



13th MEETING OF THE AFCAC AIR TRANSPORT COMMITTEE

(Victoria Falls, Zimbabwe, 25-26 May 2015)

Agenda Item 2: Yamoussoukro Decision: Progress Report

(Presented by the Secretariat)

EXECUTIVE SUMMARY

This Paper presents the steps to the liberalization of access to air transport markets in Africa since the signing of the Yamoussoukro Decision, the designation and operationalization of AFCAC as the YD Implementing Agency, the adoption of regulations and the single market for air transport services in Africa by the latest African Union Assembly of Heads of State and Government.

The key role of AFCAC with its immediate partners (AUC, AFRAA, and RECs STATES) is highlighted in this process and in addressing the challenges and opportunities.

Action by the Committee: The Committee is invited to consider the recommendations in paragraph 6 of this paper.

References:

- Doc Yamoussoukro Decision ref ECA / RCIO / CM.CIVAV / 99 / RPT
- Outcomes Indicon Project
- Doc Prepared for IATA, by Inter InterVISTAS: The Economic Impact of Intra -Africa for Services Liberalization
- Assembly / AU / Dec 565 (xxiv)
- Report on the meeting on development of air transportation sustainable in Africa, 2015-05-18- In March 2063 Agenda
- Doc First ministerial meeting of the WG is of the AT Single Market in Africa

1. BACKGROUND

An effective air transport system in Africa is a major asset for growth and development. Given the failure of surface transport, air transport plays a vital role in trade, in the movement of people and goods within the continent and between the continent and the rest of the world. It is thus an essential component of the physical and economic integration of the continent as it supports growth, trade, tourism and ensures effective and sustainable participation of States in international air transport. Thus, it is not surprising that under Agenda 2063, air transport is one of the key sectors that will change the face of the African continent.

2. Yamoussoukro Decision

The Yamoussoukro Decision (YD) was adopted in 1999 and endorsed in 2000 as a Decision of the Assembly of the African Union within the context of the Treaty establishing the African Economic Community (Abuja Treaty). The YD is meant to ensure the survival of African airlines and also establish an arrangement among State Parties for the gradual liberalization of scheduled and non-scheduled intra-Africa air transport services and collectively promote a climate of cooperation in order to achieve the integration of their airlines through the process of partnerships, mergers and consortia. The YD has precedence over any multilateral or bilateral agreements on air services between State Parties which are incompatible with it and it focuses

on internal market liberalization and fair competition as key development strategies while also addressing safety, security and environment challenges.

The Yamoussoukro Decision provides for the full liberalization of intra-African air transport services in terms of market access by removing the restrictions on traffic rights under the 3rd, 4th and 5th freedoms, frequencies, fares and capacity. The Decision also provides for safety standards, eligibility criteria, fair competition, consumer protection and a dispute settlement mechanism.

3. IMPEDIMENTS TO THE FULL IMPLEMENTATION OF THE YD

Several years after its coming into force, the YD which is the common African liberalization policy was not being fully implemented. These challenges are as a result of differences in macro-economic policies and strategies among States, different levels of development and deep concerns of individual States' interests, market position and the frail assurance of fair competition and a level playing field for both big and small airlines that are concerned that full liberalization may lead to the disappearance of their airlines as a result of anti-competitive behavior such as abuse of dominant position by bigger airlines.

The lack of an effective, legal, economic and institutional framework supplementing the provisions of YD, lack of political will from States resulting among other things in the protection of national airlines, the imposition of visas and work permits, etc. have been identified as other factors hindering the effective implementation of the Yamoussoukro Decision. Liberalization has equally brought about several challenges in terms of safety, security, the environment and consumer protection, especially from the regulatory point of view.

4. AFCAC: IMPLEMENTING AGENCY OF THE YD

In order to address the challenge of incomplete Institutional, Legal and Regulatory Framework of the YD, the Conference of African Ministers in charge of Transport (CAMT) in 2007 vested the African Civil Aviation Commission (AFCAC) with the attributions of the Executing Agency for the implementation of the Yamoussoukro Decision. With this new responsibility, the AFCAC Constitution was amended to actualize the mandate.

The essential role of AFCAC as the Executing Agency is to supervise the YD and manage the liberalized and single African air transport market. As such, it will ensure the effective implementation of the YD with the ability to enforce its provisions. It will also consider important issues such as safety and security which are integral aspects of liberalization. Additional functions of AFCAC are:

- monitoring the current status of aviation in Africa,
- development and/or harmonization of regulations applicable to air transport liberalization
- application of the regulations relating to the liberalization of air transport (Rules of competition, Consumer Protection, Dispute Settlement Mechanism),
- consideration of compliance by various stakeholders, particularly airlines, airports and other allied service providers, and
- protection of the rights of air transport service users in accordance with Articles 9.4, 9.5 and 9.6 of the YD.

5. THE FULL IMPLEMENTATION OF THE YD: CURRENT SITUATION

In September, 2014 Experts and States gathered together in Nairobi, Kenya and successfully adopted and endorsed the Regulatory Texts of the YD namely: Competition Rules, Consumer Protection and Dispute Settlement Mechanisms and Powers and Functions of the Executing Agency which had widely been seen as some of the major impediments to the full implementation of the YD. These documents were presented to the Heads of States for approval at the January 2015 Summit through the relevant organs of the African Union. The Heads of States not only approved these texts, they also took a Decision to accelerate the implementation of the YD and create a Single African Air Transport Market by 2017. Some 11 countries (namely: Benin, Cape Verde, Republic of Congo, Cote d'Ivoire, Egypt, Ethiopia, Kenya, Nigeria, Rwanda, South Africa and Zimbabwe) immediately thereafter signed a "Solemn Commitment" to actualize this Decision. Thus, a very important step was taken to advance the concrete implementation of the flagship project of the African Union 2063 Agenda.

The Single Market is first to be established with the 11 States that have already declared their "Solemn Commitment" to it and will remain open to other State parties willing to commit to it. The Summit also set up a Ministerial Working Group made up of Ministers of Transport of the above-mentioned 11 countries that have the responsibility to oversee and guide the full implementation of the agreed activities of the YD. In this regard, the Summit also requested the Commission to submit to the next ordinary Session of the Summit of Heads of State and Government scheduled for June 2015, the detailed Roadmap for the full implementation of the YD and the creation of the single market for consideration and adoption.

The Ministerial Working Group will be supported by Experts from the air transport sector of the above countries, the AUC, AFCAC and RECs with other key stakeholders, who will be responsible for the preparation of its meetings. In addition, a Monitoring Committee of Ambassadors and Representatives of the African Union was formally established to ensure close monitoring and to facilitate the process and effectively liaise between the Commission and the member States involved. The Ministerial Working Group has since adopted its Rules of Procedure and developed a Roadmap of specific activities for both the implementation of the YD and the actualization of the Single Market with clear timelines. Activities expected of the Executing Agency (AFCAC) in implementing the provisions of the 5 documents mentioned above in guiding the implementation of the YD and the Single Market are also contained in the Roadmap.

6. Challenges, Perspectives and Recommendations

For aviation to play its integration role in the African continent, African States must accept the full implementation of the YD and the unification of the African airspace with clear and strong enforcement mechanisms. AFCAC as the implementing agency with support from the AU – the guardian of the Yamoussoukro Decision – the RECs and AFRAA must conduct an intensive awareness campaign among States on the urgent need to fully implement the YD. This requires the willingness of States to fulfil their commitments by strengthening the structures, powers and capacities of the AUC, AFCAC and RECs.

It is also necessary for the Executing Agency to be adequately funded and provided with human resources so that it can fully play its role. Continental financial institutions and development partners should also be fully involved. The roles of the various stakeholders involved in this process and their intervention modality must however be clearly defined.

The operational establishment of the Executing Agency of the YD is subsequent to the existence of the RECs established by the Abuja Treaty therefore AFCAC must properly manage this existential fact to ensure that it does not pose challenges to the smooth functioning of the Executing Agency. This is because some of the RECs have already established regulatory bodies and developed regulatory texts on competition and consumer protection. However, they have not fully succeeded in liberalizing in the same proportions nor are they fully coordinated. To

address this, the full operationalization of the Executing Agency is imperative to correct the disparities and harmonize the achievements among RECs in order to coordinate actions for a proper development of intra-African air transport services.

Similarly, these RECs have set up monitoring bodies and mechanisms that AFCAC intends to use to coordinate their actions. The synergy between some groupings such as the “tripartite” will support the coordination task that falls to AFCAC. Added to this is the recent establishment of joint organizations in safety and competition oversight such as the Joint Competition Authority (“JCA”). To ensure that these initiatives do not conflict or made redundant, AFCAC must engage with these organizations to develop concrete plans of action on the way forward. In this wise, MoUs will be developed with the RECs without undue delay.

At the same time, States, organizations and stakeholders must imbibe the African Civil Aviation Policy (AFCAP) and internalize its provisions. This will help in the seamless execution of targets across the board covering inter alia, air transport liberalization, safety, security, environment, financing of infrastructure, inter-modality and linkages between air transport, Customs, Immigration, visas, tourism, education the economy and African integration.

Steps must be taken to ensure that States are meeting their commitments. The African Union, AFCAC and RECs must commit to conduct periodic evaluations and case studies on the implementation of the Yamoussoukro Decision in addition to sub-regional meetings to discuss the findings of studies and to find solutions for strengthening outreach and awareness efforts.

Finally, there is need for African States to support the actions of the Executing Agency by revisiting their position in the management of national airlines. They should also address the indirect barriers that may impact liberalization, including easing visa and work permit policies with a view to harmonizing and promoting the liberalization in place.

7. ACTION

The Committee is urged to:

- i. Take note of the stages of the full implementation of the Yamoussoukro Decision, the operationalization of the Executing Agency and the future challenges to be encountered; and
- ii. Endorse the recommendations in paragraph 6.