading to the active commencement and pursuit of liberalization of air services in the US since the late 1970s, and in Europe about ten years later, African air services continued to remain generally restrictive, costly and inefficient. It was these concerns that led to efforts to liberalise air services in Africa.

2.7 The Yamoussoukro Declaration

Africa began its experiences in the practice of Air Services liberalization in 1988 with the Yamoussoukro Ministerial Declaration. There was a collective consensus among African states that they must prepare for the combined effects on African airlines of air transport deregulation in the US, the air transport liberalisation policies of the EU and the creation of a single European market in 1993. The African ministers in charge of air transport met in Yamoussoukro in the centre of Cote D' Ivoire in October 1988 with the aim of defining a new framework for the continental air transport. A new policy named the Yamoussoukro Declaration was formulated to achieve these objectives; First of all, it was to ensure flexibility in granting of traffic rights among African countries, encourage joint use of air transport facilities while encouraging cooperation and ultimate merger among African carriers. It was also supposed to foster further financing of the air transport sector.⁶⁹

In order to speed up the implementation of the Declaration, African Ministers responsible for civil aviation adopted in Mauritius in 1994, a series of measures including the relaxation of the granting of access to 5th Freedom. The Mauritius arrangement also advocated liberalization on an

⁶⁸Fifth Worldwide Air Transport Conference: *Challenges and Opportunities of Liberalization*, op cit.

⁶⁹AFCAC, (2013).Report of AFCAC Air Transport Committee Implementation of the Yamoussoukro Decision. <http://www.afcac.org/en/documents/Plenary/2013/wp/wp25.pdf> [Accessed: August 12, 2013]

incremental and sub-regional basis. These measures helped to improve the African connections quite modestly and to facilitate the growth of the African airline industry.

Nevertheless, the Yamoussoukro declaration did not go far enough to restructure the existing framework as issues like privatisation of national carriers and mostly liberalisation of bilateral air service agreements were not decisively tackled. As expected, at 1996 implementation deadline, little or no progress has been accomplished. Thus the need for another agreement designed to go further towards correcting the imperfections of the declaration and make it applicable on ground.

2.8 The Yamoussoukro Decision

Under the auspices of ECA⁷⁰, African ministers in charge of Civil Aviation met again in November 1999 to review progress on the implementation of the Yamoussoukro Declaration relating to the liberalization of access to air transport markets in Africa. After intensive discussion, they adopted a decision related to the implementation of the Yamoussoukro Declaration and concerning the liberalization of access to air transport markets in Africa. The Decision called “Yamoussoukro Decision” was ratified in 2000 by African Head of States and Government of the AU and thus gave the said Decision a legal dimension⁷¹. It established a plan aimed at full continent-wide liberalization by the year 2002 through the removal of all restrictions.

The major policies of the new air transport framework agreed upon by African policy makers included the gradual liberalisation of scheduled and non-scheduled intra African air services and the free exchange of traffic rights including the third, fourth and fifth freedom among African states. This was meant to facilitate closer cooperation by ensuring closer connectivity through the eradication of overlapping bilateral aviation regimes that were responsible for high air fares, protectionist tax regimes and duopolistic aviation regimes that stifled competition. The enabling of multiple designations by

⁷⁰ECA: United Nations Commission for Africa

⁷¹ECA/RCID/CM.CIVAC/99/RPT, online: United Nations Economic Commission for Africa (UNECA) website, <<http://www.uneca.org/itca/yamoussoukro/>> [Yamoussoukro Decision].

each party on a city pair basis and the removal of restrictions on frequencies and capacities offered on air services linking any city pair combination while at the same time the YD was to ensure non-regulation of tariffs by governments, complete the liberalisation of cargo and non-scheduled services and encourage commercial and other forms of cooperation between African carriers. For all purposes, the Yamoussoukro Decision (YD) has introduced a limited open skies regime on an intra- African basis.

In its approach, the Decision has a similar thrust and many resemblance with other liberalization initiatives, for example, recent liberal bilateral air services agreements (such as the US Open Skies agreements signed by many African countries), the recently signed Multilateral Agreement on the Liberalization of International Air Transport⁷² and the draft OECD Multilateral Agreement for Cargo Liberalization.

The Decision on the Implementation of the Yamoussoukro Declaration concerning the Liberalization of Access to Air Transport Markets in Africa is a major and far reaching regulatory development in the history of African civil aviation, both in its depth and magnitude. It created an ambitious framework for a regional regulatory regime that would liberalize the African skies, when fully implemented. The Yamoussoukro Decision did not develop a policy for air service between Africa and other regions of the world. Framework for intercontinental air services is governed by bilateral agreements of individual countries with other countries outside the continent. YD is a comprehensive proposal to improve the incumbent fragmented regulatory regimes through a unified system that gives African airlines commercial opportunities on an equal basis within the continent and ensures that their activities are governed by a common body of air transport rules.⁷³

⁷²The Multilateral Agreement was signed on 1 May 2001 between the United States, New Zealand, Chile, Brunei and Singapore. The agreement is open to other states from the Asia Pacific Economic Co-operation forum.

⁷³Heinz, S. and OConnell, J.F. (2013). Air transport in Africa: toward sustainable business models for African airlines. *Journal of Transport Geography*. 31: 7283

The principal aim of this decision was to accelerate the implementation of the Yamoussoukro declaration especially those relating to the granting of traffic rights, regional cooperation in air transport and the role of the governments. In line with ICAO's guiding principles, the decision was to pursue the development of safe regular and orderly air transport services on the basis of equality. It was also to create a conducive environment for the development and provision of safe, reliable and affordable air transport services necessary for the free movement of persons, goods and service, in Africa. The Decision recognized the necessity to adopt measures with the aim of progressively establishing a liberalized intra-African aviation market concerning among other things, traffic rights, capacity, frequency and pricing. It came into force thirty (30) days after the date of its signature by the Chairman of the Assembly of Heads of State and Government at which this Decision was adopted.

In terms of its political and juridical content, the Decision is an instrument placed under the umbrella and scrutiny of the Abuja Treaty.⁷⁴ The Decision was adopted pursuant to Article 61 and Article 10 of the Treaty, the former relating to the integration of air transport and the latter relative to the authority of the Assembly of Heads of State and Government to adopt decisions as the supreme policy and legislative body of the African Economic Community.⁷⁵ As a treaty obligation, emanating from the Abuja Treaty, the Decision is a legally binding instrument, creating rights and imposing obligations on the 45 African states that are currently parties to the Treaty. These obligations override national rules including pre-existing agreements.

The main elements of the Decision are featured in 12 Articles divided into a number of paragraphs that lay the general framework for the liberalization process. The Decision included the

⁷⁴ The Abuja Treaty establishing the African Economic Community was adopted in Abuja, Nigeria on the 3rd day of June, 1991. It came into force on 12 May 1994. It is reported by the OAU that South Africa acceded to the Abuja Treaty with effect from June 2001, bringing the total of ratification to 45 African countries.

⁷⁵ Article 61 (Transport and Communication), in part, provides that " Member States shall ... (c) harmonize their air transport policies... (e) promote proper integration of air transport in Africa and (f) co-ordinate and harmonize their air transport policies at regional and Community level in order to eliminate non-physical barriers that hamper the free movement of goods, services and persons".

following provisions which have a similar thrust with more recent liberal arrangements: a preamble setting the context within which the instrument was prepared; a definitions article assigning meaning to essential terms used; scope of application article which expresses the main purpose of the Decision; a grant of rights article which sets the rights granted; a tariffs article which sets the rules governing fares; a capacity and frequency article which lays down the agreed principles for the amount of services to be offered; a designation and authorization article specifying the conditions for designation of airlines to operate the services including eligibility criteria; conditions for the revocation of authorization; recognition of certificate and licenses; an aviation safety and security article setting forth procedures for co-operation to deal or avoid acts or threats for the security of civil aviation; a competition article which is a fair opportunity article setting forth a general principle designed to ensure non-discrimination; a settlement of disputes article intended to establish the agreed mechanism for resolving disputes between the parties; an institutional arrangement article which establishes the framework for the running of the system; a transitional measures article which specifies the condition under which the parties may limit their commitments; a miscellaneous provisions articles which lumps together: a commercial opportunities paragraph, an operational flexibility paragraph, a co-operative arrangements paragraph, a consultation paragraph, a review paragraph, a registration paragraph; a final provisions article covering entry into force, role of sub-regional and regional organizations, withdrawal and annexes.. The Decision defines the modalities for the removal of all traditional restrictions on the granting of the five freedoms of the air⁷⁶; increased capacity and frequency control⁷⁷; reduced governmental control and approval of tariffs⁷⁸; the removal of single

⁷⁶ see Article 3 Granting of Rights

⁷⁷ See Article 5 Capacity and Frequency

⁷⁸ See Article 4 Tariffs

airline designation and its replacement by multiple designation⁷⁹; and the introduction of greater commercial and operational flexibility.⁸⁰

The Decision endeavors to institute a regional framework for the exchange of market access right in its widest sense, devoid of *a priori* governmental management of capacity and pricing, as part of the overall efforts at regional economic integration. Air transport services constitute, in many ways, the most frequent and immediately visible form of trade between the members of such economic groupings. The regime thus instituted will replace the tradition of bilateralism resulting from the Chicago Convention.

An underlying principle on which the Decision relies heavily is safeguarded liberalization and the principle that liberalization is not *laissez faire* or the absence of regulations. A major concern is how to avoid the risk of larger airlines becoming so dominant in a manner as to prevent smaller carriers from benefiting from the liberalization process and the danger for the industry of becoming highly concentrated in the hands of these bigger airlines. A central issue will be how to weigh the efficiency enhancing effects of the liberalization process against the need for appropriate safeguard that are essential to achieve the objectives of the Decision.

Constructing a liberalized intra-African air transport market, of necessity, is a difficult and evolutionary process, especially so when one considers the socio-political context of Africa and the difficulties of bringing together a continent as diverse as Africa. Given that the Decision, at this stage does nothing more than start the process of establishing a minimum set of initial rules. These rules, inevitably, will require additional refinement to make the effort of the liberalization process more complete.

⁷⁹ See Article 6 Designation and Authorization

⁸⁰ See Article 11 Operational Flexibility

That is the reason why, in the first place, a mechanism for the periodic review of the Decision was included.⁸¹ In some cases, the practical difficulties that may arise in the application of existing provisions have to be examined regularly to reach a level of convergence of views among the stakeholders, an essential ingredient for uniform interpretation and application of the provisions of the Decision. In other cases, new rules may need to be developed to complete the liberalization cycle: for example, competition policy and the refining of the institutional arrangement.

2.9 Progress since the Yamoussoukro Decision

Several key resolutions and declarations have been made as a follow up to the Yamoussoukro Decision. These include Resolution on the Follow-Up of the Implementation of the 1999 Yamoussoukro Decision, Sun City, South Africa, May 2005; Resolution on Aviation Safety in Africa, Libreville, Gabon, May 2006; Resolution on Entrusting the Functions of the Executing Agency of the Yamoussoukro Decision to AFCAC, Addis Ababa, Ethiopia, May 2007; Declaration on Civil Aviation Security in Africa, Addis Ababa, Ethiopia, May 2007. The various RECs on the continent have been tasked with facilitating the implementation of AFCAC resolutions with subsequent common competition rules being completed. The AU further established the African Common Aviation Policy (AFCAP) which was to ensure further liberalisation.⁸² As the tale below shows, growth in the aviation industry was steady.

⁸² Visit www.african-union.org/AFCAP.

Table 2.1: Air Traffic in Sub-Saharan Africa (SSA), 2001-2007.

Market	Estimated number of seats			Percentage growth		
	<u>2001</u>	<u>2004</u>	<u>2007</u>	<u>2001-04</u>	<u>2004-07</u>	<u>2001-07</u>
All SSA	50,401,448	54,544,861	72,338,706	2.6	9.87	6.20
Domestic SSA	18,184,071	19,356,818	27,477,027	2.11	12.39	7.12
International SSA	11,758,107	11,868,280	14,327,728	0.31	6.48	3.35
Intercontinental SSA	19,544,122	22,051,174	28,068,536	4.11	8.38	6.22
Between North & SSA	924,148	1,268,588	2,465,415	11.14	24.79	17.77

Source: Bofinger, 2009.

These liberalization efforts have had a significant impact on aviation on the continent (as the table above shows). Domestic passenger numbers increased by over 8% to 19.4 million due an increase in access to air travel, lower fares and new routes launched in 2012. The growing competition in many domestic markets and the resultant improvement in service quality and lower fares continue to stimulate demand. Low Costs Airlines, particularly in South Africa, Kenya, Egypt, Morocco and lately Tanzania continue to aggressively promote and attract more passengers, some of whom have never flown by air. Intra-Africa passenger numbers went up 12.75% to 16.8 million, up from 14.9 million in 2011. This growth was driven largely by the rapidly growing business and trade among African countries and the growing middle class, some of whom now prefer air travel. On the intercontinental routes, passenger numbers also went up by 12.5% to 26.7 million in 2012. Significant growth was especially experienced on the Africa-Asia Pacific and Africa-Middle East routes. Africa-Europe still remains the most important intercontinental passenger air transport market, accounting for 51% of total intercontinental passengers. Significantly, number of passengers carried intra-Africa increased to

almost the same number carried between Africa and the Middle East in 2012. Intra-Africa passenger numbers stood at 22% of total carried; same as that to/from the Middle East.⁸³

2.10 African Civil Aviation Commission and the Yamoussoukro Decision

YD envisaged a monitoring body that would supervise and implement the decision and an African air transport executing agency that would ensure fair competition. By resolution, African Ministers responsible for Air Transport entrusted AFCAC with the attribution of Executing Agency of the of Yamoussoukro Decision on 11 May 2007 in Addis Ababa, Ethiopia. AFCAC as an International Organization was created by a Constitutional Conference convened by the International Civil Aviation Organization (ICAO) in 1964. It was fully established in 1969 and in 195 became an AU then (OAU) Specialized Agency in the field of civil aviation.

Prior to entrusting AFCAC with the attributions of the Executing Agency of YD, AFCAC's role was in advisory capacity. In order to accommodate the new attribution, AFCAC Constitution was reviewed and amended, on 16 December 2009 and the new Constitution at the 21st Plenary Session of AFCAC in N'djamena, Chad 11 to 13 May 2010 entered into force on the 11 May 2010 in accordance with Article 19(4) of the Constitution. This marked the beginning of operationalizing the activities of AFCAC as the Executing Agency of YD. The African Union (AU) apart from attempt to put in place the legal and institutional framework for the implementation of the YD with AFCAC as the Executing agency has awarded a contract as a project to consultants (Indecon DFS LHC) that has assisted AFCAC in the operationalization of YD as the Executing Agency.⁸⁴ AFCAC believe in building with the momentum that already exists. There are eight regional Economic Communities (RECs) recognized by the AU. These include; COMESA, EAC, ECOWAS, SADC, ECCAS, AMU, IGAD and

⁸³ AFRAA,

⁸⁴ ACI, (2012), Africa Regional Assembly and Exhibition, Livingstone, Zambia.

CENSAD. The RECs have developed competition rules, dispute settlement mechanism and in some cases have Court of Justice.

AFCAC vision is to build on this existing framework, through harmonization, as the differences within various regions are not so divergent. In addition AFCAC hopes also to promote Consumer Protection as it has been adopted by the Pan African Parliament. From the Consultants already contracted AFCAC is currently seeking operational support in performance of recurrent tasks carrying out studies and specific services for example in Competition rules and Dispute Settlement mechanism. It has managed to develop a common framework for evaluation of the implementation of the YD while the funding of capacity building and missions specific to the YD implementation is yet to be realized.⁸⁵

2.11 AFRAA and Implementation of and the Yamoussoukro Decision

The African Air Transport Industry Association (AFRAA) 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 implementation was inhibiting the growth and competitiveness of African carriers. However, it also recognized that full implementation by all States at the same time was not feasible due to the great disparity in air transport development and level of preparedness of many African countries.

In order to support the implementation process by certain Member States and the AU, AFRAA decided to establish a core group of States, which are like-minded, ready, and willing to spearhead the implementation of the Yamoussoukro Decision on a multilateral basis, without waiting for its implementation by all other countries. This group, referred to as “Club of the Ready and Willing (CREW)”, does not carry any legal weight, as it was initiated by AFRAA, a private association of African carriers, without any official endorsement by the States parties to the Yamoussoukro Decision.

⁸⁵ Ibid.

However, it signifies an important political factor namely, that the implementation of the Yamoussoukro Decision is indeed supported by the industry, while many States still are procrastinating in moving forward.⁸⁶

⁸⁶African Airlines Association AFRAA, *Final Resolutions adopted by the 38th Annual General Assembly* (Cairo: AFRAA; 2006), at 2, Resolution 38/5.

CHAPTER THREE:

AFRICAN REGIONAL EFFORTS TO LIBERALIZE AIR TRANSPORT

3.0 Introduction

The Yamoussoukro Decision explicitly encourages sub regional and regional organizations to pursue and intensify their efforts to implement the Yamoussoukro Decision.⁸⁷ It does so because Africa is a fragmented continent with heterogeneous economic and political organizations. Expecting full and harmonious application of the mechanism of the Yamoussoukro Decision and liberalization of air services in all Yamoussoukro Decision party states two years after the decision came into force was probably excessively optimistic. A better strategy is to encourage the various sub-regional and regional organizations that are involved in air transportation to begin implementing the steps of the Yamoussoukro Decision, while at the same time pan-African efforts are driven by the African Union. The underlying idea clearly seems to be to reach a situation where many RECs have applied the Yamoussoukro Decision and then start to agree on liberalizing air traffic between them. This last step would eventually complete full continent-wide implementation.

The sub-regional economic groupings, as the building blocks of the African Economic Community, provide the institutional framework for implementation of the Decision, within the meaning of Article 88 of the Treaty.⁸⁸ In terms of that Article, the African Economic Community is to be built through the co-ordination, harmonization and progressive integration of the activities of the sub-regional economic groupings, by gearing such activities to the final objective of the establishment

⁸⁷UNECA 2004, Article 12.2

⁸⁸ Article 88 stipulates in part that “1. The Community shall be established through the harmonization and progressive integration of the activities of regional economic communities... 4. Member States undertake, through their respective regional economic communities, to co-ordinate and harmonize the activities of their sub-regional organizations, with a view to rationalizing the integration process at the level of each region.”

of the Community. As a result the parties are required to harmonize and co-ordinate the implementation of the Decision at the level of their respective economic groupings. Strengthening of the sub-regional economic groupings will improve the chances of success of the implementation of the Decision, without which an institutional vacuum may be created.

Table 3.0: Percentage of flights between country pairs by airlines that are not based in either country of the pair-to show connectivity.

	AMU	BAG	CEMAC	COMESA	EAC	SADC	WAEMU
Seats 2001	7.6%	45.3%	38.0%	25.4%	33.0%	18.7%	47.7%
Seats 2004	8.3%	36.3%	11.8%	9.9%	12.2%	2.3%	43.7%
Seats 2007	4.1%	43.3%	28.5%	14.1%	16.4%	5.7%	43.8%
YD Score	1	4	5	3	3	2	5

Source: AFCAC, 2010.

As the table above shows, the percentage of international flights conducted by carriers not part of either country being served was highest in countries where the implementation score of the Yamoussoukro Decision is highest. It is also clear that except for the Arab Maghreb Union, which is not a party to the Yamoussoukro Decision, all countries have shown an increased market proportion of these airlines between 2004 and 2007

Consequently, it was recognized early on that implementation of the Yamoussoukro Decision depended mainly on regional initiatives that were to be carried out by regional economic groupings. The African states outlined this at the “Worldwide Air Transport Conference: Challenges and Opportunities of Liberalization,” which was held in Montreal in March 2004. They stated that with reference to competition regulation, implementation of the Yamoussoukro Decision should be made through regional economic groupings.⁸⁹ The groupings are discussed in depth below.

⁸⁹See ICAO, *Instituting Mechanisms for Fair Competition*, (Working Paper No. 87 presented at the Worldwide Air Transport Conference: Challenges and Opportunities of Liberalization, Montreal, 2003) ICAO Doc. ATConf/5-WP/87, Para. 2.2.

3.1 The Arab Maghreb Union

The AMU and its Member States did not consider the liberalization of air transport among themselves, despite the fact that all Member States, except Morocco, were signatories to the Yamoussoukro Decision. However, the initiative to liberalize air transport came from neighbouring European countries, which wanted to harmonize and gradually liberalize the transport systems in the Mediterranean Region. The ministers of AMU seem to have recognized the need to liberalize air services in their region when they met in Skhirat, south of Rabat in April 2007. During this meeting, a committee was established to examine Morocco's proposal for an open skies agreement. However, while the need for liberalization of air services within the AMU has finally been recognized, no consideration of the Yamoussoukro Decision and the liberalization of air traffic to sub-Saharan Africa is currently envisaged. It may be concluded that the Maghreb region is confronted with the growing reality of having to move decisively towards liberalizing air services as a result both of the consequences of an opening and participation in the European market, as well as an important market potential in sub-Sahara Africa. Besides, most AMU countries are bound by the Yamoussoukro Decision which eventually will press for its implementation in the region.

3.2 West & Central Africa (ECOWAS, WAEMU, BAG and CEMAC)

West African States can be grouped into several economic and/or political organizations. The largest, in terms of Member States, is the Economic Community of West African States, which includes all 15 West African States. However, in terms of air transport policy and the implementation of the Yamoussoukro Decision, the West African States divided themselves into two distinct groupings at a very early stage. The French speaking West African Economic and Monetary Union includes eight States, and the Banjul Accord Group of States is comprised of seven predominantly

English speaking countries. Nevertheless, all three organizations play a central role in the implementation of the Yamoussoukro Decision, and are therefore examined below.

3.2.1 The Economic Community of West African States (ECOWAS)

The Economic Community of West African States (ECOWAS) is a regional group of initially fifteen countries which was founded in 1975 by the treaty of Lagos.⁹⁰ In July 1993, a revised version of the treaty was discussed and agreed upon at the Cotonou Summit of ECOWAS in Benin. All sixteen Member States, represented by their Heads of State, signed the revised treaty⁹¹ Given the new powers of ECOWAS and its declared policy objectives on air transportation, it could have been expected that this regional organization would play a major role in the preparation of the Yamoussoukro Decision, which was adopted six years after the signing of the revised treaty. However, ECOWAS soon faced imminent division as its Member States began to deal with air transport matters under the auspices of two separate regional groupings. The French speaking countries established the West African Economic and Monetary Union in 1994, while the Anglophone States organized themselves under the Banjul Accord in 1997. Both sub-regional organizations began implementing a range of regulations, and subsequently liberalized their air service markets either through a common policy or by a multilateral agreement among Member States.

Nevertheless, based on the fact that the Yamoussoukro Decision encouraged the sub-regional and regional organizations to “pursue and to intensify their efforts in the implementation of the Decision”, the West and Central African States mandated ECOWAS and the Economic and Monetary Community of Central Africa (CEMAC) to implement their air transport policy as defined in the

⁹⁰The founding States of ECOWAS included Benin, Burkina Faso, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, and Togo. Cape Verde joined in 1976.

⁹¹See Economic Community of West African States (ECOWAS), *Revised Treaty*, (Executive Secretariat of ECOWAS, Abuja, Nigeria, 1993) [*Revised ECOWAS Treaty*].

Memorandum of Understanding signed in Yamoussoukro on 14 November 1999.⁹² In March 2001, the Ministers responsible for civil aviation of the 23 West and Central African countries met in Bamako, Mali, to discuss steps towards implementation. At that meeting, an action plan (called the “Bamako Action Plan”) was developed. Based on that action plan, project secretariats at ECOWAS and CEMAC were established, and several studies were initiated.⁹³

In February 2003 the Council of Ministers for the Implementation of the Yamoussoukro Decision met in Lomé, Togo, for their second meeting and established an Air Transport Economic Regulation Harmonization Committee which would steer the process of developing common air transport economic regulations for the two regions of West and Central Africa, and also periodically monitor the implementation of the Yamoussoukro Decision at the State level. Furthermore, in order to address the safety issues identified at the Bamako meeting in 2001, the Council also created three sub-regional state groupings for the implementation of the Cooperative Development of Operational Safety and Continued Airworthiness Program (COSCAP). A new action plan, called the Lomé Action Plan, was adopted and it focused again on achieving improvements in economic regulation, safety and security. Despite the several Ministerial meetings, the various studies and reports prepared, and the immense financial support provided by international donors such as the World Bank and the African Development Bank, ECOWAS has not adopted any legally binding instrument or regulations which can be classified as a step towards the implementation of the Yamoussoukro Decision.⁹⁴

⁹²*Yamoussoukro Decision*, *supra* note 29 art. 12.2. See also: ECOWAS, *Air Transport Policy in Economic Community of West African States*, (Working Paper presented at the 36th Session of the Assembly of the International Civil Aviation Organization, Montreal, 2007) ICAO Doc. A36-WP/350 EC/44 at 1 [ECOWAS, *Air Transport Policy in Economic Community of West African States*].

⁹³The project secretariats and several studies were financed by two grants from the World Bank totalling USD 800,000. See: International Bank for Reconstruction and Development (IBRD), *Grant for the Implementation of Air Transport Agenda in West and Central Africa*, (IDF Grant No. TF027394). See also: IBRD, *Grant for Building Capacity for Implementing a Program for Liberalization of Air Transport Services in West and Central Africa*, and (IDF Grant No. TF051220).

⁹⁴A formal decision by the Authority of Heads of State of Government of ECOWAS is necessary for any regulation or decision of ECOWAS to be binding upon its Member States. See *Revised ECOWAS Treaty*, *supra* note 329, arts. 9(4) and 12(3).

3.2.2 The West African Economic and Monetary Union (WAEMU)

The West African Economic and Monetary Union (WAEMU), also known in French as “*Union économique et monétaire ouest-africaine*” (UEMOA) is a customs and monetary union between some of the members of Economic Community of West African States (ECOWAS). It has its roots in the treaty establishing the West African Monetary Union (WAMU), signed on 12 May 1962,⁹⁵

The involvement of the WAEMU in air transport matters stems from Article 4 of the treaty, which sets as an objective of the Union the coordination of national sectoral policies in transport and telecommunications. To achieve this objective, the Council of Ministers of the WAEMU adopted on 27 June 2002 a common air transport program which can be regarded as a sectoral strategy incorporating an implementation action plan applicable to all the Member States.⁹⁶ The first objective of the common air transport program is to open the territory of the WAEMU to the outside World.

The most relevant measures for the implementation of the Yamoussoukro Decision are found on its objectives on the liberalization of air transport services. The two main elements of liberalization of air services in the WAEMU are: one the disengagement of the governments of member states from the “industrial and commercial air transport sector”, which is defined as airlines, airports, ground handling, and catering; and, secondly, the full liberalization of access to the air transport sector by allowing, in the long-term, cabotage, or eighth freedom flights for WAEMU carriers. Additional actions planned for the implementation of these two important steps include: the development of common competition regulations; the enhancement of facilitation by the elimination of restrictions upon free movement of persons and goods; and, the adoption of consumer protection regulations.⁹⁷

⁹⁵See Amos Jenkins Peaslee, *International Governmental Organizations* (The Hague: MartinusNijhoff, 1974).

⁹⁶WAEMU, Commun du Transport Aérien des EtatsMembres de l'UEMOA (2002), subsequently incorporated into and adopted as part of: WAEMU, Décision portant adoption du programme commun du transport aérien des Etatsmembres de l'UEMOA, (2002) WAEMU Doc. No. 08/2002:CM/UEMOA, Bulletins officiels de l'UEMOA [WAEMU, Décisionportant adoption du programme commun du transport aériendesEtatsmembres de l'UEMOA].

⁹⁷WAEMU, Décision portant adoption du programme commun du transport aérien des Etats membres de l'UEMOA, supra, note 356 at 17

WAEMU has made progress in implementation by promulgating several regulations in the five years following the adoption of the common air transport program. In sum, the WAEMU has adopted most of the necessary regulations for the Union-wide implementation of the air transport liberalization program, which, at the same time comply with or exceed the provisions and requirements of the Yamoussoukro Decision. The most significant regulations are: Traffic rights (Yamoussoukro Decision Article 3) Tariffs (Yamoussoukro Decision Article 4), Competition regulation (Yamoussoukro Decision Article 7), Safety and Security (Yamoussoukro Decision Article 6.12). In addition to addressing the requirements of the Yamoussoukro Decision, the WAEMU has also addressed some consumer protection and carrier liability issues.

It can be concluded that the WAEMU has established most of the necessary regulatory framework to implement the main provisions of the Yamoussoukro Decision within the territories of its member States, and has even gone beyond the requirements of the Yamoussoukro Decision in terms of market access. However, the integration of the WAEMU air service market into the broader continental African region covered by the Yamoussoukro Decision is not effectively addressed. Despite the fact that the preamble to each WAEMU air transport-related regulation includes a reference to the Yamoussoukro Decision, it also effectively limits the scope of application of the air transport policy to the territory of the WAEMU.

3.2.3 The Banjul Accord Group of States

The Banjul Accord Group (BAG) was created on 29 January 2004 when seven West African States signed the Banjul Accord Group Agreement.⁹⁸ This new agreement builds on the initial Banjul

⁹⁸The signatory States included the Republic of Cape Verde, the Republic of The Gambia, the Republic of Ghana, the Republic of Guinea, the Republic of Liberia, the Federal Republic of Nigeria, and the Republic of Sierra Leone. See *Agreement to establish the Banjul Accord Group and implement the Banjul Accord for the accelerated implementation of the Yamoussoukro Declaration*, 4 April 1997 (entered into force in 2004) at 19 [*Banjul Accord Group Agreement*].

Accord which was established in 1997.⁹⁹ The initial Banjul Accord primarily aimed at ensuring and accelerating the implementation of the Yamoussoukro Declaration of 1988. Accordingly, the Banjul Accord of 1997 states as its prime objective the safeguarding of international air transport in the region, and the promotion and encouragement of cooperation among national carriers. In like manner as the Yamoussoukro Declaration, the integration of airlines into larger entities - even joint multinational carriers - became the declared objective of the Banjul Accord of 1997. The Banjul Accord Group Agreement of 2004 explicitly states that its objective is the Implementation of the Yamoussoukro Declaration and the Yamoussoukro Decision. In addition, member states have agreed to enter into joint ventures and/or cooperative arrangements to foster the development of international civil aviation among Member States, non-member states and organizations.

However, while the Yamoussoukro Decision is, in fact, titled the “Decision relating to the Implementation of the Yamoussoukro Declaration concerning the Liberalization of Access to Air Transport Markets in Africa”, the Banjul Accord Group Agreement seems to only emphasize the aspect of airline cooperation rather than focus primarily on liberalization and free competition as stipulated in the Yamoussoukro Decision. By agreeing to implement the Declaration as well as the Decision, the Banjul Accord Group

Agreement creates a certain contradiction or confusion about its real focus with regard to the development of air services. The kernel of the issue lays in the fact that the policy focus clearly shifted from cooperation between airlines to liberalized competition in the eleven years between the signing of the Yamoussoukro Declaration and the making of the Yamoussoukro Decision. Nevertheless, the Plenary of the Banjul Accord Group produced two additional documents aside from the Banjul Accord

⁹⁹Banjul Accord Group (BAG), Memorandum of Understanding of the Second Consultative Meeting of the Group of Directors of Civil Aviation and Airline Executives of the Banjul Accord Member States of 26 November 1997, Appendix A. [Banjul Accord Group MOU]

Group Agreement. The first is a Multilateral Air Services Agreement and the second is a Memorandum of Understanding for the implementation of a technical cooperation project.¹⁰⁰

3.2.4 The Economic and Monetary Community of Central Africa (CEMAC)

The legal basis of CEMAC is a treaty which was signed in 1994 between Cameroon, the Central African Republic, Chad, and the Republic of the Congo, Equatorial Guinea, and Gabon.¹⁰¹ As an organization, CEMAC became the successor of the former Customs and Economic Union of Central Africa (UDEAC), which it completely replaced in June 1999.¹⁰²

Earlier on, the objectives of the CEMAC States included the development of the air transport sector of the region. The basis for this was the specific objective stated in Article 2 of the Convention governing the UECA, of coordinating national sectoral policies of member states in trade, tourism, transport...” The three measures that were taken in this connection in the CEMAC region before the advent of the Yamoussoukro Decision are: 1) The Agreement on Air Transport of CEMAC Member States 2) The Civil Aviation Code of the CEMAC Community and 3) Joint CEMAC Competition Regulations.

The Agreement on Air Transport of CEMAC Member States was adopted by the Council of Ministers on 18 August 1999 and it aims at developing the CEMAC intra-community air transport sector in order to establish greater access within the region, and to promote economic and commercial relations between Member States.¹⁰³ In addition the CEMAC Agreement on Air Transport has additional provisions set forth certain requirements for the implementation of the intra-community liberalization of the sector.

¹⁰⁰*Banjul Accord Group Agreement, supra* note 379, arts. 3.2 and 3.3

¹⁰¹*Traité instituant la Communauté Économique et Monétaire de l'Afrique Centrale*, (1994). The annex to this treaty includes the Convention Governing the Economic Union of Central Africa, which was created by article 2 of this treaty [*CEMAC Treaty*].

¹⁰²The Customs and Economic Union of Central Africa (also known as UDEAC from its French name "Union Douanière et Économique de l'Afrique Centrale") was established by a treaty signed in Brazzaville, Congo, in 1966. It created a customs union with a free trade area between members and a common external tariff for imports from other countries. The Member States were Cameroon, Central African Republic, Chad, Republic of the Congo, Equatorial Guinea, and Gabon.

¹⁰³CEMAC, Règlement portant adoption de l'Accord relatif au Transport Aérien entre les Etats membres de la CEMAC, (1999), art. 2.

Given the objective of establishing a coordinated and harmonized legal framework for the air transport sector, the Council of Ministers adopted a Civil Aviation Code for the CEMAC Community in July 2000.¹⁰⁴ The Code has since become legislation in all Member States of the community, replacing obsolete or contradictory national aviation legislation.¹⁰⁵ In terms of the Yamoussoukro Decision, all the major provisions of the agreement on air transport of CEMAC member states have been incorporated in the code. These include, in particular, regulations on: market access, tariffs: frequency and capacity designation and establishment, competition.

The third element of liberalization of air services among the CEMAC Member States is the joint competition regulations, which were adopted by the Council of Ministers on 25 June 1999.¹⁰⁶ The competition regulations are of general nature and apply to all domains or industries of the CEMAC common market. Their primary objective is to prevent any form of interference with free and efficient competition.¹⁰⁷

In conclusion it can be stated that, in similar manner as WAEMU, CEMAC has implemented within its territory most of the necessary regulatory framework required under the main provisions of the Yamoussoukro Decision. CEMAC Member States can therefore be considered as part of the Yamoussoukro Decision, which is therefore applicable within their respective territories.

3.3 Southern and Eastern Africa (COMESA, SADC, and EAC)

There are three regional economic communities in Southern and Eastern Africa that address the air transport sector. The largest in terms of member states and territory covered is the Common Market for Eastern and Southern Africa (COMESA), which currently includes 20 countries stretching from Egypt in the North to Zimbabwe in the South. The next regional economic community is the Southern

¹⁰⁴CEMAC, Règlement portant adoption du Code de l'Aviation Civile de la CEMAC, (2000).

¹⁰⁵*Ibid.*, art. 335.

¹⁰⁶CEMAC, Réglementation des Pratiques Commerciales Anticoncurrentielles, (1999) [CEMAC Antitrust Regulations].

¹⁰⁷*Ibid.*, preamble and art. 2

African Development Community which comprises 15 Member States from the Southern part of Africa. The smallest regional economic organization is the East African Community which consists of five Eastern African States. It is significant to note that the membership of these communities easily overlaps, with most countries belonging to two of them.¹⁰⁸ Nevertheless, starting at a very early stage, each regional economic community has addressed liberalization of air services within its respective membership over the years.

3.3.1 The Common Market for Eastern and Southern Africa (COMESA)

COMESA is Africa's largest regional economic organization covering a large area of Eastern Africa. It currently includes 20 member states, 15 of which were signatory states to the former PTA treaty.¹⁰⁹ The principal aims and objectives of COMESA are stated in Article 3 of the treaty.¹¹⁰ COMESA's policy on air transport was already well established in the COMESA treaty. These include: to foster sustainable growth and development of the Member States; jointly adopt and support macro-economic policies and programs; create an enabling environment for foreign, cross-border and domestic investments; promote peace, security and stability among member states; strengthen relations between the common market and the rest of the world; and, contribute towards the establishment and realization of the objectives of the African Economic Community.

Article 84 of the treaty engages member states to develop coordinated and complementary transport and communications policies. The essence of the air transport policy is outlined in Article 87

¹⁰⁸For example, in East Africa Burundi, Kenya, Rwanda and Uganda are members of COMESA and the EAC. In Southern Africa ten countries are members of COMESA and SADC: Angola, the Democratic Republic of the Congo, Malawi, Madagascar, Mauritius, the Seychelles, Swaziland, Tanzania, Zambia, and Zimbabwe.

¹⁰⁹The Member States are Angola (21 Dec 1981), Burundi (21 Dec 1981), Comoros (21 Dec 1981), Democratic Republic of the Congo (21 Dec 1981), Djibouti (21 Dec 1981), Egypt (6 Jan 1999), Eritrea (1994), Ethiopia (21 Dec 1981), Kenya (21 Dec 1981), Libya (3 June 2005 at the 10th Summit of COMESA), Madagascar (21 Dec 1981), Malawi (21 Dec 1981), Mauritius (21 Dec 1981), Rwanda (21 Dec 1981), Seychelles (2001), Sudan (21 Dec 1981), Swaziland (21 Dec 1981), Uganda (21 Dec 1981), Zambia (21 Dec 1981), and Zimbabwe (21 Dec 1981).

¹¹⁰ COMESA, *Agreement establishing the Common Market for Eastern and Southern Africa (COMESA)*, (1994), online: COMESA website, <<http://about.comesa.int/langen/overview/comesa-treaty>> [*COMESA Treaty*].

which appears to have been drafted in line with the Yamoussoukro Declaration of 1988. The main focus of Article 87 is co-operation between operators in the Common Market.¹¹¹

In 1999, practically in parallel with the African Economic Communities' initiation of the Yamoussoukro Decision, COMESA's Council of Ministers issued the "Regulation for the Implementation of the Liberalised Air Transport Industry".¹¹² The regulation was issued as a directive titled "Legal Notice No.2" which became binding on the Member States and on all subordinate organs of the Common Market.¹¹³ Legal Notice No. 2 aims at liberalizing air transport services as a step towards the creation of a free trade area which will guarantee the free movement of goods and services produced within COMESA, as well as the removal of all tariff and non-tariff barriers.¹¹⁴ However, despite of the fact that Legal Notice No. 2 exceeds the scope of liberalization required by the Yamoussoukro Decision, it does not mention the Yamoussoukro Decision as the basis or source of inspiration for 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 was initiated in October 1999 and it is significant to note that fifth freedom rights, which are considered essential in many liberalization policies including the Yamoussoukro Decision, were already being granted in Phase I of COMESA's liberalization. The peak of liberalization of air transportation within COMESA was reached one year after the commencement of Phase I. In October 2000, Phase II took effect and, in essence, it introduced free movement into intra-COMESA air transport services. Phase II has liberalized air services within COMESA far beyond the scope envisaged by the Yamoussoukro Decision. Despite the very clear and concise liberalization program provided for in Legal Notice No. 2, its adoption was stalled in 2001 when the Council of Ministers of

¹¹¹See *COMESA Treaty* art. 87

¹¹²COMESA, *Legal Notice No. 2* (1999) [*COMESA Legal Notice No. 2 of 1999*].

¹¹³*COMESA Treaty*, arts. 9(2)(c) and 9(3).

¹¹⁴*COMESA Legal Notice No. 2 of 1999 Op. Cit* preamble.

COMESA decided to “defer the implementation of Phase II to await the preparation of competition regulations”.¹¹⁵ Subsequently, the implementation of a liberalized air services regime within COMESA as specified in Phase II was suspended for several years. The Draft Regulations for Competition in Air Transport Services within COMESA, EAC and SADC was consequently adopted by ministers responsible for civil aviation in September 2002 and in November 2006; they jointly adopted the “Guidelines, Provisions and Procedures for the Implementation of the Regulations for Competition in Air Transport Services within COMESA, EAC, and SADC.”¹¹⁶

3.3.2 Southern African Development Community (SADC)

The Southern African Development Community was formally established by a treaty on 17 August 1992.¹¹⁷ The main objectives of SADC include development and economic growth, poverty alleviation, and the enhancement of the standard and quality of life of the peoples of Southern Africa while supporting the socially disadvantaged through regional integration.¹¹⁸ The objectives and development priorities of the transport sector of the SADC region were defined in a rather early protocol signed in 1996, and which came into force two years later.¹¹⁹ Civil Aviation is covered in Chapter 9 of the Protocol which starts by setting the objectives for the sector. They include the provision of safe, reliable and efficient air transportation within Member States.¹²⁰ Liberalization of air services is mentioned only once in Article 9(2), titled Civil Aviation Policy, which provides that member states will develop a harmonized regional aviation policy, which includes the “gradual liberalization of intra-regional air transport markets for the SADC airlines.

¹¹⁵COMESA, *The Development and Implementation of Competition Regulations in Eastern and Southern Africa*, (presented to the Meeting of African Ministers responsible for Air Transport, Sun City, South Africa, 2005) at 3.

¹¹⁶Southern African Development Community (SADC), Status of the Implementation of the Yamoussoukro Decision in SADC and EAC as of 04 May 2007.

¹¹⁷*Treaty of the Southern African Development Community*, (1992) online: SADC website, <<http://www.sadc.int/>> [SADC Treaty].

¹¹⁸*Ibid*, art. 5(1)

¹¹⁹*Protocol on Transport, Communications and Meteorology in the Southern African Development Regions*, (24 August 1996), entered into force on 6 July 1998, online: SADC website, <<http://www.sadc.int/>> [SADC Protocol on Transport].

¹²⁰*SADC Protocol on Transport*, art. 9.1

The SADC Protocol on Transport, agreed upon three years before the signing of the Yamoussoukro Decision, clearly reflects the objectives of the previous Yamoussoukro Declaration, which primarily aimed at integrating African air carriers. While most of the other RECs have agreed upon or issued legislation and/or regulations aimed at implementing the Yamoussoukro Decision, SADC did not take this further step in defining liberalization of the air transport sector as part of its implementation of the Yamoussoukro Decision. Nevertheless, despite the fact that SADC never formally agreed on intra-regional liberalization of its air services, it has continuously worked at implementing the Yamoussoukro Decision, to which most of the SADC Member States are bound.¹²¹ The only regional element of the implementation of the Yamoussoukro Decision is the joint COMESA, SADC, and EAC effort aimed at preparing common regulations for competition in air transport services within the three RECs. However, despite the fact that a concrete roadmap for implementation was laid out on several occasions, the adoption of the joint competition regulations and the establishment of a Joint Competition Authority remains incomplete.¹²²

SADC has therefore not taken any steps towards implementation of the Yamoussoukro Decision which, for the most part, is binding upon its Member States. However, it has at least acknowledged the Yamoussoukro Decision and its objective of liberalizing air transportation.

3.3.3 East African Community (EAC)

The East African Community (EAC) was formed as an economic cooperative between Kenya, Tanzania, and Uganda in 1967.¹²³ One of the objectives of the treaty establishing the EAC was to maintain the cooperative regional trade framework which was initially mandated by the British Crown. The main challenge of the new organization was the fact that the governments of the three member

¹²¹Madagascar, South Africa, and Swaziland are not Yamoussoukro Decision Member States

¹²²SADC, Annotated Record, Ninth Meeting of the SADC Civil Aviation Committee. (Manzini, Swaziland; 2006). See also SADC, Major Achievements and Challenges (Gaborone, Botswana: SADC Secretariat, 2005).

¹²³*Treaty for East African Cooperation* (1967) reprinted in (1968) 7:2 *Journal of Common Market Studies* 129 Treaty for East African Co-operation.

countries had become increasingly divergent in their ideological and political views.¹²⁴The EAC consequently collapsed in 1977 only ten years after its creation.

A second attempt at regional cooperation led to the formation of East African Community by a treaty was signed in Arusha by the three so called Partner States on 30 November 1999. Following ratification and deposit of the instruments of ratification with the Secretary General by all three Member States, the Treaty entered into force on 7 July 2000. Initially comprised by the three Partner States, membership of the EAC was enhanced in 2007 when Burundi and Rwanda joined.¹²⁵ Chapter 15 of the EAC Treaty outlines the modalities of cooperation in infrastructure and services between Partner States. The civil aviation and civil air transport sectoral program is outlined in Article 92. The objectives of the civil aviation and civil air transport program are to (i) harmonize the civil aviation policies among Partner States, and (ii) to facilitate the establishment of joint air services.¹²⁶

Although the stated elements of the EAC Treaty include some elements of the Yamoussoukro Decision, which was signed the same year as the EAC Treaty, it is significant to note that the former restricts itself by merely mentioning the liberalization of the granting of air traffic rights for passengers and cargo operations, and not further specifying the degree or freedom of liberalization to be achieved.

The other elements reflected in the EAC Treaty are at best, only secondary measures of the Yamoussoukro Decision. They include the harmonization of civil aviation rules and application of the ICAO guidelines for determination of user charges for scheduled air services. Furthermore, the concrete objectives of establishing joint air services and facilitating the efficient use of aircraft are

¹²⁴See Agrippah T. Mugomba, "Regional Organisations and African Underdevelopment: The Collapse of the East African Community" (1978) 16:2 *Journal of Modern African Studies* 261

¹²⁵The five Member States of the EAC today include Kenya (2001), Uganda (2001), Tanzania (2001), Burundi (2007), and Rwanda (2007). See generally Neil Ford, "*Rwanda and Burundi to join East African Community*" (2007).

¹²⁶Apart from air transport, the following sectors are also defined: Common Transport and Communications Policy (Article 89); Roads and Road Transport (Article 90); Railways and Rail Transport (Article 91); Maritime Transport and Ports (Article 93); Inland Waterways Transport (Article 94); Multimodal Transport (Article 95); Freight Booking Centres (Article 96); Freight Forwarders, Customs Clearing and Shipping Agents (Article 97); Postal Services (Article 98); Telecommunications (Article 99); Meteorological Services (Article 100); and, Energy (Article 101).

elements of the previous Yamoussoukro Declaration of 1988.¹²⁷ Despite the fact that the EAC Treaty did not incorporate the principles of the Yamoussoukro Decision, the Sectoral Council on Transport, Communications and Meteorology of the EAC has worked continuously on several key measures of the Yamoussoukro Decision. The most important of these measures is the application of a liberalized air transport policy for scheduled air services.

While other RECs (for example the WAEMU) have developed specific regulations that have liberalized air services within their respective RECs, the EAC chose to focus merely on amending existing bilaterals between the partner states. During the 11th Meeting of the Council of Ministers of the EAC, several air transport related projects were formally approved by the Council, which also issued the necessary directives.¹²⁸ The first step towards the implementation of these decisions and directives was taken on 18 April 2007, when an Extra Ordinary Meeting of the Council of Ministers in Arusha approved the establishment of the EAC Civil Aviation Safety and Security Oversight Agency (CASSOA).¹²⁹ The prime objective of the CASSOA is the promotion of safe, secure and efficient use and development of civil aviation by having the partner states meet their obligations and responsibilities under the Chicago Convention.¹³⁰

The EAC has displayed great interest and motivation towards the liberalization and development of air services within the territory of its partner states. Being a relatively small REC, the EAC depends mainly upon mutual consent when it comes to major decisions and the implementation of programs. The notion of cooperation between partner states has a long history in East Africa, and must be regarded as the best way forward. Liberalization in the sense of agreeing to bilaterals which

¹²⁷See *Yamoussoukro Declaration*,

¹²⁸East African Community, *Report of the 11th Meeting of the Council of Ministers*, (Arusha, Tanzania: EAC, 2006) EAC/CM11/Decision 44 at 61 [EAC/CM11].

¹²⁹Protocol on the Establishment of the East African Community Civil Aviation Safety and Security Oversight Agency, (adopted at the Extra Ordinary Council of Ministers Meeting. Arusha, Tanzania: 2007) [EAC Protocol on Aviation Safety and Security Oversight Agency].

¹³⁰*Ibid.* art. 4

conform to the principles of the Yamoussoukro Decision is, therefore, the most appropriate manner of implementation. However, this key element of the EAC's approach to implementing the Yamoussoukro Decision (i.e., the amendment of the existing bilaterals between EAC States), is still pending. Currently, the existing regime of bilaterals between the EAC Partner States is more restrictive than what the Yamoussoukro Decision framework Envisages.

3.4 Conclusion on Regional Efforts for Liberalization

Some of these sub-regional initiatives described above aim at greater flexibility of rules which go beyond the existing bilateral regulatory framework. They involve the adoption of regional regulation of air traffic, either complementing or superseding the bilateral structure. 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.

As the building blocks of the liberalization process, sub-regional organizations are not effectively recognized in the institutional set-up. Article 12.2, on the role of sub-regional organizations, is nothing more than an encouragement provision and does not clearly provide for their effective participation in the Monitoring Body. It simply provides that "*Sub-regional and regional organizations are encouraged to pursue and to intensify their efforts in the implementation of this Decision.*" Furthermore, Article 9.2 appears to give to these organizations a secondary role when it provides that the Monitoring Body will be "assisted, as the case may be, by representatives of sub-regional organizations."

CHAPTER FOUR:

A CRITICAL ANALYSIS OF THE IMPACT OF THE YAMOUSSOUKRO DECISION ON THE LIBERALIZATION OF AIR TRANSPORT IN AFRICA

4.0 Introduction

The previous chapter was on the regional efforts undertaken by Sub regional organisations in implementing the YD. This chapter is a critical analysis of the impact of YD in liberalising air transport in Africa, the chapter will also analyse the implementation challenges of the YD.

4.1 The Impact of Yamoussoukro Decision on Liberalization

Various studies including by IATA make the same conclusion that liberalization can provide significant benefits for consumers, airlines and national economies. Consumers benefit in terms of greater choice, lower fares and improved standards and quality of service. Airlines benefit from the greater commercial freedom that allows them to allocate capital more efficiently, to respond better to changes in demand in markets and to improve productivity and efficiency. It enhances their competitive position by repositioning them to be more competitive. Liberalization has the potential to enable them to create new services and increase efficiency for the benefit of the travelling public.

Liberalization also provides significant benefits for the wider economy. For example, a recent Study by Intervistas quoted by IATA found that globally, liberalising some of the current major restricted country pair routes could increase traffic by 63% and generate an additional \$490billion of GDP.¹³¹

Liberalization also stimulates private sector participation in the development of the air transport industry. In addition, liberalization has the potential to encourage the development of tourist and cargo traffic. The potential for tourism growth is enormous. Every major study has concluded that tourism could be a major source of job creation and contributor to GDP. However, the growth of this sector is constrained by inadequate air services and high ticket prices. YD implementation is expected

¹³¹InterVISTAS – ga2 Consulting, Inc., The economic impact of air services liberalization, op cit.

to result into more services and lower prices due to the expected competition on currently capacity constrained routes.

Experience in the sub-continent also shows positive impact of liberalization. TheComMark Trust Study of 2006 found, among other things that, the liberalization of the Kenya/ South Africa bilateral agreement in 2003 allowing multiple designation and removal of restrictions on frequency and capacity, resulted in a 69% increase in passenger volumes by 2005 on the Nairobi-Johannesburg route.¹³² In addition domestic liberalization in South Africa allowed the entry of low cost carriers. The same Study also found that allowing competition on the Johannesburg –Maputo route could result in 37% reduction in fares. Furthermore an ECA Study indicated that where a more liberal approach had been adopted, fares had gone down by more than 30% in Eastern Africa as well as between East and Western Africa.¹³³

A recent Study on the Implementation in the COMESA liberalisation programme found that the flexibility in the granting of traffic rights had a very positive impact in the quantity of air services offered. New routes had been opened adding new flights, frequencies and new players in the marketplace. These new services were in part responsible for the continued improvement in connectivity, particularly between Ethiopia, Kenya, Uganda and Sudan. Frequencies to Entebbe increased by 12 to 49 between March 2007 and March 2008 while Addis Ababa increased its connectivity by 19 frequencies during the same period. Nairobi benefited the most with 23 additional frequencies. These are significant benefits to the consumer as increased connectivity improves the quality of air services.¹³⁴

¹³²Abate, Megersa A. 2007. "The Economic Effects of Progressive Air Transport Liberalization in Africa," op cit

¹³³ECA, 2003, Report on the Implementation of the Yamoussoukro Declaration (ECA/RCID/023/02/Rev. 1), Paper presented at the Meeting of the Committee on Regional Integration, Addis Ababa, 15 April, 2003, 1-13.

¹³⁴134

In a nutshell the impacts below have been observed on routes where liberalization has been practised. New lines have been provided; frequencies have increased among African States, rendering a bit more fluid the movement of people and goods; consumers have several frequencies and multiple tariff choices. In some cases, tariffs dropped by more than 30%; Air traffic and aircraft movements have increased on some lines; incomes of airport authorities, airlines and airline agencies are beginning to improve which is a result of increased airline movements as more people can now afford the competitive air fares. Competition has been introduced on lines, and this has led to the improvement of the quality of services and the introduction of several tariffs ranges thus leading to more choices for consumers.

The private sector has begun to show interest in the air transport sector in Africa through participation in the capital and/or establishment of new airlines; airline cooperation agreements are under negotiation in several sub-regions; airlines that are unable to adapt themselves to the liberalized environment are in the process of restructuring and/or reorganizing their services. Some major airlines have plans to enter into alliance agreements with African airlines; partners have given their support to the air transport liberalization process in Africa. Indeed, the World Bank and the European Union assisted the sub-regional economic communities in managing the liberalization and strengthening their institutional capacities.

NEPAD, under the MDGs has ensured sustained growth in the industry. As the table below shows, there was a conscious effort to enhance the air transport sector through a structured process of timeline achievements and periodic self-assessment to ensure a uniform and steady compliance with closer air connectivity.

Millennium Development Goals	Target	MDG Target Indicators
MDG 8 Global partnership for development	Air transport services improved, fares reduced and movement of goods and services facilitated in all African countries by 2015	<ul style="list-style-type: none"> • Number of new connections between African countries established • Number of products and volume of traffic of products transported by air. • Percentage reduction in transport fares

New jobs have been created; some airlines operating below capacity are in danger of disappearance because they are no longer able to cope with the competition; and some non-profitable airlines have been abandoned by investors.

While the benefits of liberalisation are not perhaps different from those in other parts of the world, in respects to Africa the benefits of regional liberalisation will have the added economic importance of strengthening the African market and ultimately enhancing the participation African airlines in international air transport and integration of the continent. These potential benefits derive from:

4.1.1 Efficiency

The efficiency of air transport would be enhanced by allowing more open markets for its supply. 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

4.1.2 Stimulation of Traffic

Liberalization tends to encourage in most cases traffic developments. This is what happened with countries that have adopted liberalisation. For example today frequencies between Kenya and Uganda have been increased to twenty flights per week, between Kenya and Ethiopia to 11 flights per week. It appears that with this substantial increase in frequency, the load factors have not declined indicating an overall increase of traffic. In addition fares between Nairobi and Addis have gone down from US\$ 630 to US\$ 350. The study found out that liberalisation offers significant benefits to the consumer. It can serve to increase the range of options and choices available to the traveling public; improves the standards and quality of services. The study therefore proved the hypothesis that Africa air transport has become more efficient following the Yamoussoukro Decision. There is however more that needs to be done in areas of airport management and the harmonization of tariffs. Liberalisation if pursued further may also improve the competitive position of African airlines by positioning them to be more competitive. Liberalisation has the potential to enable them to create new services and increase efficiency for the benefit of the travelling.

As a result of a 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. The YD has attempted to create a more competitive international (across border) inter- African air services network instead of an open (deregulated) internal (domestic) air services market. This implies that no single Competition Authority will have exclusive jurisdiction over such air services that are based on an exchange of traffic rights between two States in terms of BASAs.¹³⁵

¹³⁵Smyth, Pearce B., and IATA. (April 2007) "Airline Liberalisation - Lessons from other industries on the impact of removing operational, ownership and control restrictions" IATA Economics Briefing No 7. Geneva.

Attempts by regional economic blocks (COMESA, EAC and SADC) at developing suitable competition regulations for application to air transport have not been enacted into local law of African States and some ambiguity remain on the expectations of what these measures should accomplish and the process and manner of how Competition Authorities normally function.

Air transport regulatory measures that were identified to establish competition safeguards include: The inclusion of agreed conditions in BASAs between the aeronautical and licensing authorities as identified by ICAO and unilateral legislation and regulations of a nature as has been adopted in the USA and Europe.

A pragmatic solution may be found by the inclusion of suitable measures and procedures in BASAs and the adoption of elements derived from the unilateral measures taken by the USA and in Europe.

4.1.3 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. 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.

Liberalisation has the potential to encourage the development of tourist and cargo traffic. 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 relying exclusively on charter operations could attract high income tourists seeking quality products and price combination.

4.2 The Challenges of Implementing the Yamoussoukro Decision

Questions have often been asked at several aviation fora as to what has been responsible for the non-implementation of these fine air transport policy despite yawning desires expressed by governments and carriers in the continent. The following are some of the challenges of implementing the decision.

4.2.1 Competition and Dominant Position

The provision in the Yamoussoukro Decision relating to competition rules was deemed inadequate because that provision in the said decision does not prohibit malpractices by major airlines on the markets. This situation has undermined the credibility of the liberalization policy and has led to fears and mistrust among airlines that are in poor financial, technical and operational situation. On several liberalized African markets, it is noted that some airlines tend to resort to all sorts of practices to obtain dominant positions to the detriment of the interests of users and airlines that had had a good performance before the entry into force of the Yamoussoukro Decision. The well-organized companies played on their technical, financial and technological advantages to control the markets and in this way sought to reduce the activities of other airlines. In a case where airlines with the necessary resources did not want to eject the medium-sized airlines from the markets, alliances, co-operations or partnership agreements were entered into.¹³⁶

In some cases, the medium sized airlines were transformed into feeder airlines. Other airlines had the support of their partners. The same situation can be found on routes between Africa and the other parts of the world. Consequently, African airlines are faced with competition from the major foreign airlines not only on African markets but also on international markets.

¹³⁶ Ibid

A vast majority of African countries do not regulate competition or have the institutions specialising in competition matters. Resources at the national level are often insufficient to establish the organisational structure especially in the civil aviation and airport authorities and to ensure constant upgrading of the regulatory regime.

4.2.2 Visa Regulations

Visa regulations in some African countries create imbalance on the liberalized air transport markets. A general policy as well as rules or codes of conduct on the grant of visas is necessary for ensuring equal treatment for operators. The visa problem is not a matter for the aeronautical authorities but it is part of facilitation.

4.2.3 Skilled Manpower

Currently many civil aviation and airport authorities do not have the appropriate skilled manpower due to lack of financial resources and the fact that the qualified trained people are due or have gone to retirement. It has become necessary for the standardization and harmonization of the human resource capability for there to be sound leadership in the handling of the various liberalization plans and the technical capability of ensuring smooth airline services.

4.2.4 Infrastructure, Safety and Security

The anticipated increase in traffic that could result from liberalisation has to be accompanied by upgrading of the infrastructure and improvement of safety. Without a matching improvement in these areas, any gain from liberalisation will have little or no impact.

The issue of aviation safety and security was considered important by the Yamoussoukro Decision which made it one of the criteria of eligibility of an air carrier to operate air services. A State has the right to refuse authorization if it is not satisfied that the airline meets internationally recognized standards and recommended practices or the state does not effectively exercise its safety oversight

responsibilities.¹³⁷

The complexities of addressing and monitoring safety standards dictate that aviation safety must become a matter of sub-regional co-operation and partnership. The need for harmonising air safety regulatory framework is of paramount importance if Africa is to take into account an industry which by essence is trans-national. Co-operation in accident investigation is an area in which Africa can forge ahead. Safety and security challenges: Safety is the most pressing challenge facing the aviation industry in Africa.

In 2011, the average number of air traffic accidents was nine times higher than the global average. The frequency of accidents stems largely from inconsistency in the implementation and enforcement of internationally accepted safety standards and practices. Increasing the level of safety should be a key priority for the development of the African aviation industry. The African authorities have endorsed an African Union backed plan aimed at addressing deficiencies related to aviation safety and security and strengthening the regulatory framework. Accordingly, the International Air Transport Association jointly with the International Civil Aviation Organization and other organizations have committed to supporting the Africa Strategic Improvement Action Plan of the African Union. The plan encourages African governments to foster regulatory oversight through the adoption of globally accepted safety and security standards.¹³⁸

Inadequate infrastructure: The air transport industry faces various challenges including poor airport infrastructures, lack of physical and human resources, limited connectivity, and lack of transit facilities. Although substantial progress has been made during the past decade, Africa still lags behind

¹³⁷ See paragraph 6.9 f) of Article 6 of the Yamoussoukro decision

¹³⁸ The Economic Impact of Air Service Liberalization, op cit.

other regions in terms of “soft” and “hard” infrastructure. It is therefore critical that African countries invest in the soft as well as hard infrastructure to support the industry.

Lack of regulation and government actions: Despite the growing awareness of the role that the aviation industry could play in the development of the continent, the industry is still not the top priority of African governments. More, despite increased liberalization of the African aviation industry and the growing presence of foreign companies, some African governments are still reluctant to open their skies fearing foreign competition could undercut national airlines, some of which are short of commercial viability besides being just symbols of sovereignty.¹³⁹ These challenges require governments to enhance regulation of aerospace management, consumer protection and safety of airlines. Lack of aviation experts and skills, high airport taxes and fees, the weak connectivity and restrictions on transit visas and facilities add to the menu of impediments affecting Africa’s aviation industry.

4.2.5 Co-ordination and Harmonization

One of the important task or issue for African air transport liberalisation is the question of how to manage the various sub-regional initiatives in a manner that would avoid duplication of efforts. A major priority of those responsible for the liberalisation process is to achieve synergy among these groupings.

4.2.6 Amendment of Bilateral Agreements

The African bilateral air service agreements have tended to focus on individual routes or small sets of routes, thus leading to difficulties in arriving at a high level of efficiency over intra-African networks of air services. A number of bilateral agreements are still restrictive. These impediments prevent carriers from planning their route networks purely on the basis of commercial considerations.

¹³⁹ Ibid

4.2.7 Lack of an Effective Enforcement Mechanism

The Abuja Treaty and the Decision do not provide for an effective enforcement mechanism in the event of the failure of a party to observe and perform its obligations arising under the Decision. Under Article 87 of the Treaty, disputes are to be settled by direct agreement of the parties, failing which by the Court of Justice. Under the Decision, there is no mechanism for enforcement, other than the good faith of the parties and reliance on the general reciprocity clause enunciated in the Decision. On this basis, the other parties will not be obligated to honour their commitments vis-à-vis that state. Reciprocity requires that the obligations of a party to grant any right under the Decision to any other Party is limited to the same extent as that party's commitment in respect to such rights. There may also be a need to closely analyze the treaties establishing the sub-regional economic groupings to determine if other alternatives are available there under.

4.2.8 Cost of Liberalisation

Liberalisation 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. These airlines will have little chance of remaining in business and therefore the desire to be protective by some governments.

4.2.9 Funding

Nigeria's former Minister of Aviation, Kema Chikwe described the funding situation as follows: "The Aviation Industry in Africa is grossly under-capitalized. Much capital is needed to enforce standards in the various areas of the industry. Lack of Capital is responsible for the inadequate navigational aids, obsolete ground handling equipment, the use of aged aircraft and poor facilities at the airports". She went further to say: "African airlines do not have the necessary financial muscle for the sustenance of their portfolio. They need to forge alliance or co-operation with one another". There

is also the belief that the financial institutions within the continents especially the African Development Bank (ADB) have performed below expectation in terms of mobilization and education.

There is no gainsaying that African airlines lack the ingredients to match the competitive edge of their European and American counterparts individually in the face of the high rate of fleet depletion while their aforementioned colleagues are taking deliveries of modern and sophisticated jet every now and then in replacement of old stocks. The reason for the inability of most African carriers to acquire modern machines is obvious. The operating economic environment makes accessibility to the capital required for such a venture near impossibility. Hence pooling of resources among airlines, a major process of realizing the policy, was the worst casualty of the entire process as no state or airline wanted to dare such.

4.2.10 Lack of Political Will and Poor Coordination

Also largely responsible is the lack of political will and poor coordination both at the national and sub-regional level. The lack of commitment from the parties concerned was a major impediment in the past. Efforts by African Airlines Association (AFRAA), the umbrella body of the carriers in the continent to foster unity among their members for positive relationship have yielded no dividends as nation states have continued to show lack of political will to implement their several policy initiatives.

The target date of year 2002 set for unrestricted market access for National carriers of African States could not be realized. Most of the African States, including Nigeria, appeared not prepared to relax some of the legislations that stand in the way of the realization of the desired strong aviation industry in the continent that can match the threats of globalization. There is still the challenge of failure to adhere to YD targets and stipulations for the realization of closer connectivity.

4.3 Conclusion

The path towards liberalization on the continent has been slow and full of numerous challenges. Since the Yamoussoukro Declaration in 1988 to the present Executing Agency under the AFCAC, the continent has had to overcome policy differences that bred protectionism, the poor infrastructural facilities present in most African countries due to slow economic development. Despite these challenges, the continent has to a large extent managed to achieve deregulation levels that were non-existent in the 1970s and the 1980s. The study has therefore proved the hypothesis that air transport has been enhanced as a result of the liberalisation regime of the YD.

CHAPTER FIVE:

SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

5.1 Summary

The air transport sector in the world grew exponentially in the 20th Century with Europe and North America taking the lead. Initially, world aviation was beneficial only to military powers that used it to gain war victories in the First and Second World Wars. This situation changed after the Second World War when there began a conscious attempt to develop the civil aviation industry. There was however still heavy protectionism in these markets with little effort being made to achieve closer cooperation. The American market was the first to deregulate with the Civil Aeronautical Board being stripped of its powers to regulate the industry.

The immediate benefits of liberalization in the US enlightened European countries to the hidden benefits of liberalization. This region therefore slowly followed what was happening in the US in the 1980s and 1990s. With integration advancing in the form of the European Community (EC) air transport also grew. On the African continent, the initial liberalization came in the form of the Yamoussoukro Declaration in 1988 which came 44 years after the Chicago Convention which was the premier international agreement to guide closer cooperation in the world.

Since the African continent has gone through various mechanisms under the YD that have facilitated the liberalization of aviation on the continent.

5.2 Conclusions

Formal implementation of the Yamoussoukro Decision remains very slow, many national airline officials have advised their governments that the airlines are not ready for a free market and still need protection. Many are concerned that an open skies policy for intercontinental transport, particularly to Europe, would drive African carriers from the intercontinental market, with adverse secondary effects for international and domestic services in Africa. This attitude almost certainly hinders regional development. Ample evidence already exists of the benefits for Africa from wider liberalization.

African aviation is clearly at the cross roads of progress where years of enthusiastic endeavour toward consistent cooperation between 53 states are now seemingly giving rise to hope that a liberalised aviation environment will emerge in the African continent. This is by no means an easy task given the pluralism and diversity of interests that naturally accompany such a large landmass and multitude of countries.

The challenge for effective regional liberalization is one of choosing an appropriate path and maintaining the momentum created. The objective is to identify existing obstacles to be addressed and to provide impetus for consideration of proposals for freer market access in air services. The Decision is commendable because it is a comprehensive proposal to replace the 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.

Observers have contended that the implementation of the Yamoussoukro accord remains the only way to save the continent and its carriers from the threat of total extinction in the emerging trend of globalizations. The result of delay is the continued decay of African aviation. Meanwhile, analysis have strongly canvassed that the question of implementing the Y/D is better harnessed now than before

in view of the growing wave of alliances and globalization among mega-carriers of Europe, America and Asia. The European and American counterparts are moving in jet speed in terms of cooperation, code sharing and alliances. Within Africa the issues of alliance, mergers and acquisition among African airlines have remained mere slogans echoed only within the intellectual discourse.

One of the positive impacts of the Yamoussoukro decision is that it served as a catalyst for sub-regional initiatives for the implementation of the declaration. As a result, a number of sub-regional consultations and arrangements were developed. It has also helped to relax the restrictions in areas such as routes and frequency of services in intra-Africa market aviation, which has enabled carriers such as South African Airways and Kenya Airways to add additional routes across Africa.

The liberalisation in intra-Africa market remains an incomplete process. The YD has not been fully implemented. As a result, the industry is highly regulated with numerous restrictions on routes and market access, and state-owned airlines account for majority of African airlines. State involvement and poor safety and security are among other factors adversely affecting the industry and state involvement is hindering the full liberalisation of aviation in Africa. Such factors make it extremely difficult for effective competition to take place as most African airlines are receiving state support in various forms. Privatisation of state owned airlines, alongside the liberalisation process would help to ensure the emergence of effective competition in the industry.

The interests of consumers (the passenger and the shipper of cargo) are usually lost in the dialogue on aviation policy in Africa. This disparate and unorganised group had very little impact in the past on the development of African aviation policy. The rationale for liberalisation is for greater competition which will promote efficiency, better services and offer competitive prices. The interests of the consumer are important and Africa must guard against developments which clearly are against the interests of the consumer.

The study concludes that in a global era, Africa requires new perspectives on the airline industry. The blue print is already available in YD but more efforts are needed in the implementation. As a first step barriers to liberalisation that still exist must be removed, in particular the absence of a level playing field for effective implementation of the liberalisation process - visa restrictions, work permits, government travel, exchange control, etc.

5.2 Recommendations

The study recommends the following measures that may lead to closer cooperation among the various regional and continental instruments to further accelerate the liberalization process in Africa. The study observes that the objective of achieving full liberalization in the air transport sector is yet to be achieved as a result of the various bottlenecks already identified. First of all to change the attitude and soft-peddling of the liberalisation process an aggressive sensitization and awareness campaign must be launched to build a broad consensus among all stakeholders at the national, sub-regional and continental level (governments, airlines and consumers). The stakeholders must be made to understand the benefits of liberalisation process. Further studies and analyses of the impact of liberalisation from other regions should be available to African policymakers with a view of forging an informed way forward for this important exercise.

Secondly, a firm political commitment and actions that will internalise the liberalisation process at the national level is an essential ingredient for freer market access in air services. It would seem difficult to liberalise intra-African air transport without taking collateral actions in respect to domestic operations which in many African countries are still under rigid state control and monopoly. There should also be a development of appropriate regulations and a harmonised sub-regional civil aviation code requires concrete program of co-operation at the continental and sub-regional basis. Since this process cuts across national boundaries and states are integrating regionally, the regional

inter-governmental organisations should be empowered and adequately equipped to carry out this mandate. A co-ordinated and harmonised programme of action capturing the activities of all stakeholders relating to the implementation of the liberalisation process needs to be developed and disseminated.

Thirdly, the institutional capacity of states to be able to manage the implementation of the liberalisation process has to be strengthened. When bilateral agreements are renegotiated, specific provisions using defined standard terms in line with the Yamoussoukro Decision may be incorporated. Such provisions might include open route exchanges, multiple designation, capacity freedom, fare freedom, complete third and fourth freedom rights, and the practice of 5th freedom as agreed in Yamoussoukro. This type of approach enjoys the benefits of introducing a degree of uniformity into the existing, though disparate, system of agreements without disrupting their basic structure.

Establishing and strengthening follow-up mechanism. Effective follow-up machinery with clear mandate and financial resources to manage the liberalisation process should be established, strengthened and empowered at the sub-regional and continental level. These bodies will provide a common framework for the oversight of the liberalisation process and co-ordination of the activities related to air transport liberalization. Among their duties the following could be considered:

- a) development and formulation of policy framework for the implementation of the liberalization process in their sub-regions;
- b) formulation of recommendation of rules, guidelines and regulations to accelerate the implementation of air transport liberalization and when approved monitor enforcement of such rules, guidelines and regulations;
- c) Investigation of alleged complaints of non-compliance with the decisions taken by the appropriate organs and rules, guidelines and regulations issued there under.

- d) monitoring the actions or inaction of national authorities on matters relating to the liberalisation process; and
- e) co-ordination of aviation safety and security

Creation of awareness, dissemination of information related to the liberalization of air transport markets as well as private sector participation in the development of air transport industry will become necessary and will secure partner support.

Infrastructure development and implementation of air transport regulations as indicated above, liberalization will have a significant impact on infrastructure development. Therefore the private sector and the government will have to develop partnerships in the expansion and rehabilitation of airport infrastructure and navigation equipment.

Lastly and most important is that there should be capacity building including training, development of appropriate policy regulation framework and setting-up of appropriate institutional organizations. With strong commitment, African countries must take on the initiative to review and incorporate in their national legislation the liberalization objectives adopted by the Heads of State and Government of OAU. They also have to remove all non-physical barriers as indicated above to ensure the full implementation of the Yamoussoukro Decision.

5.3 Issues for further study

There are other academic areas of concern which were not tackled by this research because they were not within the scope of the study, further research on this areas would enlighten the debate on liberalisation of air transport in Africa further and include a further research on the impact of YD on customer service and how YD has impacted liberalisation in Africa in general.

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