

Liberalising aviation in Africa: the Yamoussoukro Decision

February 14 2018 | Contributed by [George Etomi & Partners](#)

Introduction

Implementation status

Potential impact

Comment

Introduction

In 1999 African ministers responsible for civil aviation under the aegis of the Organisation of African Unity (now the African Union) adopted the Yamoussoukro Decision – a multilateral agreement between Africa's 54 countries designed to liberalise the continent's aviation market. The Yamoussoukro Decision is based on the recommendations of the Yamoussoukro Declaration 1988, which aimed at the full integration of the African air transport market. However, its primary focus at the time was the cooperation between and integration of African airlines and carriers. It was not until 1999, following the adoption of the Yamoussoukro Decision, that a policy shift from airline integration to the full liberalisation of air services in Africa took place. The Assembly of the African Union endorsed the Yamoussoukro Decision in 2000 and it became fully binding in 2002.

Essentially, the Yamoussoukro Decision opens up African airspace for its signatories by:

- supporting the free exercise of the first, second, third, fourth and fifth Freedoms of the Air, under which an airline or air carrier from one African country can simply fly into another airspace and land on its territory using only a simple prior notification procedure;⁽¹⁾ and
- eliminating the need for separate bilateral air service agreements between individual countries.

The rationale behind the Yamoussoukro Decision was the need to foster socio-economic development in Africa – policymakers recognised that aviation and a competitive aviation market could be decisive for unlocking Africa's economic potential. However, the agreement has not been fully implemented by its signatories.

This update examines the reasons behind and potential solutions to the non-implementation of the Yamoussoukro Decision.

Implementation status

The implementation of the Yamoussoukro Decision can be examined from two perspectives:

- policy implementation – the carrying out or putting into effect of the agreement's provisions; and
- operational implementation – the signatories' application of the Freedoms of the Air provided under Article 3 of the agreement.

The Yamoussoukro Decision provides the following four main policy initiatives, which are essential for its full implementation.

AUTHOR

[Oshokha
Michael
Momoh](#)



Article 7 (competition rules)

Parties must ensure fair opportunity, on a non-discriminatory basis, for the designated African airline to compete effectively in providing air transport services within their respective territories. This provision of fair opportunity and anti-discrimination is extremely marginal. Article 7 provides no further principles or rules that would define fair and unfair competition between operators more clearly – the absence of any competition rules can be seen as a missing element in the Yamoussoukro Decision's implementation. **(2)**

In 2007 the African Union (responsible for the overall supervision and implementation of the agreement) prepared its competition rules after taking inspiration from a number of regional economic communities (RECs), including the Common Market for Eastern and Southern Africa, the East African Community and the Southern African Development Community. These REC's had prepared joint draft regulations for competition in air transport services for their regions, but had failed to adopt them.

Article 8 (arbitration procedure)

States are encouraged to settle disputes by negotiation; if that proves unsuccessful, settlement should be pursued through arbitration in accordance with Appendix 2 (which is actually Annex 2). However, Annex 2 contains no arbitration procedure – it describes the duties and responsibilities of the monitoring body. This omission has been acknowledged by the African Union.

The creation of the arbitration and dispute resolution mechanisms was linked to the establishment of the Executive Agency (Articles 9.4 to 9.6). While the agency has been operational since 2007, no dispute resolution mechanism has been put in place. **(3)**

Articles 9.1 to 9.3 (monitoring body)

Article 9.1 establishes the monitoring body, which is composed of representatives of the United Nations Economic Commission for Africa, the African Union, the African Civil Aviation Commission (AFCAC) and the African Airlines Association. Its principal responsibility is the overall supervision, follow up and implementation of the Yamoussoukro Decision.

Articles 9.4 to 9.6 (executive agency)

Article 9.4 states that an executive agency should be established to ensure the Yamoussoukro Decision's successful implementation and provides that the principal responsibility of the executing agency will be the supervision and management of Africa's liberalised air transport industry.

Articles 9.5 and 9.6 give additional responsibilities to the executive agency with regard to formulating rules and regulations for equal opportunities and ensuring consumer protection. **(4)**

Under the Yamoussoukro Decision's regulatory text, the AFCAC is tasked with the responsibilities and functions of the executive agency due to refusal to levy aviation charges to fund the establishment and development of an independent executive agency. In 2014 transport sector ministers approved the regulatory text, including:

- the Powers and Functions of the Executing Agency;
- competition rules;
- consumer protection regulations; and
- a dispute resolution mechanism.

In March 2017 the institutional and regulatory texts were adopted by the Sectoral Technical Committee on Transport, Energy and Tourism.

Regarding the implementation of the Yamoussoukro Decision's operational principles, the West Africa sub-region has done remarkably well: the West African Economic and Monetary Union and the Banjul Accord Group have applied most of the principles, the former in its internal market and the latter through a multi-lateral air service agreement. **(5)**

Further, in 2015 the Assembly of the African Union adopted the declaration on the establishment of the Single African Air Transport Market (SAATM). The SAATM is a flagship project of the African Union's Agenda 2063, which aims to create a single unified air transport market in Africa. The

SAATM is to be achieved through the Yamoussoukro Decision's implementation. The SAATM was formally launched at the 30th Summit of the African Union on January 28 2018. To date, 23 African countries have signed up and committed to the SAATM. Airlines from these countries will be eligible to conduct and provide aviation services in each other's territories and take full advantage of the traffic rights provided under the Yamoussoukro Decision.

Potential impact

The Yamoussoukro Decision's full implementation will effectively unify Africa's airspace. The cost of air services is likely decrease due to:

- reduced operational costs;
- increased competition; and
- higher operational and customer service standards.

The effect of a liberalised aviation market in Africa cannot be over emphasised. It will have a considerable multiplier effect and foster industrial growth in other areas of the African economy. Freer movement of goods and services will lead to more competitive pricing. The Yamoussoukro Decision, if fully implemented to create a unified African airspace and market, will strengthen African air carriers and prevent the dominance of foreign airlines within Africa.

Comment

The aviation sector was rightly identified as a major element in the push towards socio-economic integration and cooperation within Africa. This recognition gave rise to the Yamoussoukro Declaration in 1988 and the Yamoussoukro Decision in 1999, which was designed to unify Africa's airspace in order to achieve the overall goal of economic integration. Given the length of time that has passed since the decision became operational, the arrival of the SAATM initiative is better late than never. However, the African Union must ensure effective implementation and avoid unnecessary delays at all costs. On a national level, state governments should adopt policies and strategies that would improve the aviation sector in their respective countries. For instance, in Nigeria, the government must reduce operational costs for providing air services by lowering taxes and improving aviation infrastructure. Such measures will encourage private carriers to spread to other markets within Africa.

For further information on this topic please contact [Oshokha Michael Momoh](mailto:oshokha.momoh@geplaw.com) at George Etomi & Partners by telephone (+234 1 462 1660) or email (oshokha.momoh@geplaw.com). The George Etomi & Partners website can be accessed at www.geplaw.com.

Endnotes

(1) The Freedoms of the Air are a set of commercial aviation rights granting a country's airlines the privilege to enter and land in another country's airspace, formulated as a result of disagreements over the extent of aviation liberalisation in the Chicago Convention on International Civil Aviation 1944. The Freedoms of the Air can be found on the [website](#) of the International Civil Aviation Organisation.

(2) Charles E Schlumberger, *Open Skies for Africa, Implementing the Yamoussoukro Decision*, The World Bank, Washington DC, 2010, p 32.

(3) *Ibid*, p 34.

(4) *Ibid*, p 36.

(5) The West African Economic and Monetary Union is an organisation of mainly francophone West African states within the Economic Community of West African States. It was established to promote economic integration among countries that share the West African franc as a common currency. The Banjul Accord Group is a sub-regional group of seven Anglophone countries in Nigeria with the goal of ensuring the implementation of the Yamoussoukro Decision.

The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).