



# Liberalisation initiatives of the airline industry in southern Africa: Progress achieved and hindrances to implementation

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## Abstract

The purpose of this study is to identify liberalisation initiatives in the airline industry and their effects on airline performances in southern Africa. The study addresses the liberalisation of the airline industry, namely, the Paris Convention, the Convention on International Civil Aviation (Chicago Convention), the Bilateral Air Service Agreements (BASAs), and pooling agreements. The research involved an extensive literature search of liberalisation initiatives on the airline industry in southern Africa. This was complemented with personal interviews with several key personnel from seven regional airlines. From the study it is clear that southern African governments still oppose liberalisation by claiming to protect their sovereignty, yet they do not realise that the economic costs of this largely surpass the political costs they might need to face if the national airlines do not manage to compete in a liberalised environment and are obliged go out of business. Furthermore, the bilateral regulatory system remains a bottleneck in the overall development of the air transport network in southern Africa, thereby restraining the region's potential for tourism growth and regional stability and sustainability

**Keywords:** Bilateral Air Service Agreements (BASAs), liberalisation, sovereignty, airline performances, tourism growth, southern Africa

## Introduction

Although the aviation industry is important for the southern Africa's tourism industry, the ability of airlines to access foreign markets remains hindered by restrictive regulatory policies (Abate, 2013). Southern African countries continue to artificially restrict international air travel by limiting the number of flights to their cities as well as the number of airlines that may fly to them (Mhlanga, 2017a). These restrictions make it more expensive to travel to southern Africa, thereby reducing the number of tourists who visit the region. This protectionist approach has hampered the liberalisation of southern African skies and reduced opportunities for airlines to become pan-southern African airlines, which would reduce airfares, attract investment and boost tourism (Njoya, 2016).



According to Adeyeye (2016), a highly restricted air services regime inhibits competition between airlines and is a serious constraint to tourism growth. This in turn severely limits air traffic and raises its costs, thereby significantly lowering the competitiveness and growth potential of the region's tourism industry (Mhlanga & Steyn, 2017). Owing to this trade-detering effect of restrictive regimes, there was a general move towards full implementation of international air transport agreements in southern Africa (Kuuchi, 2016). However, a major challenge was the lack of adequate knowledge on the effect of liberalisation initiatives on airline operations in southern Africa (Mwiti, 2016). To this end, understanding liberalisation initiatives on airline performances in southern Africa is indispensable.

### **Air Service Agreements (ASAs) as instruments for air traffic regulation**

In general, before an airline operates international services to another country, the government must first negotiate a treaty level agreement with the destination country's government in the form of a Bilateral Air Service Agreement (BASA) (Wang & Song, 2010). A BASA is concluded between two contracting countries, which permits commercial civil aviation services between the countries. The agreements allow the designated airlines of those countries to operate commercial flights that cover the transport of passengers and cargoes between the two countries (Mwiti, 2016). In addition, they normally regulate the frequency and capacity of air services between the countries, pricing and other commercial aspects (Warnock-Smith & O'Connell, 2011). This agreement sets the legal framework for the bilateral air transport relationship between both countries (Mhlanga, Steyn & Spencer, 2017a).

Traditionally BASAs sought to protect national or regional carriers, occasionally at the expense of the overall economic well-being of the region (Adeyeye, 2016). There is a gradual move away from the reciprocity approach stipulated within the majority of bilaterals, not just in markets trying to promote inward tourism, but more generally (Kuuchi, 2016). Policymakers are increasingly looking to maximise macroeconomic gains from liberalisation (Wang & Song, 2010).

### **Methodology**

The research involved an extensive literature search of liberalisation initiatives on the airline industry in southern Africa using a wide range of relevant peer reviewed articles, books and electronic media. This was complemented with personal interviews with several key personnel in the following regional airlines, namely, Air Zimbabwe, South African Airways, Mango, Comair, Fly Safair, Air Botswana and Air Namibia. The data was collected manually through face-to-face interviews. This data was recorded manually using pen and paper, and with the permission of the interviewees. In line with Babbie (2010), the principles of purposive sampling were used to determine the sample size for the study and to select respondents.

According to O'Reilly and Parker (2012) there is no commonly accepted sample size or number of participants in purposive sampling; the research goal is in-depth strategies and understanding, and not sampling strategies. However, Bernard (2011) argues that the ideal sample size in purposive sampling is to select respondents until saturation is reached. Saturation means the researcher gathers data to the point of diminishing returns, or when additional respondents do not add anything new to data already collected (O'Reilly & Parker, 2012). Consequently, a sample size of at least 50 managers was deemed appropriate for this study. Purposive sampling was used to select respondents who were deemed to have sufficient relevant knowledge to participate in the interview sessions. According to Babbie (2010), the main advantage of purposive sampling is that when the most appropriate people for the study are selected, the process becomes a lot less time consuming.



## Discussion

The international air transport industry operates under a complex regulatory framework of Bilateral Air Service Agreements (BASAs). Heinz and O'Connell (2013) claim that an overriding motivation of the history of economic regulation of the aviation sector was the desire to ensure the protection of national flag carriers, which explains the negative attitudes of many countries toward air transport liberalisation. Over the years, the BASAs, which impose certain restrictions on airlines frequencies and capacity, have rendered the industry inefficient (Uzodima, 2012). This is because the restrictions suppress competition via route size, and designated carriers cannot operate additional services beyond those specified in BASAs. The BASAs also require designated airlines to be substantively owned and effectively controlled by bilateral partner countries (Mhlanga *et al.*, 2017a). This tends to restrict foreign firms from establishing airlines in bilateral partner countries. However, according to Surovitskikh (2012), the local ownership of airlines has negative effects on the domestic capital market. In southern Africa, the capital market is usually too small to provide sufficient equity for the development of a capital-intensive airline industry (Mhlanga & Steyn, 2017).

According to Heinz and O'Connell (2013), many airlines in southern Africa (such as Air Zimbabwe and Air Namibia) were established as national flag carriers during the transition from colonialism to independence. As such, some of the economic development functions with which airlines in the developing world were charged included integrating national territory, promoting tourism and trade through international links, and providing high wages and highly skilled jobs. These airlines were also integral elements in state foreign policies and defence (Steyn & Mhlanga, 2016). Moreover, the private sector's singular objective of profit maximisation usually conflicted with national objectives. As a result, the airline industry was highly regulated in the international as well as the domestic markets (Heinz & O'Connell, 2013).

In light of the shortcomings of the BASAs, there is a growing recognition by southern African countries of the limits of the current bilateral frameworks and the need to launch initiatives toward genuine liberalisation of air services (Surovitskikh, 2012). These liberalisation initiatives are discussed below.

### *Paris Convention*

The Convention for the Regulation of Aerial Navigation (the Paris Convention), which was signed on 13 October 1919 to provide for the foundation for regulation of the international airline industry, is the pre-eminent multilateral agreement for the international aviation regime, evolving from the Paris Peace Conference of 1919. The Paris Convention recognised the need for every nation to exercise 'sovereignty' over airspace above its territory and set forth the fundamental policy, which underlines all aviation negotiations today (Ssamula, 2014).

### *Convention on International Civil Aviation (Chicago Convention)*

The Chicago Convention was signed on 7<sup>th</sup> December 1944 by 52 states. This convention set rules that still govern the aviation industry today, through an International Civil Aviation Organisation (ICAO), which became a specialised agency of the United Nations (UN) in October 1947. ICAO was formed to standardise and regulate the framework for the air transport industry worldwide (Alves & Forte, 2015). Furthermore, different types of scheduled operations, called the 'degrees of freedom', were defined and seen then as the basis for how much lee-way a country could give another in operating in its airspace.

The modern structure of international air transportation controls can be traced back to the failure in 1944 of the Allied Powers at the Chicago Convention to reach an agreement on how the post-Second World War air transportation system should operate (Mhlanga *et al.*, 2017a). While representatives from 52 governments managed to agree on the legal and technical framework for the operation of international air services, their inability to reach a consensus on economic regulation meant that it fell to pairs of governments to negotiate the precise terms of air services provision between their countries (Doganis, 2010). The hope was that those signing would grant freedom of access to airports and to airspace above their territory to all other signatories (Gavin, 2013).

Some of the main outcomes of the Chicago Convention involved standardising different types of scheduled operations, categorised according to the various ‘freedoms of the skies’. The result was a myriad of Bilateral Air Service Agreements (BASAs) between countries that, in general, stipulated which airlines could fly between them, the capacity of each airline, the fares to be charged and, often, how the revenues generated were to be shared between the carriers.

The concept of ‘freedoms of the skies’ or ‘the degrees of freedom’ or ‘freedom of the air’ was initiated at the Chicago Convention and essentially denotes air traffic rights, in other words a set of commercial aviation rights granting a country’s airline(s) the privilege to enter and land in another country’s airspace (Parets, 2007). The degrees of freedom have since been the basis for the amount of freedom a country enjoys in operating over another country’s airspace, encompassing nine different freedoms, which may be, negotiated.

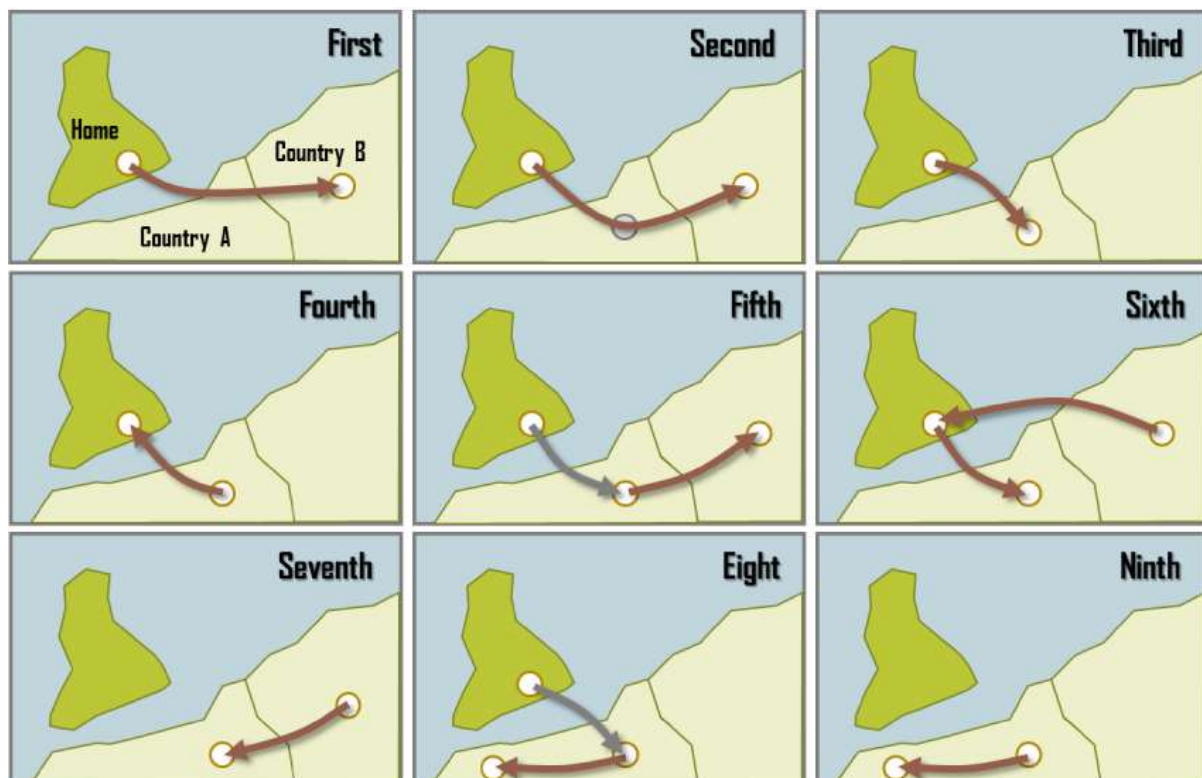


Figure 1: Degrees of freedom (Source: Schlumberger, 2010)

First Freedom of the Air, (also known as a First Freedom Right), the right or privilege in respect of scheduled international air services, granted by one state to another state or states to fly across its territory without landing (Parets, 2007).



Second Freedom of the Air, (also known as a Second Freedom Right), the right or privilege in respect of scheduled international air services, granted by one state to another state or states to land in its territory for non-traffic purposes (Parets, 2007).

Third Freedom of the Air, (also known as a Third Freedom Right), the right or privilege, in respect of scheduled international air services, granted by one state to another state to put down, in the territory of the first State, traffic coming from the home state of the carrier (Parets, 2007).

Fourth Freedom of the Air, (also known as a Fourth Freedom Right), the right or privilege in respect of scheduled international air services, granted by one state to another state to take on, in the territory of the first state, traffic destined for the home state of the carrier (Parets, 2007).

Fifth Freedom of the Air, (also known as a Fifth Freedom Right), the right or privilege in respect of scheduled international air services, granted by one state to another state to put down and to take on, in the territory of the first state, traffic coming from or destined to a third state. ICAO characterises all 'freedoms' beyond the Fifth as 'so-called' because only the first five 'freedoms' have been officially recognised as such by international treaty (Parets, 2007).

Sixth Freedom of the Air, (also known as a Sixth Freedom Right), the right or privilege in respect of scheduled international air services of transporting, via the home state of the carrier, traffic moving between two other states (Parets, 2007).

The so-called Sixth Freedom of the Air, unlike the first five freedoms, is not incorporated as such into any widely recognised air service agreements such as the Five Freedoms Agreement (Parets, 2007).

Seventh Freedom of the Air - the right or privilege in respect of scheduled international air services, granted by one state to another state of transporting traffic between the territory of the granting state and any third state with no requirement to include on such operation any point in the territory of the recipient State, that is, the service need not connect to or be an extension of any service to/from the home State of the carrier (Parets, 2007).

Eighth Freedom of the Air, (also known as an Eighth Freedom Right or "consecutive cabotage"), the right or privilege in respect of scheduled international air services, of transporting cabotage traffic between two points in the territory of the granting state on a service which originates or terminates in the home country of the foreign carrier or (in connection with the so-called Seventh Freedom of the Air) outside the territory of the granting state (Parets, 2007).

Ninth Freedom of the Air, (also known as a Ninth Freedom Right or "stand alone" cabotage), the right or privilege of transporting cabotage traffic of the granting state on a service performed entirely within the territory of the granting state (Parets, 2007).

#### *Bilateral Air Service Agreements (BASAs)*

Since the Chicago Convention only managed to have member states to agree on the first two air traffic freedoms, the exchange of other freedoms became a bilateral agreement issue among specific countries (Gavin, 2013). A bilateral regulation is a regulation undertaken jointly by two parties, most typically by two states, although one or both parties might also be a group of states, a supra-state (a community or other union of states acting as a single body under authority granted to it by its member states), a regional governmental body or even two airlines (Kuuchi, 2016). These are agreements that one state can have with another for granting carriers from the other country specific air traffic freedoms (Warnock-Smith & O'Connell, 2011), where the purpose of such agreements is to control market access (Oluwakoya, 2011).



Bilateral arrangements enable countries to safeguard their sovereignty and traffic rights (Alves & Forte, 2015). This means that countries are able to control the flow of air traffic from its airports. However, bilateral deals constrain airlines from exercising traffic rights. They limit an airline's ability to operate freely by servicing routes between two countries. "Bilateral air services arrangements are effectively trade agreements between governments, not between airlines" (Doganis, 2010). The intra-Africa air services are subjected to intense regulation through the system of bilateral air service agreements (Gavin, 2013). This means the airline's route network largely begins and ends in their country of origin unless the carrier is able to enter into alliance with other foreign carriers as a means of entering new markets.

While the virtues of air transport are widely known, non-physical barriers continue to impede air transport service expansion between southern African countries (Abate, 2014). For example, a quick look at bilateral air transport agreements between South Africa and other African countries between 1994 and 2017 indicates that many such agreements have not yet been ratified, implemented and/or have restrictions. These barriers mainly stem from restrictive bilateral arrangements, which dictate how the service is rendered. According to Abate (2013), because of these restrictive bilateral arrangements most southern African airlines are not able to operate as many routes or frequencies as they want between Johannesburg and major cities in the other southern African countries (Niewiadomski, 2013). Mhlanga *et al.* (2017b) concur that this prevents the airlines from meeting market demands and imposes inefficiencies, such as two southern African airlines being limited to flying a route only a couple of times a week, and neither of them achieving economies of scale on the route.

The bilateral arrangement between Angola and South Africa is a case in point. Frequency is restricted by allowing only one carrier from each country to fly the route just three times a week, meaning that there is not a daily flight between them at a time when investment and trade between the two countries is rapidly growing (Mondliwa, 2015). This limits choice and numbers of airlines available on the route, which offers protection to the state-owned carriers to serve the market. This bilateral agreement makes it as expensive to fly from Johannesburg to Luanda as from Johannesburg to London, three times the distance.

Another example of a restrictive bilateral arrangement is between Nigeria and South Africa, which prohibits South Africa Airways from increasing its Lagos service beyond three weekly frequencies. The tight restrictions imposed by both the Nigerian and South African Governments on frequencies and slots limits competition on the route. Slots restrictions regulate departures and arrivals at particular airports (Kuuchi, 2016). The restrictions imposed by these governments effectively mean that the carrier would not be able to launch additional services on that route to meet travellers' demands. Therefore, travellers have to pay premium prices because there is no competition.

According to Mondliwa (2015), these restrictive bilateral agreements resulted in high fares and low passenger numbers in southern Africa. For instance, a sample of SAA's ticket prices from Johannesburg to a range of southern African destinations reveals a stark correlation between constrained routes and high fares. According to Mhlanga (2017b), for destinations under 1 200 kilometres, for example from Johannesburg to Windhoek (Namibia), the cost per kilometre is 52c whilst for a flight from Johannesburg to Harare (Zimbabwe) the cost per kilometre is 65c. These are relatively unconstrained routes where BA/Comair competes with the national carriers and Comair's no-frills carrier kulula.com has entered these markets (Mhlanga *et al.*, 2017b).

This is in contrast to other destinations under 1 200 kilometres wherein a flight from Johannesburg to Maputo (Mozambique) the cost per kilometre is R1.57 per kilometre and a flight from Johannesburg to Gaborone (Botswana) the cost is R2.01 per kilometre. However, both of these are highly constrained routes where only national airlines of each country are allowed to fly the route. As a consequence, Mozambique's fly-in tourism industry is underdeveloped partly because airfares (in 2017) were 163% higher on the highly constrained Johannesburg-Maputo route when



compared to the same distance from within South Africa (Mhlanga & Steyn, 2016). Similarly, for destinations between 2 400 and 2 900 kilometres, for example from Johannesburg to Dar es Salaam (Tanzania), the cost per kilometre is 52c and a flight from Johannesburg to Nairobi (Kenya) the cost per kilometre is 55c. These are relatively unconstrained routes due to a more liberal approach by the governments involved (Ssamula, 2014). This contrasts with another destination example between 2 400 and 2 900 kilometres where a flight from Johannesburg to Luanda (Angola) costs R1.21 per kilometre, a highly constrained route that protects SAA and the Angolan national airline TAAG on the route from any competition (Mhlanga, 2017a).

Agreements by SADC countries with other African countries follow a similar pattern to the intra-SADC ones. According to Ssamula (2014), most only permit designation of a single airline and constrain flight frequency and/or seat capacity. Unfortunately, little effort was made by the carriers to improve efficiency or reduce cost to stay competitive and consequently travellers paid the high prices arising from the restriction (Mhlanga *et al.*, 2017b). However, there were some notable positive changes among some southern Africa countries to relax these restrictive bilateral agreements, which is a step in the right direction. For example, in 2013 Zambia and South Africa signed an air service agreement which permitted unlimited frequencies and opened intra-Africa freedom traffic rights between two countries (Button & Brugnoli, 2015). This was a welcome change from the prior stance where both countries allowed traffic only within selected cities with under-utilised capacity and resisted further liberalisation (Schlumberger, 2010). Another example is that of Kenya and Tanzania, which as of 2015 still had pending issues from their 1985 bilateral agreement that threatened to affect flight operations and bilateral relations between the two countries (Mwiti, 2016).

Furthermore, in October 2016 South Africa and Namibia signed a bilateral air service agreement (BASA) to operate an unlimited number of flights per week per side for passenger services and the exercise of fifth freedom traffic rights at intra-African points (Mhlanga & Steyn, 2016). Before the signing of the BASA, SAA operated 20 flights per week on the Johannesburg to Windhoek route, making it three flights a day, while South African Express operated nine flights per week on the Johannesburg to Walvis Bay route and six flights per week on the Cape Town to Walvis Bay route. SA Airlink operated 11 flights per week on the Cape Town to Windhoek route, while Comair operated seven flights on the Johannesburg to Windhoek route; Air Namibia operated 21 flights per week on the Windhoek to Johannesburg route, 14 flights on the Windhoek to Cape Town route and seven flights per week on the Walvis Bay to Cape Town route (Mhlanga, 2017b).

Finally, in November 2016, Zimbabwe and South Africa signed an air service agreement, which according to Mhlanga and Steyn (2016), is based on key principles of the YD, including higher frequencies and open intra-Africa freedom traffic rights. In terms of the agreement, Air Zimbabwe and SAA will now enjoy as many as 85 flying frequencies per week into each other's territory, unlike before when frequency was severely restricted (Mhlanga, 2017b).

### *Pooling agreements*

Whereas BASAs take place between two states, pooling agreements can take place between two airlines, for example, SAA has a pooling agreement with Air Botswana (Gavin, 2013). A pooling agreement is an agreement that two nations sign to allow international commercial air transport services between their territories. These formal/informal agreements enable competing carriers to co-operate with one another to decide on the frequency of flights and fares (Abate, 2013). Thus, it is an anti-competitive agreement that serves to the benefit the firms (Njoya, 2016). Up to the early 1990s, such agreements generally took the form of revenue-sharing pools, or less frequently, revenue and cost-sharing pools (Doganis, 2010).



Doganis (2010) asserts that because of anti-trust laws in the United States, pooling agreements on flights to/from the U.S. were banned. In December 1987, the European Council of Ministers decided to make pooling agreements illegal under the 'First Package' on air transport liberalisation. After the deregulation of the skies in the USA and Europe, Africa also came up with some liberalisation initiatives for the region (Njoya, 2016).

#### *Yamoussoukro Declaration (YD)*

Prior to gaining independence, most southern African countries had air services that were primarily based on their European relationships and agreements (Kuuchi, 2016). Only when a number of southern African countries became independent (for instance Zimbabwe), did southern African states start negotiating and concluding their own air services agreements (Mondliwa, 2015). During this time, the majority of the newly independent southern African states created their own, mostly government-owned, national air carriers, and with that came problems of mismanagement, lack of technical skill due to political involvement and corruption leading to insufficient funds to manage national airlines. Consequently, most of the national air carriers failed (Steyn & Mhlanga, 2016).

Furthermore, most southern African national air carriers pursued a business model that encompassed using profitable international routes to and from the territories of their former colonial masters to cross-subsidise their costly, yet extensive, domestic route networks (Steyn & Mhlanga, 2016). This often resulted in the maintenance of strict bilateral relationships for intercontinental routes, where capacity was limited and controlled to maximise profitability (Button & Brugnoli, 2015). Governments tended to view the development of regional air services as secondary, especially when they were obliged to maintain a costly domestic network (Schlumberger, 2010). Following the international example at that time, intra-African air transport services became regulated by the traditional framework of BASAs. The typical BASAs of the 1960s were based on the traditional predetermination model, by which market access and capacity were predetermined. This model controlled the market through effectively restricting competition (Doganis, 2010). Whereas liberalisation had been actively pursued in the United States since the late 1970s and in Europe since the late 1980s, southern African air services remained generally restrictive, costly, ineffective and inefficient (Schlumberger, 2010).

In November 1984, to prevent the collapse of African national airlines the Economic Commission for Africa (ECA) of the United Nations Economic and Social Council organised a conference in Mbabane, Swaziland (Oluwakoya, 2011). The conference also discussed the reasons why African carriers faced difficulties in obtaining traffic rights in other African states. The conference ended with the Declaration of Mbabane, which called for the creation of a technical committee that would develop "a common African approach for the exchange of third and fourth freedom rights" and "encourage the exchange of fifth freedom rights" (Abate, 2013).

It further proposed an additional set of measures that focused primarily on closer cooperation between African carriers (Mhlanga, 2017b). These measures, which later became the core of the YD included a joint financing mechanism, a means of coordination for scheduling air services, a centralised databank and research programme, as well as the promotion and creation of sub-regional carriers (African Union, 2011).

The need for regional consensus on how air transport should be used as an important instrument for social and economic development in southern Africa, as well as on how to speed up liberalisation of African air services, was discussed at length under the auspices of the ECA by the Ministers in charge of Civil Aviation of 40 African states in Yamoussoukro, Cote d'Ivoire. This led to the adoption of the YD in October 1988 (Mhlanga, 2017c).





This declaration on a new African civil aviation policy included comprehensive proposals for a general framework of air transport reforms in Africa, the unification of the fragmented air transport markets and commitment from the governments represented to make all necessary efforts to integrate their airlines within eight years (African Union, 2011). This declaration was regarded as the cornerstone of African Civil Aviation and had the following salient objectives:

Ensure flexibility in granting of traffic rights among African countries;

Encourage joint use of air transport facilities;

Encourage co-operation and ultimate merger among African carriers, and

Encourage further financing of air transport sector.

The YD also foresaw the gradual elimination of traffic restrictions, specifically the granting of fifth freedom rights to African airlines during the implementation period. Despite its overly ambitious objectives and the weak likelihood of its implementation, the Declaration stimulated further initiatives aimed at liberalising the African air transport market (Schlumberger, 2010). In 1994, having evaluated the steps required to implement the YD, the African Ministers in charge of Civil Aviation met in Mauritius and agreed on a set of measures to facilitate the granting of third, fourth and fifth freedom rights to African carriers (Niewiadomski, 2013). Of significance was the fact that the YD enforced the notion that the air transport sector in Africa needed to be liberalised. This led the ECA to include the liberalisation of air services in its work programme (Button & Brugnoli, 2015).

One of the positive effects of the YD is that it served as a catalyst for sub-regional initiatives for its implementation (Kuuchi, 2016). However, it did not go far enough to restructure the existing framework, as issues such as privatisation of national carriers and mostly the liberalisation of BASAs were not adequately addressed (Niewiadomski, 2013). By the end of 1996, which was the implementation deadline, little or no progress had been made. Therefore, there arose a need for another agreement to correct the shortcomings of the Declaration and make it implementable, and in 1999 a Council of Ministers responsible for civil aviation met again in Yamoussoukro (Oluwakoya, 2011).

#### *Yamoussoukro Decision (YD)*

After meeting in 1999 in Yamoussoukro, a Council of Ministers responsible for civil aviation adopted a decision relating to the implementation of the Yamoussoukro Declaration regarding liberalisation of access to air transport markets in Africa (Mondliwa, 2015). In July 2000, different African Ministers responsible for civil aviation and the heads of state and the government of the Organisation of African Unity (OAU), now called the African Union (AU), adopted the Yamoussoukro Declaration. This name later changed to the Yamoussoukro Decision, which made it binding in law, to be adopted by all member states of the AU (African Union, 2011).

The YD came into force on 12 August 2000 and was ratified by 44 African countries, becoming fully binding on 12 August 2002 (Mhlanga, 2017c). In accordance with Article 2, the YD takes precedence over all bilateral and multilateral agreements within the regions that are not in conformity with it. The new policy framework aimed at providing safe, efficient, reliable, and affordable air services to consumers and came to be known as the Yamoussoukro Decision.

The YD also sought to promote co-operation among African member states through their air transport policies. By deregulating the industry within Africa, competition on routes, and fares and



traffic would also encourage competition between airlines (Oluwakoya, 2011). In essence, the main aim of the YD was to provide a continent-wide aviation agreement to liberalise African air transport markets and eventually create an 'open skies' environment in Africa (Button & Brugnoli, 2015). The major policies of the new air transport framework agreed upon by African Ministers were:

Gradual liberalisation of scheduled and non-scheduled intra-African air services (as defined under Article 2 of the YD);

Free exchange of traffic rights including third, fourth and fifth freedom rights on both scheduled and non-scheduled passenger and air freight (cargo and mail) air services performed by an eligible airline (as defined under Article 3 of the YD);

Non-regulation of tariffs by government (as defined under Article 4 of the YD);

No restriction of frequencies and capacities offered on air services linking any city-pair combination (as defined under Article 5 of the YD);

Multiple designation by each party on a city-pair basis (as defined under Article 6 of the YD);

Competition regulation (as defined under Article 7 of the YD);

Settlement of disputes through negotiations (as defined under Article 8 of the YD);

A monitoring body to oversee the implementation process (in accordance with Article 9 of the YD); and

Encouragement of commercial and other forms of cooperation between African carriers (African Union, 2011).

The total implementation of the YD gradually eliminated all non-physical barriers and restrictions to:

The granting of fifth freedom traffic rights;

African airlines aircraft capacity;

Tariff regulation (passengers and goods);

Designation by states of operating tools; and

The operation of cargo flights.

The YD remains the single most important air transport reform policy initiative undertaken by African governments to date (Mordy, 2014). It was adopted out of recognition that the restrictive and protectionist intra-African regulatory regime, based primarily on BASAs, hampered the expansion and improvement of air transport on the continent (Mhlanga, 2017c). The BASAs enabled the stakeholders to limit capacity, therefore driving up prices, maximising profits and creating an expensive air sector. As a result, intra-African air traffic remained costly and inefficient, especially in those cases where the BASAs protected a state-owned carrier (Schlumberger, 2010).

One of the vital parts of the YD was intra-African liberalisation, the objective of which was to develop air services in southern Africa and to stimulate the flow of private capital in the industry. As of today (2017), the governments of southern Africa have not yet fully implemented the YD, although on a small scale, some like-minded countries (such as South Africa and Zimbabwe)



apply the principles of the YD but not, however, on a continental-wide basis. The reasons for not applying the YD range from non-implementation of certain elements of the YD, for example, establishing competition rules, a dispute settlement mechanism, and an operational monitoring body, to simply ignoring it by continuing to implement the traditional restrictive bilaterals (Markman, 2016).

Implementation of the YD would have been the biggest single development in southern African aviation history (Mordy, 2014). Apart from the benefits to the airlines and passengers, it would have made a significant contribution to the national economies of southern Africa (Steyn & Mhlanga, 2016). Markman (2016) adds that implementation of the YD would result in radical changes, not only for airlines, but also for national economies resulting in increased tourism and greater availability and flexibility of air services, within the region and continent.

### **Progress in implementing liberalisation initiatives**

Despite the fact that the YD had not been fully implemented throughout southern Africa, progress was made in the countries involved (Markman, 2016). Below is a summary of the main developments related to the implementation of the YD:

A few countries in southern Africa, such as South Africa and Tanzania among others, took urgent measures towards the implementation of the YD, applying the agreements on the liberalisation of traffic rights on a bilateral basis. In line with these measures, the South African Airlift Strategy of 2006 set up liberalisation targets to speed up the implementation of the YD with like-minded African countries. Development partners lent support to the process of liberalisation of air transport in southern Africa. The World Bank and the EU assisted the sub-regional economic communities to manage liberalisation and strengthen institutional capacities.

New routes came into use and frequencies were enhanced between southern African countries, thus streamlining the movement of passengers and goods. Examples include bilaterals between South Africa and Zambia which were signed on 12 January 2014 (Mhlanga, 2017b). The two countries agreed to move away from a restrictive framework that allowed for seat capacity, single designation of airlines and a restrictive route schedule. The agreement between South Africa and Zambia created conditions for the emergence of viable and quality African air transport that met the integration imperatives of the region, which virtually created an 'open skies' market, including multiple designations, multiple entry points and unrestricted capacity and frequency (Mhlanga & Steyn, 2016). The effect of liberalisation was particularly evident on the Nairobi to Johannesburg route, which increased frequencies from four in 2000 to an unlimited number in 2015 and research by Surovitskikh and Lubbe (2015) indicates that the passenger volumes increased by 69% over the pre-liberalisation period. The southern African position, as expressed through the regional economic community or grouping, SADC, in relation to air transport regulations, was properly co-ordinated and defined at international forums as southern African countries became increasingly aware of the importance and the implications of new air transport policies.

An element of competitiveness was introduced, bringing about an improvement in services and the emergence of a broader range of tariffs. The results of the study by Njoya (2016), which analysed the effect of airfares on 56 routes in SADC, indicate that airfares were 18% lower on liberalised routes and that this reduction in airfares was expected to increase passenger volumes by 14% to 32%, and

Alliances and co-operation arrangements, such as SAA and Air Tanzania, were established among southern African airlines in certain sub-regions, such as the EAC and SADC (Mordy, 2014).



Nonetheless, there was slow progress to implement the YD because of the fear by smaller members of the SADC (such as Lesotho, Swaziland, Botswana and Namibia) that SAA would eliminate competition in a liberalised southern African air market (Njoya, 2016). This fear prevented SADC from making progress in implementing the YD (Kuuchi, 2016). It is for this reason that the connections between South Africa and its neighbours are still based largely on strict bilateral agreements (Njoya, 2016).

### **Hindrances to implementation**

Despite the potential benefits of the YD in African air transport markets and African development, there are still a number of outstanding issues that militate against the effective implementation of the liberalisation process (Abate, 2013). The lack of full implementation of the YD is partly driven by the governments of a number of southern African countries determined to protect their national carriers (Button & Brugnoli, 2015). They refuse to liberalise their air transport markets irrespective of the obligations they assumed under the YD (Mondliwa, 2015). The desire by each country to have a national airline and the absence of a mechanism to form and jointly own airlines on the continent is a major impediment to liberalisation (Kuuchi, 2016). This hindered full liberalisation of the continent's air transport sector and effectively prevented southern African airlines from taking full advantage of the positive economic effect of air transportation (Alves & Forte, 2015). Some of the reasons for the slow pace of progress include:

Lack of political commitment and unification: firm political commitment and actions are necessary to unify the liberalisation process at the national level, as well as to make it less heterogeneous in various sub-regions. Strong commitment is required from all member states to implement the YD, as the member states are currently at different stages of the YD implementation. Ssamula (2014) discusses the heterogeneous and fragmented state of liberalisation within the various regional communities, highlighting the varying degree of liberalisation achieved within these air transport markets. An example of the lack of political commitment is illustrated in the Arab Maghreb Union (AMU), in which the need for the liberalisation of air services was only recognised by the AMU Transport Ministers in 2007, however, few liberalisation initiatives have been implemented to date. In the regions where liberalisation has taken place in line with the key elements of the YD, such as the Banjul Accord Group (BAG), West African Economic and Monetary Union (WAEMU) and Economic and Monetary Community of Central Africa (CEMAC), positive effect on air transport services is evident;

Barriers to liberalisation, such as immigration restrictions and foreign exchange control, that still exist to date (2018), need to be relaxed for effective implementation of the liberalisation process. For example, travel between SADC countries requires a visa, which affects the ease of travel and the flow of visitors to and within the region. Another example is that of residents of Angola and the DRC requiring a visa to enter Lesotho. In order to mitigate the above, SADC's tourism industry has proposed a single visa (UNIVISA) for the region (Adeyeye, 2016). Competition policies and institutions: the vast majority of southern African countries do not regulate competition or have institutions that specialise in competition matters. The First Ordinary Session of the Ministers Responsible for Air Transport, held by the AU in 2005 in South Africa, concluded that harmonisation of the rules for liberalising air transport was necessary as different rules in different subregions hindered full implementation of the YD (African Union, 2011). Mauritius informally indicated that it was withdrawing from the YD because of the failure of SADC countries to adopt the competition rules relating to the full liberalisation of air transport. In 2007, the AU drafted its own common competition rules, including special provisions on air transportation (African Union, 2011). At the Third Session of African Union Ministers Responsible for Air Transport, held in May 2007 in Ethiopia, the Ministers noted the preparation of draft texts concerning the harmonisation of common competition rules (African Union, 2011). While the objective was to have the heads of state formally adopt these rules at the Ninth Ordinary Session of the Assembly of the African Union held in Ghana in July 2007, this matter is still pending today (Mwiti, 2016). This is further



inhibited by the fact that no regional or AU competition rules and arbitration procedures have been implemented to support the implementation of the YD (African Union, 2011). No community treaty was implemented in Africa that would ensure that competition in the African market is not distorted and that markets operate as efficiently as possible within a single economic market. In addition, no International Convention on Competition Law for across the border trade currently exists, making this hindrance particularly difficult to overcome (Njoya, 2016).

Unlike the Directorate General for Competition in Europe, there is also no super national authority to enforce a single set of competition rules within Africa (Kuuchi, 2016). An important distinction between the YD and the EU regulatory regime is that a single set of EU competition rules apply to air services within the EU, whilst intra-African air services within the scope of the YD will remain the subject of treaties between African states by means of BASAs (Markman, 2016). International air services present complications when considered from the traditional competition Structure-Conduct-Performance (SCP) approach as competition authorities in different jurisdictions may have diverging ideas on how such competition rules would be enforced and under what local laws (Njoya, 2016). Mhlanga (2017b) claims that the enforcement of competition rules will prevent unfair competition and ensure that passengers derive ongoing benefit from the liberalisation of air routes.

Limited skilled manpower: currently (2018) many civil aviation and airport authorities do not have the appropriately skilled manpower due to lack of financial resources and 'jobs for pals'. Although African aviation is not new to the loss of skilled manpower, there was a significant upward increase in the loss of professional and skilled manpower, inter alia, pilots, safety inspectors, engineers and aircraft technicians. At the Second Session of the Conference of the Ministers Responsible for Transport held in Angola in 2011 it was highlighted that the current trend of 'brain drain' would continue and get even worse as the demand for highly skilled manpower and professional staff increased with the anticipated growth in the sector. This in turn would have a negative effect on the overall growth of African air transport. The main factors contributing to the high rate of brain drain range from significant traffic growth in certain markets, such as the Asia Pacific and the Middle East, resulting in an exodus of professionals and highly skilled employees from Africa, limited training capacity offered on the Continent and continued instability of African airlines to manpower poaching by large airlines, in particular from the Middle East (Kuuchi, 2016).

Infrastructure, safety and security concerns: the issue of aviation safety and security was considered important by the YD, which made it one of the criteria of eligibility of an air carrier to operate air services. Several articles of the YD address safety and security directly and indirectly. Article 5.1 of the YD, for example, notes that a state may unilaterally limit the volume of traffic, the types of aircraft to be operated or the number of flights per week for environmental, safety, technical or other special considerations. Article 6.9 declares that the eligibility criteria for a designated airline to operate under the YD are that the airline must be capable of demonstrating its ability to maintain standards at least equal to International Civil Aviation Organisation (ICAO) and to respond to any query from any state to which it provides air services.

The analysis by Mwiti (2016) on the quality and progress of safety oversight in Africa revealed that the majority of regional economic communities only took minor steps in this regard and that most regions of sub-Saharan Africa rated as poor in relation to safety. Thus, the current situation with respect to safety oversight in Africa could be considered as one of the main obstacles to implementation of the YD (Adeyeye, 2016). Excessive protection of national carriers: the situation in southern Africa concerning the liberalisation of intra-African air services reflects a heterogeneous picture. On the one hand there are those states that maintain a small, often struggling carrier and generally remain very protective in their bilaterals. By not applying the principles of the YD, they aim at regulating access, capacity and frequency so as to limit competition, which keeps tariffs at high levels. On the other hand there are two groups of countries that actively support the liberalisation of air services: the first group comprises states that have



strong and often market-dominant air carriers, while the second group is represented by states that have lost or have never had a significant national carrier (Schlumberger, 2010).

Mozambique is a clear example of a conflict between the interests of tourists and those of the national airline. The Mozambican government has recognised the importance of tourism to its national economy, however, it continues to protect the national airline, LAM, by restricting competition on international routes. The negative effect of these restrictions is apparent in excessive fares: return flights to Maputo from Johannesburg are 163% more expensive than return flights to Durban from Johannesburg, despite a similar distance between the country-pairs (Mhlanga, Steyn & Spencer, 2017b).

Due to capacity and bilateral constraints in certain parts of southern Africa, points either on a North/South or East/West axis can only be accessed via hubs outside the region, which makes no business or economic sense. Lack of an effective enforcement mechanism: although there is a monitoring body, as stipulated under Articles 9.1 to 9.3 of the YD that assesses and oversees the implementation of the YD, its role in enforcing the YD was ineffectual. The monitoring body has met only a few times since its legal creation (in Ethiopia, 2004 and South Africa in 2005 among others); its infrequent meetings are thus an indication of the overall slow pace of the implementation of the YD (Njoya, 2016). It must be noted that the monitoring body relies on the willingness of the states to co-operate as it does not have any enforcement rights on its own.

To ensure successful implementation of the YD, Article 9.4 provides that an African air transport executing agency should be established. The African Civil Aviation Committee (AFCAC) was entrusted with the functions of the executing agency in 2007. According to Adeyeye (2016) it has not expanded on details of either the competition rules and regulations, or the arbitration procedures and the dispute settlement mechanisms. It can therefore be concluded that strong intergovernmental institutions, which are practically non-existent in Africa, are essential for the successful continent-wide implementation of the YD. Solving this issue may assist in solving many of the hindrances discussed above.

### **Recommendations to support and accelerate liberalisation**

The following measures or conditions play an important role in accelerating the implementation of the YD. It must be noted that most African countries adopt their own level and pace of incorporating these measures into their policy documents. The various economic groupings in Africa, such as Economic Commission for Africa (ECA), the Regional Economic Community (REC) and the AU among others, have attempted to address some of the measures in an effort to bridge the gaps and accelerate air transport liberalisation:

Development and harmonisation of competition rules and dispute-settlement mechanisms on a continental basis: the First Ordinary Session of the Ministers Responsible for Air Transport in 2005 concluded that harmonisation of the rules for liberalising air transport was necessary, as the fragmented state of the Continent was hindering the full implementation of the YD (African Union, 2011). The formulation of a harmonised set of rules governing competition is necessary at the regional level to avoid the emergence of sub-regional blocks and to enable the uniform implementation of the YD (Ssamula & Venter, 2013).

The absence of the competition rules is regarded as an absent element in the implementation of the YD (Mwiti, 2016). As discussed earlier, this is a complex issue, given that the competition authorities derive their mandates from local legislation and currently no 'International Convention on Competition Law' exists, which can only be applied if markets are 'internalised' under the jurisdiction of a single Competition Authority.



Dissemination of information related to the liberalisation of air transport markets, as well as private sector participation in the development of the air transport industry, should be intensified among the YD countries (Ssamula & Venter, 2013).

Infrastructure development: it is clear from several studies (Ssamula & Venter, 2013; Mhlanga, 2017c; Adeyeye, 2016) that liberalisation will have a significant effect on infrastructure development. A plan of action to achieve balanced regional development needs to be implemented, taking into account the different views on funding, ownership and revenue base for infrastructure within the African Continent.

Safety and security: the complexities of addressing and monitoring safety standards dictate that harmonising an air safety regulatory framework is of paramount importance. Aviation policies should be amended to ensure that only airworthy aircraft are allowed to enter the market (Alves & Forte, 2015). One of the strong elements of the YD is its focus on safety and security. However, this has become the main obstacle to timely implementation as many African states do not, or only marginally, comply with ICAO's safety and security standards and recommended practices (Schlumberger, 2010).

Removing barriers to liberalisation (such as relaxing the immigration formalities and foreign exchange control, among others). Three sub-regions, ECOWAS, CEMAC and EAC, have made considerable progress in enhancing the movement of people across regional borders (Gavin, 2013), where the latter two have instituted a regional passport. This is a clear example of the fragmented African aviation market, where liberalisation initiatives are driven by a number of economic groupings. However, to effect continent-wide removal of barriers to liberalisation, their efforts should be streamlined and unified to achieve the YD objectives.

## Conclusion

Although southern African governments still oppose liberalisation by claiming to protect their sovereignty, they do not realise that the economic costs of this largely surpass the political costs they might need to face if their national airlines do not manage to compete in a liberalised environment and have to go out of business. Most states in southern Africa continue to insist on postponing liberalisation, arguing that they need time to enable their national airlines to restructure and thereby position themselves before deregulation. However, these states have so far failed to indicate the time frame in which they will fully liberalise their markets.

Furthermore, the bilateral regulatory system remains a bottleneck in the overall development of the air transport network in southern Africa, while the quantity and quality of air services has not improved. It is for this reason that the strict bilateral agreements that are frequent in southern Africa negatively affect airline performances and restrain the region's potential for tourism growth. Except for general assertions about the merits/demerits of liberalisation, an empirical understanding of the welfare effects of such policies in southern Africa remains rudimentary if airlines in southern Africa are to be at all successful.

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