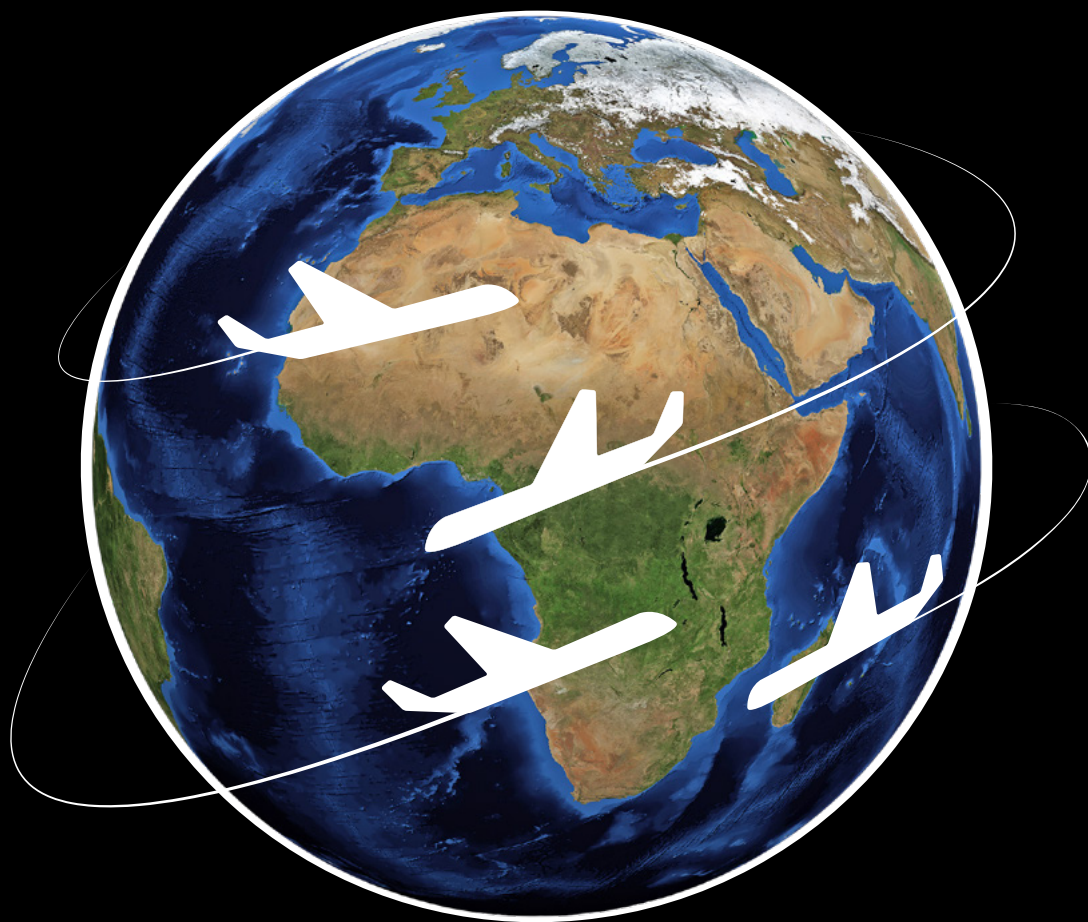


Deloitte.



Single African Air Transport Market

Is Africa ready?

May 2018

“In 2017, more than 4 billion passengers used aviation to reunite with friends and loved ones, to explore new worlds, to do business, and to take advantage of opportunities to improve themselves. Aviation truly is the business of freedom, liberating us from the restraints of geography to lead better lives.

De Juniac, IATA (2018)

Executive Summary

The liberalisation of civil aviation in Africa as an impetus to the Continent’s economic integration agenda led to the launch of the Single African Air Transport Market (SAATM). The Open Sky agreement, originally signed by 23 out of 55 Member States, aimed to create a single unified air transport market in Africa.

Africa is considered a growing aviation market with IATA forecasting a 5.9% year-on-year growth in African aviation over the next 20 years, with passenger numbers expected to increase from 100m to more than 300m by 2026 and SAATM is a way to tap into this market. The benefits of SAATM to African Countries include job creation, growth in trade resulting to growth in GDP and lower travel costs resulting to high numbers of passengers. However, is Africa ready for a Single African Air Transport Market?

In Deloitte’s opinion, SAATM needs to consider various aspects in regards to ownership and effective control, eligibility, infrastructure, capacity and frequency of flights. In this situation, we turn to various international treaties as guideposts where these Open Skies agreement have been done relative success. However, of uttermost importance is that, these agreements ensure that they put in place mechanisms that ensure fair playing ground to all signatory countries. These mechanisms look at competition rules, ownership and control, consumer rights, taxes and commercial viability. These mechanisms are integral to an open sky treaty to ensure the realization of the benefits to the signatories.

From Deloitte’s research and conversations with industry stakeholders, the low commitment from AU Member States is likely to be brought on by the treaty’s lack of a proper implementation framework. This framework is necessary to harmonise existing differences between airlines as well as provide a level playing field going forward. From our research, we have identified several gaps within SAATM that need to be addressed to attain successful implementation.



Introduction

In January 2018, The African Union Heads of State and Government launched the Single African Air Transport Market (SAATM) more commonly referred to as the Open Skies Treaty. This initiative is one of the flagship projects of the African Union's (AU) Agenda 2063. The initiative is geared at creating a single unified air transport market in Africa through the liberalization of civil aviation in Africa. This is seen as an impetus to the continent's economic integration agenda¹. The International Air Transport Association (IATA) has welcomed the launch of the SAATM initiative by the AU to open up Africa's skies and improve intra-African air connectivity. At the publishing of this report, 23 out of 55 Member States have committed to the single air transport market.

What is open sky?

The open sky principle is an international policy concept that calls for the liberalization of the rules and regulations of the international commercial aviation industry—especially commercial aviation—in order to create a free-market environment for the airline industry. For open skies to become effective, an (bilateral or multilateral) air transport agreement must be concluded between two or more nations. Its primary objectives are:

- to liberalize the rules for international aviation markets and minimize government intervention as it applies to passenger, all-cargo, and combination air transportation as well as scheduled and charter services; and
- to adjust the regime under which military and other state-based flights may be permitted.

The first open skies agreement was signed in 1992 between the Netherlands and the United States of America, which gave both countries unrestricted landing rights on each other's soil.

The **Convention on International Civil Aviation (1944)**, also known as the **Chicago Convention** prepared a framework within which civil air transport could function. The Convention established rules of airspace, aircraft registration and safety, and detailed the rights of the signatories in relation to air travel. The Chicago Convention put in place important articles such as:

- Article 1: "...every state has complete and exclusive sovereignty over airspace above its territory where territory."
- Article 2: "...the territory of a State shall be deemed to be the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection or mandate of such State."
- Article 6: "No scheduled international air service may be operated over or into the territory of a contracting State, except with the special permission or other authorization of that State, and in accordance with the terms of such permission or authorization."

This ensures that every State has, to the exclusion of all other States, the unilateral and absolute right to permit or deny entry into the area recognized as its territory and similar right to control all movements within such territory. This means that no other state can go to another states' territory without permission hence open skies is all about agreements between states.

The Chicago Convention also established the core principles permitting international transport by air and led, through article 43, to the creation of the International Civil Aviation Organization (ICAO)², which is charged with coordinating and regulating international air travel.

Game changer – Freedoms of air

One of the ways that ICAO works to harmonise air transport is through the freedoms of the air. These freedoms are fundamental to the implementation of open skies globally. 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. They are the fundamental building blocks of the international commercial aviation route network.

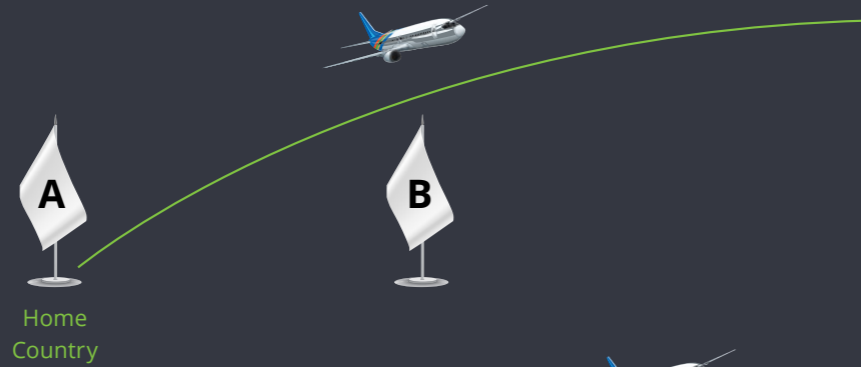
¹ The Single African Air Transport Market

² Convention on International Civil Aviation (1944)

Freedom of the Air

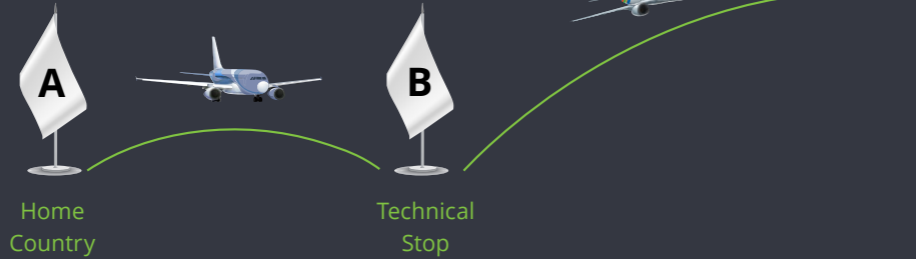
First Freedom

The negotiated right for an airline from country (A) to overfly another country's (B) airspace.



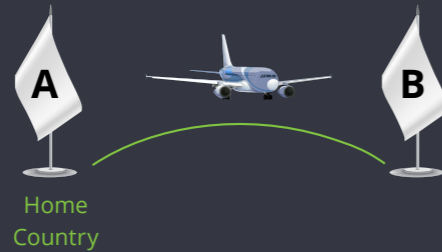
Second Freedom

The right for a commercial aircraft from Country (A) to land and refuel (commonly referred to as a technical stop) in another country (B)



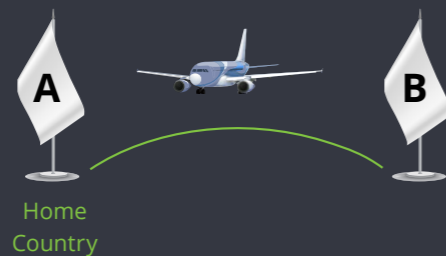
Third Freedom

The right for an airline to deliver revenue passengers from the airline's home country (A) to another country.



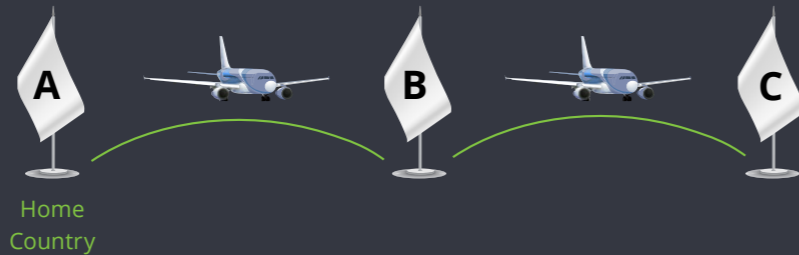
Fourth Freedom

The right for an airline to carry revenue passengers from another country (B) to the airline's home country (A)



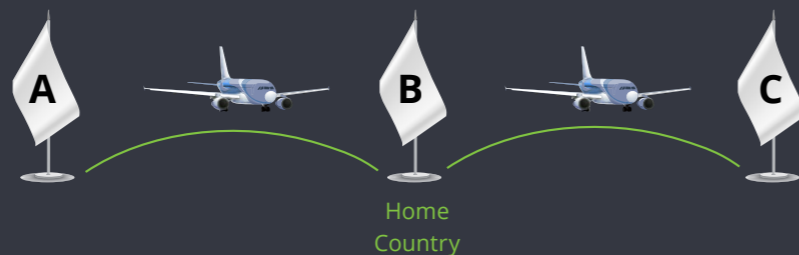
Fifth Freedom

(Sometimes referred to as beyond rights)
The rights for an airplane to take passengers from its home country (A), deposit them at destination (B) and then pick up and carry passengers on to another international destination (C)



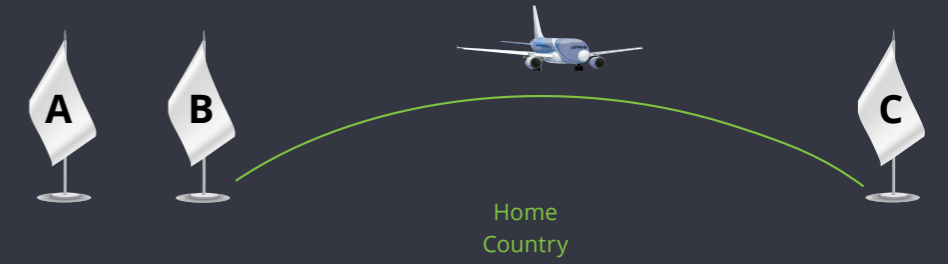
Sixth Freedom

(Combination of third and fourth freedoms)
The right for an airplane to carry passengers or cargo between two foreign countries (B & C) provided the aircraft touches down in the airline's home country (A).



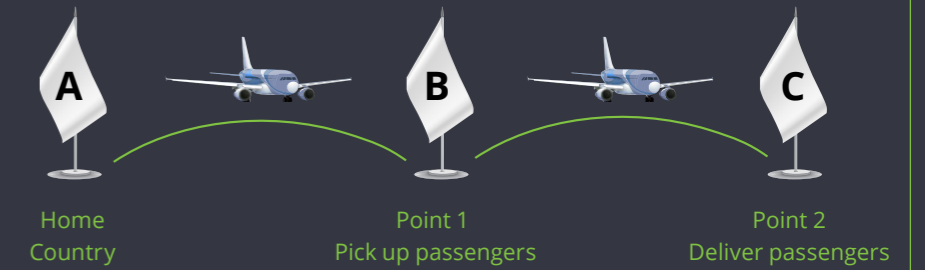
Seventh Freedom

The right for an airline to carry on flights that originate in a foreign country (B) bypass its home country (A) and deposit the passengers at another international destination (C).



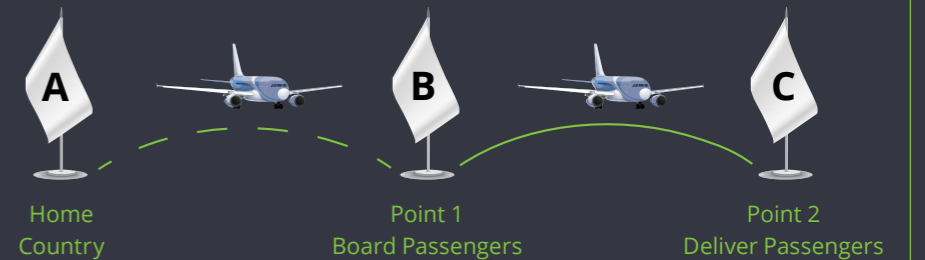
Eighth Freedom

The right for an airline to carry passengers from one point in the territory of a country (B) to another point within the same country on a flight that originates in the airline's home country (A). This freedom is also known as Cabotage and is extremely rare outside of Europe.



Ninth Freedom

The right for an airline from a particular country (A) to originate a flight in a foreign country (B) and carry passengers from one point to another within the foreign country. Also known as the stand-alone Cabotage. It differs from the aviation definition of true Cabotage, in that it does not directly relate to one's own country.



Freedom Rights for SAATM

SAATM would allow airlines the fifth freedom rights, which allow airlines to carry traffic to a third country, provided the flight originates or terminates in the partner country. These open-air agreements allow carriers of two or more countries to operate any route between the countries without interference in decisions about routes, capacity and pricing, making it easier for carriers to provide affordable, convenient and efficient air service for consumers.

For SAATM to work, there would be fifth freedom rights that would give other country airlines to pick passengers and drop them in another country. A good example would be looking at Rwanda Air that has fifth freedom rights with Kenya and Uganda where RwandAir moves from Kigali, drops and picks passengers in Nairobi Kenya and then flies to Entebbe Uganda where it can do the same.



The Application of Open Skies

The Open sky principal has been present in the world where two states sign air agreements with the aim of liberalizing aviation services. One of the most successful open sky treaty, and one that SAATM could learn from, is that of the European Common Aviation Area.

European Common Aviation Area (ECAA)

The ECAA was created in 2006 as an extension of the Single Aviation Market that was established in 2002 overseen by the European Aviation Safety Agency (EASA). Its legislation is enforced by the European Court of Justice (ECJ). The creation of the single European aviation market has seen a revolution in the economic and regulatory landscape of air transport in Europe.

The EU gradually moved to a single aviation market by sequentially putting in place mechanisms and regulations through “packages”.

After a transitional period until 1997, EU carriers also gained the right to operate a route within another Member State (so called “Cabotage”) which was an unprecedented step in international air transport.

First Package 1987	This package started to relax established rules. For intra-EU traffic, it limited the right of governments to object to the introduction of new fares. It gave some flexibility to airlines concerning seat capacity-sharing.
Second Package 1990	It continued liberalisation efforts in the same areas, allowing greater flexibility over the setting of fares and capacity-sharing. It also gave all EU carriers the right to carry an unlimited number of passengers or cargo between their home country and another EU country (3rd and 4th freedom traffic right).
Third Package 1992	It fully liberalised tariff setting, capacity, market access, introduced the possibility of Member States to tender public services obligations (PSO) and harmonised requirements for an operating licence for EU airlines.

ECAA benefits

The ECAA approach was gradual in its formation, allowing the different countries time to set in place mechanisms that would ensure the members attain benefit from the agreement. As a result of its successful implementation, the ECAA proffered several benefits to its members and the market.

- The treaty created **new markets for airlines**. This resulted in a significant increase of intra-EU routes available to consumers by 303% between 1992 and 2015. This growth has been sustained to date. For example, scheduled passengers carried between the UK and EU increased from 69 million passengers in 1996 to over 130 million in 2015.
- **Expansion of the airline industry.** This alleviation of commercial restrictions allowed EU network airlines to expand and intensify their “hub-and-spoke networks”, which led to more passengers for EU airlines and a larger share for EU industry
- **Development of low cost carriers.** The introduction of Low Cost Carriers such as Easy Jet and Ryan air, which provide service savings, operational savings and overhead savings, resulted in increased number of seats per aircraft, increased

daily flying time and elimination of free in-flight passenger services resulting in cost savings. In 2015, LCC accounted for 48% of seat capacity.

- EU aviation policy has had a positive impact on the **demand for aeronautical products**. By liberalising market access and ensuring the regulatory framework, standardisation and certification efforts enable for the export of aeronautical goods.
- Today the EU aviation sector directly employs between 1.4 and 2 million people and has created unprecedented opportunities for employment models such as multi-AOC airline consortia or pilots employed through agencies. In total the sector supports 4.7 to 5.5 million jobs (including indirect and induced impacts)
- Aviation has considerable multiplier effects, which increase the overall contribution to jobs and growth. This is seen mostly in the growth in tourism and contribution to the attractiveness of the EU as a business location.
- Direct contribution to the EU’s GDP by EUR 110 billion which increases to €300bn taking into account indirect and induced impacts.

³ An Aviation Strategy for Europe – European Commission

ECAA Challenges

The implementation of the ECAA has not been without its share of challenges. Two of the more recent challenges being experienced are⁴:

- The increase of intra-EU routes was accompanied by a strong shift towards more competition on these routes. The rise of strong competitors in the Gulf countries and Turkey is linked to this shift of the world's economic centre of gravity to the East. The geographical position of these countries enables them to tap into the rapid economic growth of Asia.
- Brexit - When the UK leaves the EU, the UK's membership of the ECAA would lapse. This would affect the ability of airlines to continue accessing the UK-EU route. Free movement of people is a key requirement for ECAA membership; and this is one of the key reasons why many in the Brexit camp wanted to leave the EU in the first place.

Other open sky treaties around the world

The EU-US Aviation Agreement

The EU-US Air Transport Agreement was negotiated and signed in two stages in 2007 and 2010 and governs the world's largest intercontinental traffic flows. The ultimate objective is to create a Trans-Atlantic Open Aviation Area: a single air transport market between the EU and the US with free flows of investment and no restrictions on air services, including access to the domestic markets of both parties. The benefits include:

- Airlines are allowed to fly without restrictions from any point in the EU to any point in the US. This triggered a dramatic increase in services particularly in those parts of the Trans-Atlantic market that were previously subject to significant restrictions on operations arising from the pre-existing bilateral agreements:

- The number of individual city pairs (departure and arrival at different cities) increased by 30%. The number of passengers grew by 18% to more than 52 million scheduled passengers between 2004 and 2014. A comparison with other key extra-EU markets shows that the US is by far the most important extra-EU market. For example, in July 2015, there were 4 million scheduled seats offered on EU-US flights, which is the combined number of seats offered to Switzerland and Turkey, which are currently the second and third most important extra-EU markets.⁵

The EU-Morocco Aviation Agreement

In 2006, the EU and Morocco signed an aviation agreement that provides for the abolition of all restrictions on nationality, capacity, frequency and routes by European or Moroccan airlines between the two regions. It also provides for far reaching regulatory convergence in areas such as air traffic management, safety and security, environment, competition and consumer protection. The aviation market between Morocco and Europe was previously governed by restrictive bilateral air transport agreements, constraining the potential for growth.

The benefits of the agreement was an increase in traffic where traffic increased from 5.6 to almost 12 million annual passengers between 2006 and 2014, achieving a compound annual growth rate of more than 11% across the period. Fares also reduced representing a consumer surplus gain of around EUR 3.5 billion. The EU-Morocco aviation agreement also contributed to the creation of jobs, notably in the Moroccan tourism sector, which in 2013 contributed to 1.8m, jobs (direct, indirect and induced) and contributed to 19% (direct, indirect and induced) to the Moroccan GDP⁶. Morocco welcomed more than 10 million tourists in 2013 – most of whom are from the EU. This number grew by almost 60% since 2006 – also due to the development of air traffic since the conclusion of the Agreement in 2006.⁷

⁴ Aviation and the European Common Aviation Area (ECAA)

⁵ An Aviation strategy for Europe - European Commission

⁶ Fair competition in aviation is a must - The European Cockpit Association

⁷ An Aviation strategy for Europe – European Commission

The ASEAN Single Aviation Market (ASEAN-SAM)^{8,9}

Association of Southeast Asian Nations Single Aviation Market (ASEAN-SAM) agreement was first entered into force in 2009 between 10 South East Asian countries. The agreement is geared towards the development of a unified and single aviation market among ASEAN. However, its implementation has been delayed as not all members had signed the different protocols by the target date of 1 January 2016. The benefits that are expected will be realized with the agreement:

- The treaty will account to USD 2.7Billion - USD 5.7Billion in additional direct GDP by 2025 to the Indonesian government;
- An additional 16,000 – 29,000 direct and indirect jobs by 2025; and
- Promotion of economic growth through enhancement of infrastructure policy, planning and investment.

50-60% increase in air traffic and tourism. The ASEAN Open countries are working towards harmonizing the infrastructure, capacity and agreeing on the freedom rights for all members.¹⁰

In all these case studies, the open skies agreements have more pros than cons to the countries that sign these agreements and hence a good background to having SAATM in Africa.



⁸ The State of ASEAN Aviation in 2016 – ASEAN Briefing

⁹ Implementation framework of the ASEAN single aviation market - ASEAN

¹⁰ An Aviation strategy for Europe - European Commission



Open Skies in Africa

Africa's Aviation scenario

Africa has an estimated 76.6 million annual air travellers. According to IATA¹¹. By 2035, it will see an extra 192 million passengers a year for a total market of 303 million passengers. The top ten fastest-growing markets in percentage terms will be in Africa: Sierra Leone, Guinea, Central African Republic, Benin, Mali, Rwanda, Togo, Uganda, Zambia and Madagascar. Each of these markets is expected to grow by more than 8% each year on average over the next 20 years, doubling in size each decade. The potential growth of the African air transport is further showcased by the fact that Africa is home to 16% of the world's population and yet only has a share of 2.2% of global air passenger traffic.

According to the 2017 Air Benefits Report by ICAO¹², Air transport in Africa supports 6.8 million jobs and contributed USD 72.5 billion to Africa's gross domestic product (GDP). Of this, USD 9.9 billion was a direct impact on Africa's GDP. Beyond this, the sector impact reaches economies in multiple ways.

- The effect of the procurement of goods and services through the supply chain has an impact of USD 11.3 billion.
- The benefits that arise when employees of the industry and its supply chain spend their wages in the local consumer economy account for another USD 5.2 billion of economic impact. Direct, indirect and induced, respectively, contribute USD 26 billion to the African GDP.
- In addition, the spending by foreign tourists in the continent accounts for USD 46 billion of the total economic impact.

With the high growth forecast in regards to air travellers, it is evident that a strong case for open skies in Africa exists.

What would SAATM mean for Africa?

What would SAATM mean for Africa? Air transport can open and connect markets, facilitating trade and enabling African organisations to link into global supply chains. It plays an especially pivotal role in just-in-time global manufacturing production and in speeding fresh produce from agricultural communities to appropriate markets. Enhancing air connectivity can help raise productivity by encouraging investment and innovation; improving business operations and efficiency; greater cooperation between African airlines; access to cross-border investments and mergers.

Air transport is indispensable for tourism. According to ICAO, aviation supported USD 46 billion of GDP to Tourism sector in Africa. Examining some of Africa's most well known Tourist destinations reveals:

- 5.1% of Kenya's GDP is supported by air transport & foreign tourists arriving by air, and foreign tourists spent USD 0.8 billion in 2014.¹³
- 4.4% of Egypt's GDP is supported by air transport & foreign tourists arriving by air, and foreign tourists spent USD 6.9 billion in 2014.¹⁴
- 3.5% of South Africa's GDP is supported by air transport & foreign tourists arriving by air, and foreign tourists spent USD 9.2 billion in 2014.¹⁵

Convenient air service facilitates the arrival of larger numbers of tourists to a region or country. The opportunity for new jobs include the employment at airports and navigation services providers as well as many other positions along the air transport value chain. However, there is a need to analyze the source markets for African states to ensure they take full advantage of SAATM to grow its tourism business. Currently, East and Central Africa is the largest source market for Kenya followed by Europe and the Middle East with growth in the United States.

Africa's History on Open Skies

On 17 October 1988, the Ministers in charge of Civil Aviation of forty African States met in Yamoussoukro, Ivory Coast, and adopted a new African Air Transport Policy, known as "**Declaration of Yamoussoukro on a New African Air Transport Policy**", which is commonly referred to as the "**Yamoussoukro Declaration**." The Declaration envisaged the gradual liberalisation of the Aviation sector within Africa. This was proposed to be done through:

01. The integration of airlines in three phases over a period of eight years.
02. Gradually eliminating the need to exchange traffic rights.
03. Have African Civil Aviation Administrations and airlines undertake to increase cooperation aimed at minimising operating costs and thereby reducing tariffs.

¹¹ IATA Forecasts Passenger Demand to Double Over 20 Years

¹² Aviation Benefits – 2017 – ICAO

¹³ The Importance Of Air Transport To Kenya (2016)- IATA

¹⁴ The Importance Of Air Transport To Egypt (2016)- IATA

¹⁵ The Importance Of Air Transport To South Africa (2016)- IATA

The policy geared towards a comprehensive reform of the air transport industry and the unification of the fragmented African air transport market. Unfortunately, the declaration did not come to fruition however it has always been an agenda for the AU. In 2013, the liberalization of air transport as part of the continent's socio economic and development agenda was included in the African Union (AU) Agenda 2063 as a flagship project leading to the launch of SAARM in 2018.

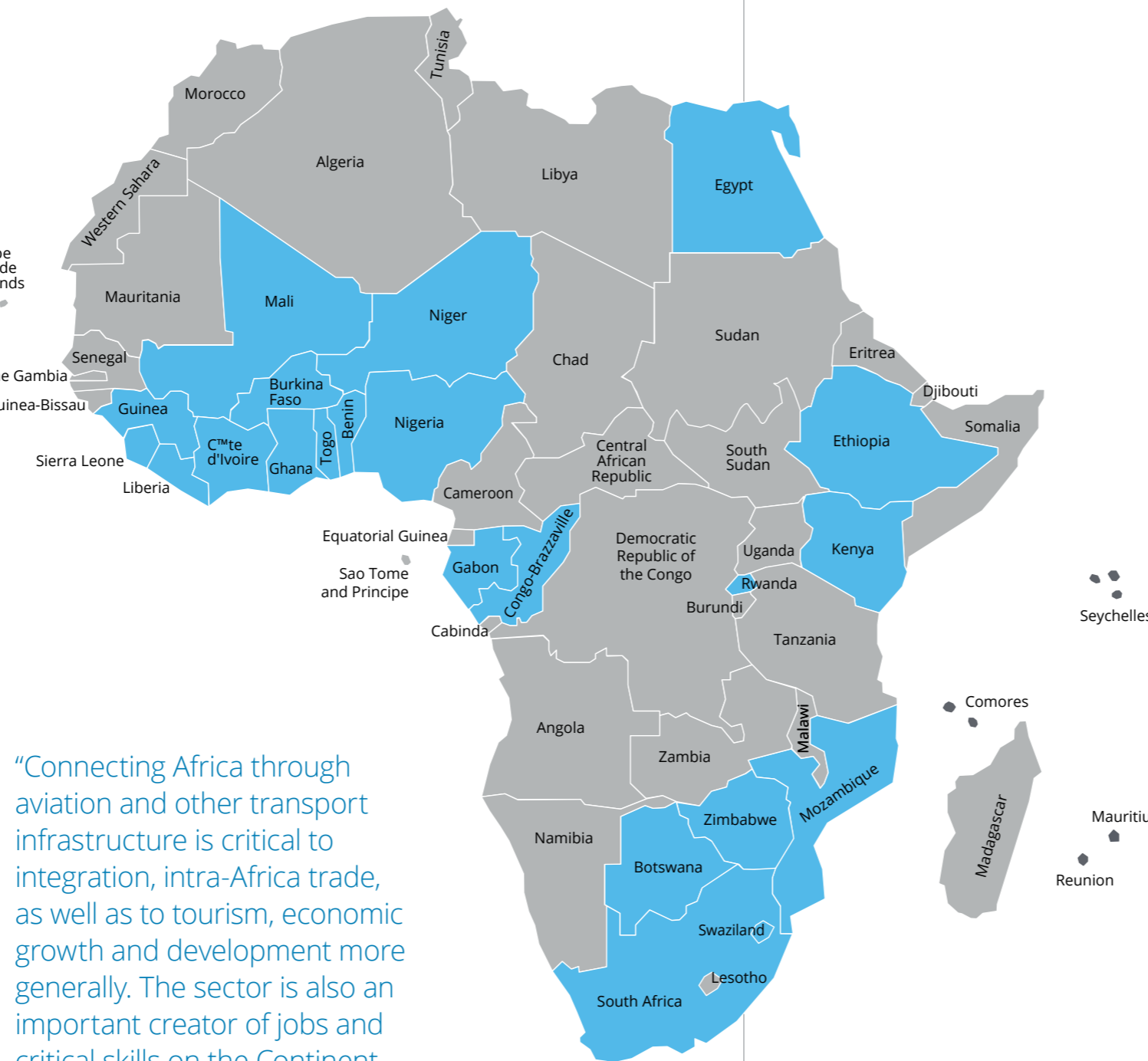
What would SAATM seek to achieve

SAATAM picks up from the 1999 Yamoussoukro Decision¹⁶ which called for:

- The full liberalization of intra-African air transport services in terms of market access;
- The free exercise of first, second, third, fourth and fifth freedom traffic rights for scheduled and freight air services by eligible airlines;
- Eligibility criteria for African carriers;
- The full liberalization of frequencies, tariffs and capacity;
- Safety and security standards for African carriers; and
- Mechanisms for fair competition and dispute settlement and consumer protection.

The full implementation of the 1988 Yamoussoukro Declaration, ultimately, the single market will evolve into a common aviation area, calling for:

- The abolition of bilateral air service agreements between Member States for intra-Africa traffic;
- Recognition of community airlines owned by African nationals;
- Harmonisation of competition regulation; and
- Establishment of a Board of Appeal and an Arbitration Tribunal to guarantee the basic rights of the consumer.



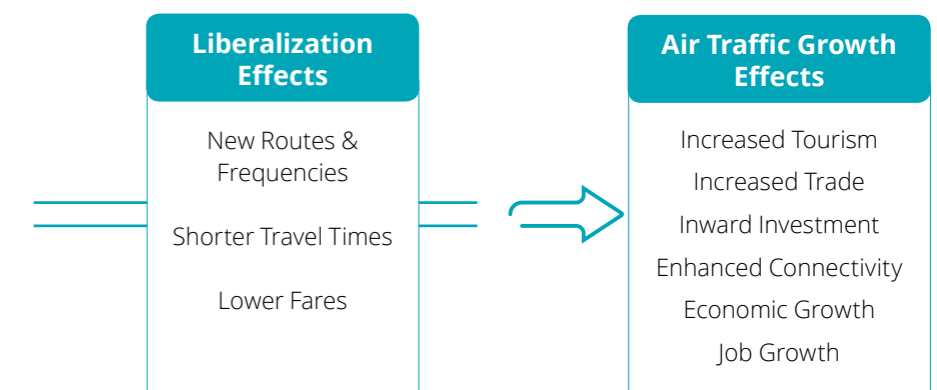
“Connecting Africa through aviation and other transport infrastructure is critical to integration, intra-Africa trade, as well as to tourism, economic growth and development more generally. The sector is also an important creator of jobs and critical skills on the Continent. The aviation sector is strategic for the implementation of Agenda 2063”

AUC Chairperson H.E. Dr. Nkosazana Dlamini-Zuma, (2015)

Benefits of Liberalising African Skies (IATA)

A report published by the International Air Transport Association (IATA) outlines the benefits that would accrue if 12 African nations were to implement the 1999 Yamoussoukro Decision. The 12 nations in the report are: Algeria, Angola, Egypt, Ethiopia, Ghana, Kenya, Namibia, Nigeria, Senegal, South Africa, Tunisia and Uganda.

The report demonstrated that complete air connectivity across these 12 countries would provide an extra 155,000 jobs and USD 1.3 billion in annual GDP. A potential five million passengers a year would be able to travel due to the fare savings. Ticket prices would go down by as much as 35% and trade would grow by USD 430 million.



Jobs and GDP Impact for the 12 countries - IATA¹⁸

Country	Additional Employment	Additional GDP (USD M)
Algeria*	11,100	123.6
Angola*	15,300	137.1
Egypt**	11,300	114.2
Ethiopia	14,800	59.8
Ghana	9,500	46.8
Kenya	15,900	76.9
Namibia*	10,600	94.2
Nigeria**	17,400	128.2
Senegal*	8,000	40.5
South Africa	14,500	283.9
Tunisia*	8,100	113.7
Uganda*	18,600	77.6

A recent example of this in Africa is South Africa's and Zambia 2013 bilateral open-skies agreement. This resulted in benefits being realized in regards to fares and costs

where fares between the two countries fell by nearly 40 percent and there was a 38% increase in passenger traffic as well as higher travel frequencies.

*Not signatories to SAATM.

** Have since pulled out from their initial commitment to SAATM

¹⁶ Decision Relating To The Implementation of The Yamoussoukro Declaration Concerning The Liberalization Of Access to Air Transport Markets In Africa

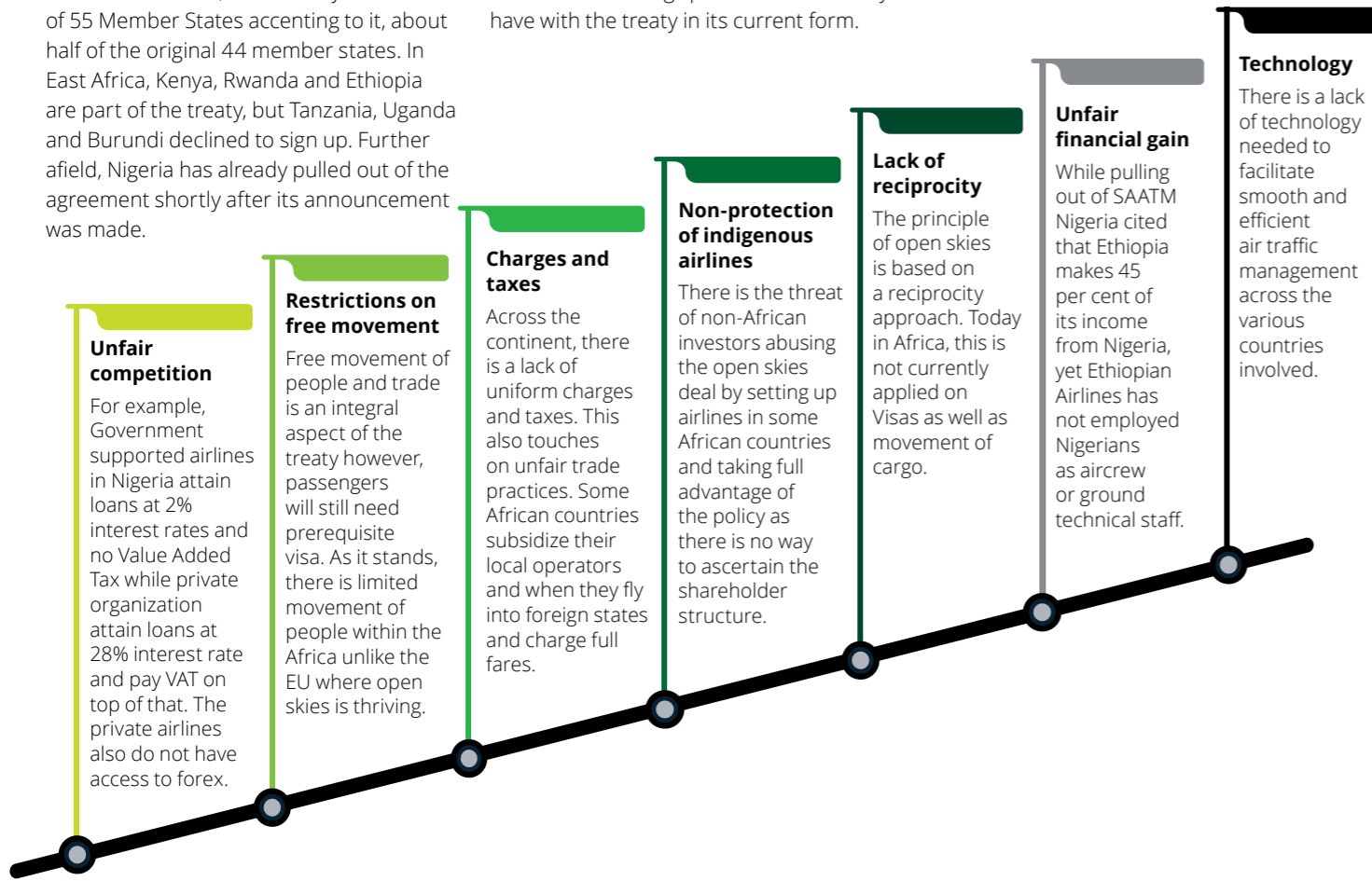
^{17, 18} Significant Benefits of Liberalized African Air Markets - International Air Transport Association

SAATM's challenges: A lack of an implementation framework

Despite these benefits, SAATM is facing an adoption challenge across the continent. At its announcement, SAATM only had 23 out of 55 Member States acceding to it, about half of the original 44 member states. In East Africa, Kenya, Rwanda and Ethiopia are part of the treaty, but Tanzania, Uganda and Burundi declined to sign up. Further afield, Nigeria has already pulled out of the agreement shortly after its announcement was made.

Concerns hindering the adoption of SAATM

Some countries such as Nigeria¹⁹ and Egypt have pulled out of the treaty. They have raised the following specific concerns they have with the treaty in its current form.



Unfair competition
For example, Government supported airlines in Nigeria attain loans at 2% interest rates and no Value Added Tax while private organization attain loans at 28% interest rate and pay VAT on top of that. The private airlines also do not have access to forex.

Restrictions on free movement
Free movement of people and trade is an integral aspect of the treaty however, passengers will still need prerequisite visa. As it stands, there is limited movement of people within the Africa unlike the EU where open skies is thriving.

Charges and taxes
Across the continent, there is a lack of uniform charges and taxes. This also touches on unfair trade practices. Some African countries subsidize their local operators and when they fly into foreign states and charge full fares.

Non-protection of indigenous airlines
There is the threat of non-African investors abusing the open skies deal by setting up airlines in some African countries and taking full advantage of the policy as there is no way to ascertain the shareholder structure.

Lack of reciprocity
The principle of open skies is based on a reciprocity approach. Today in Africa, this is not currently applied on Visas as well as movement of cargo.

Unfair financial gain
While pulling out of SAATM Nigeria cited that Ethiopia makes 45 per cent of its income from Nigeria, yet Ethiopian Airlines has not employed Nigerians as aircrew or ground technical staff.

Technology
There is a lack of technology needed to facilitate smooth and efficient air traffic management across the various countries involved.

Case study: Air Afrique²⁰

One of the key principles behind open skies is the removal of restrictions on ownership of airlines. This is not new in Africa. In 1961 newly independent West African governments created Air Afrique as a symbol of regional integration. The airline was done through the Treaty of Yaoundé, signed on 28 March 1961 and was mainly owned by 11 West African countries, Air France and UAT (Union Aéromaritime de Transport) a French airline. Air Afrique was established as the official transnational carrier for francophone West and Central Africa and had its headquarters in Abidjan, Ivory Coast. It was supposed to be a solution to the reality of uneconomic national airlines. The carrier was a member of the IATA as well as the French Union's smaller IATA-like Association Internationale de Transporteurs Aériens Francophones (ATAF). The airline brought about the expansion of the airline's routes to numerous African capitals and European and Western countries. The passenger traffic grew from 300,587 to 757,323 passengers per year/month between 1961 and 1985, and to an extent, it fulfilled some of its original ambition of being seen as a sign of regional integration and progress. However, a number of issues lead to the demise of Air Afrique. First was the lack of an institutional framework for the different states. Secondly, the purchase of aircraft exposed it to foreign currency risks and consequently doubled the value of the debt due to devaluation of the currency. In addition, the airline was saddled with huge personnel enlistment and unpaid air tickets from governments. Finally, a collapsed debt-rescheduling plan led to the seizure of aircraft, which lead to unbearable delays, and cancellation of flights. All these brought the airline to its knees in 2001 despite numerous attempts to revive the airline.

¹⁹ Airline Operators of Nigeria reject proposed African open skies
²⁰ The Rise and Fall of Air Afrique

SAATM - good on paper, but far from good!

At the onset, SAATM looks good on paper however there are a number of factors that must be put in place to ensure that SAATM benefits the individual country as it liberalizes the African sky. In a move that appears to be similar to the Airline Deregulation Act of the US, the recently launched SAATM lacks the proper mechanisms required to govern the different airlines. It differs with the original 1988 Yamoussoukro Declaration in its lack of clear mechanisms and rules that would be used to implement SAATM. Further, its proposal for an 'instantaneous' roll out and its lack of a phased approach to implementation will likely be to the detriment of most signatories and go against ICAO's initiative of No Country Left Behind (NCLB).²¹

NCLB focuses and expands ICAO's support to States for globally harmonized implementation of SARPs so that all States have access to the significant socio-economic benefits of a safe and reliable aviation system. These socio-economic benefits include: expanded tourism; greater access for businesses and producers to foreign supplies and markets; improved emergency transport and search and rescue capabilities; and many other cultural and economic advantages arising from the global connectivity provided by aviation. SAATM can apply ICAO's initiative of No Country Left Behind (NCLB) campaign to assist States to effectively implement ICAO Standards and Recommended Practices (SARPs) and policies to enable standardization of the aviation industry.

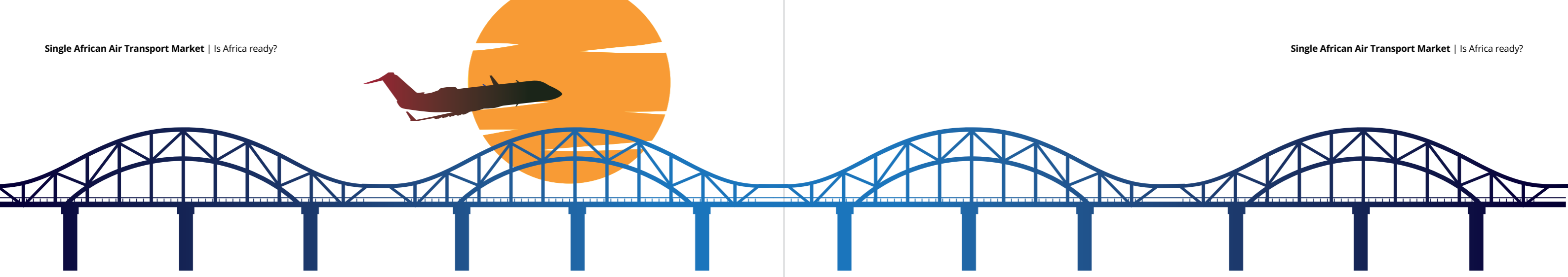
SAATM needs to be governed through rigorous legal mechanism that all parties must adhere to. An agreement on all the below mechanisms will ensure a level playing field. Without this, SAATM will either favour few states or collapse entirely as each state looks after its own interests.

- Competition;
- Consumer Rights;
- Commercial Viability;
- Fees and Taxes;
- Infrastructure; and
- Safety Standards.

A case of unintended consequences: The US Airline Deregulation Act^{22,23,24}

The effects of a lack of an implementation framework can be best illustrated by the events that followed the 1978 Airline Deregulation Act in the USA. This move caused profound changes in aviation and the aeronautical industry. Prior to the Act, airlines competed on service alone, as fares were regulated by the government. Deregulation resulted in the rise of Low-Cost Carriers like Southwest and the collapse of larger carriers like Pan Am. It also significantly reduced the powers and eventually dissolved the Civil Aeronautics Board, allowing passengers to be exposed to market forces in the airline industry. Immediately following deregulation and for a few years after, airline prices dropped and passengers increased especially with LCC's coming into the market. To increase their efficiency, airlines adopted the hub-and-spoke system using a few major airports as central connecting points. This maximized aircraft use, increased passenger loads, and kept more aircraft flying. However, it increased airport and air traffic congestion and eliminated many convenient nonstop flights. Moreover, where one airline dominated a hub, the lack of competition often led to higher fares. One of the stated goals of the Deregulation Act was "the avoidance of unreasonable concentration which would tend to allow one or more air carriers to unreasonably increase prices, reduce services or exclude competition." However, a 2015 report by the Associated Press found that at 40 of the 100 largest U.S. airports, a single airline controls a majority of the market, as measured by the number of seats for sale. This was up from 34 airports a decade earlier. By 2015, after years of consolidation, the US had four major airlines that controlled 80% of the market. Overall, domestic fares climbed 5 percent over the same period, after adjusting for inflation excluding other add-on charges that many fliers now pay. Airlines also shed routes they no longer wanted, prompting the provision of 'Essential Air Service.' Under this program, the Department of Transportation determines the minimum level of service required at each eligible community by specifying a hub through which the community is linked to the national network. The programme cost USD 283 million in 2016 having grown by about 47% since 2012 in nominal dollars. The deregulation also did not serve to better the fortunes of the airlines. In 27 years prior to deregulation, no airline went bankrupt. On the other hand, 160 airlines have ceased activities in the United States since 1978. In 2005, almost all major North American airlines filed for bankruptcy. It is important to note that pre-deregulation prosperity of airlines was also a result of government regulating fares that ensured the profitability of airlines. Despite this Deregulation benefited the US aviation industry through lower fares where the average of the fares that passengers actually paid—declined 30 percent in real, inflation-adjusted terms. The industry also experienced an improvement in productivity in terms of infrastructure and allowed better adaptation of equipment to markets. However, the demise of many carriers, reduction in service quality and dominance of hubs in the market is a case of unintended consequences of deregulation.

²¹ No Country Left behind - ICAO
²² Effects of the Airline Deregulation Act on Aeronautical Industry - International Journal of Advance Innovations, Thoughts & Ideas
²³ Essential Air Service (EAS) – Rachel Tang (Congressional Research Services)
²⁴ Airline Deregulation



Mechanisms necessary for SAATM's success

Based on the various case studies, for any open sky agreement to succeed, there must be certain rules that the signatory countries must adhere to. These rules are put in place through the various mechanisms that are the core to the agreement and must be followed.

Competition

A Competition policy aims to provide and maintain a level playing field where economic actors, and in this case, nations, can freely and fairly compete and that will ensure that the different nations do not engage in practices that would put any other actor at a disadvantage.

The Yamoussoukro Decision formed an executing agency; African Civil Aviation Commission AFCAC and one of its mandates was that on Competition. According to article 7 of the decision *“State Parties shall ensure fair opportunity on non-discriminatory basis for the designated African airline, to effectively compete in providing air transport services within their respective territory.”*

In addition “AFCAC shall put in place adequate rules of competition in Air Transport services and dispute resolution mechanisms.

The need for a strong competition regulator is especially important due to:

- Differences in levels of aviation development between AU Member States;
- Concerns regarding the protection of individual state interests; and
- The lack of a level playing field for airlines within their jurisdictions among others

To illustrate the importance of a competition policy, we can look at Ethiopia's national airline, Ethiopia Airways. In July 2017, Ethiopia Airways merged with Ethiopian Airports Enterprise (EAE) to create the Ethiopian Airlines Group. The merger allows the Group to provide airport services to air operators, and construct, expand, maintain and administer airports that were the domains of EAE. This has caused ripples in the industry with stakeholders expressing a fear of monopoly and conflict of interest in the aviation industry. Opening the up the market to allow for fifth freedom right will expose its competitors to a distinct disadvantage owing to this relationship. This would be due to the possibility of influence across the airports operator from the airline. Further, its size and the size of its network given its significant ownership of airlines in West, Central, Southern, and East Africa would allow it to easily engage in a price war. This is reminiscent of what happened to some of the smaller players in the US, following the Airline Deregulation Act.

Without a comprehensive competition law, countries would be hard pressed to get into an open skies agreement with Ethiopia. Nigeria has already been vocal with its concerns with Ethiopian airlines. According to airline industry stakeholders without a competition mechanism in place, AU Member States could see the downfall of their national carriers possibly through a price war. Passengers will generally go for the cheaper option and without these regulations, resulting in the cannibalisation or collapse of competitors. After that, the dominant airline will be operating in a monopolistic environment and could then adjust fares at will.

What should be done?

In Deloitte's opinion, SAATM needs to consider various aspects in regards to ownership and effective control, eligibility, infrastructure, capacity and frequency of flights. In this situation, we turn to various international treaties as guideposts to developing our own regulation. Some of the treaties we have referred to include:

01. The European Commission Treaty,
02. The Agreement between the Government of the United Kingdom and the Government of the United States of America relating to Air Services between their Respective Territories (Bermuda I Agreement)
03. The Consolidated air services agreement between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland (Bermuda II Agreement)

Anti-Competitive agreements between players:

Article 81 of the EC Treaty (ex Article 85) prohibits "...all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market..."

Abuse of Dominant positions:

Article 82 of the EC Treaty "Any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market insofar as it may affect trade between Member States."

State Aid

Article 87 of the EC Treaty (ex Article 92) "Save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between Member States, be incompatible with the common market."

Article 87 of the EC Treaty is especially important as the Yamoussoukro Decision specifically states effective control by a State Party as one of the eligibility criteria for airlines. This provision within YD in essence locks out private airlines and goes against the very principles of Open skies.

Ownership and Control

The Agreement between the Government of the United Kingdom and the Government of the United States of America relating to Air Services between their Respective Territories (Bermuda I Agreement) provides a good guidance on ownership and control. Under Article 6 it states, "each Contracting Party reserves the right to withhold or revoke the exercise of the rights specified in the Annex to this

Agreement by a carrier designated by the other Contracting Party in the event that it is not satisfied that substantial ownership and effective control of such carrier are vested in nationals of either Contracting Party"

Furthermore, according to Article 3(6) of the Bermuda II Agreement, each Contracting Party is required to grant the appropriate operating authorisations and technical permissions to an airline when certain conditions are satisfied, including the condition that substantial ownership and effective control of that airline be vested in the Contracting Party designating the airline or in its nationals. This ensures a fair playing ground for the states under the treaty.

Dispute resolution

There is also a need to put in place a working governing body that is empowered to resolve disputes among states and prevent economic waste caused by unreasonable competition. This mechanism is already stipulated in the Chicago convention under Article 84 which states "If any disagreement between two or more contracting States relating to the interpretation or application of this Convention and its Annexes cannot be settled by negotiation, it shall, on the application of any State concerned in the disagreement, be decided by the Council."

SAATM states that YD provides for the creation of an African Aviation Tribunal, to facilitate the dispute settlement mechanism. However, YD does not mention a Tribunal, but rather a Monitoring Body. This Body's responsibilities include stating its views on any disputes, interpretation of the Decision and recommending solution to the dispute. The stated African Aviation Tribunal needs to be set up and empowered to take up the role of an arbitrator within SAATM.

Importance of competition legislation

The Competition legislation in the aviation industry is key in ensuring fair playing ground for all signatories however, it also shields signatory nations from external competition.

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In 2017, the EU revised the current Regulation that grants all carriers, European and non-European, the same rights and same opportunity of accessing air transport related services. This was being done in order to safeguard fair competition in EU external aviation relations and reinforce the competitive position of the EU aviation industry, ensure reciprocity and eliminate unfair practices.²⁵

This has been brought on by 'booming' airlines from the Gulf region who have expanded their capacity on many of the routes previously serviced by European carriers. Consequently, European airlines are not only losing market share, they are losing entire markets while the Gulf carriers are not creating additional demand. The problem is that many of these gulf airlines are (partly) state-owned, supported by state subsidies, benefitting from access to cheap (airport) infrastructure, fuel and capital.

Aviation Competition legislation in Africa ²⁶**COMESA-EAC-SADC JOINT COMPETITION AUTHORITY (JCA)**

The Joint Competition Authority (JCA) was established under the Regulations for Competition in Air Transport Services within the Common Market for Eastern and Southern Africa (COMESA), the East African Community (EAC) and Southern African Development Community (SADC) of 2004. The JCA was launched to oversee the full implementation of the Yamoussoukro Decision on Air Transport in the three RECs commencing January 2009. The Decision Relating to the Implementation of the Yamoussoukro Declaration Concerning the Liberalization of Access to Air Transport Markets in Africa signed served as the backbone of this project.

The objective was the need to develop a framework to assist the Regional Economic Communities (REC) to institutionalise the JCA for the purpose of overseeing the full implementation of the Yamoussoukro Decision within the common territory of the Tripartite RECs. Article 7 of the JCA looked at the compliance with the Regulations for competition in Air Transport Services within the RECs. The article stipulates, "Each Member State undertakes to implement within its territory the Regulations for competition in air transport services within COMESA, EAC, and SADC of 2004 to promote and guarantee free and fair competition within the three RECs."

Unfortunately, the operationalisation and execution of the JCA has been delayed due in part to the absence of an active monitoring institution.

Consumer Rights

For any Open Skies Agreement to work, it is essential to put in place clear regulation that ensures no infringement harms the interest of consumers in any of the Member States and gives competent authorities the right to conduct simultaneous investigation and these enforce measures. Under SAATM, AFCAC, as the executing agency has this mandate where it states, "Aviation Authorities and service providers shall establish consumer service units to enlighten consumers of aviation services of their responsibilities and rights as well as address their grievances". In addition, "All aviation service providers must avoid all forms of predatory pricing and other

anti-competitive behaviours." While this was adequate prior to SAATM, consumer protection now needs to be a harmonised across member signatories in order to afford all consumers equal rights.

An early effort at harmonisation came from the tripartite initiative between COMESA, EAC and SADC that eventually led to the formation of JCA, which attempted to address consumer protection. It went as far as drafting policies and guidelines and setting a framework for their implementation. The framework identifies key principles such as "conducting air transport in the interest of the consumer and whose interests shall be considered

²⁵ Regulation of the European parliament and of the council on safeguarding competition in air transport, repealing Regulation (EC) No 868/2004

²⁶ A Framework For The Operationalization of The COMESA-EAC-SADC Joint Competition Authority (JCA)

as protected”; and “considering liberalised routes as a public good held for the use of and interest of the citizens.” The final report on the development of the framework also included YD-compliant Air Service Agreement template that recognised that efficient and competitive international air services are important to benefit consumers. Unfortunately, despite the adoption of the Common Regulations for Competition of Air Transport Services implementation remains pending in all three RECs to date.

Therefore, the situation that remains across Africa is one where different states have their own consumer protection laws. For example, In Kenya, the Consumer Protection Act under the Civil Aviation Act (Cap. 394) protects the consumers when it comes to the aviation. The law provides for passenger rights and the standards of service by air carriers including access to necessary services while on a grounded air carrier, customer complaints, notification of delays, cancellations, overbooking, baggage concerns, compensation for passengers and the right to deplane where such rights are infringed.

On its part, the EU has comprehensive consumer protection regulations. Article 22 of the EU Regulation 1008/2008²⁷ provides airlines with pricing freedom. However, it goes ahead to state that “...Member States may not discriminate on grounds of nationality or identity of air carriers in allowing Community air carriers to set fares and rates for air services between their territory and a third country.” Article 23 obliges airlines to disclose all applicable conditions when offered or published. The final prices should include the applicable airfare, taxes, charges, surcharges and fees which are unavoidable and foreseeable at the time of publication.

In addition, EU regulation 261/2004²⁸ establishes common rules on compensation and assistance to passengers in the event of denied boarding, flight cancellations, or long delays of flights. Airlines are obligated to

either reimburse or re-route passengers in case of long delays and cancellations. It requires compensation of €250 to €600 depending on the flight distance for delays over 4 hours, cancellations, or being denied boarding due to overbooking. Shorter delays mean a percentage of the full compensation. Airlines must provide refreshments and accommodation where appropriate. The European Court of Justice enforces this regulation. Every year, the EU member states network identify common enforcement priorities and carry out sweeps or systematic checks to investigate breaches of consumer protection law. The members coordinate their legal approach on consumer rules and adopt a common position.

A lack of a proper consumer protection mechanism exposes SAATM to a lack of adoption due to consumers not having a platform in which they can seek redress where they feel aggrieved. All signatory member states will need to adopt and enforce harmonised, consumer protection regulations in order to give all consumers across the continent a level playing field when using their services. It is only then that SAATM will be able to achieve its objective of ensuring the sustainable development of air transport in Africa.

Commercial viability – Capacity, frequency and equipment

The Chicago convention identifies sound economic operation as one of the tenets of any open skies treaty. Similarly, the primary purpose of the 1988 Yamoussoukro Declaration was to create a conducive environment for the development of intra-African and international air services. At the end of the day, the commercial aviation industry needs to provide fair returns to its investors. The Single African Air Transport Market is a flagship project of the African Union Agenda 2063, strategic framework for the socio-economic transformation of the continent.

According to the 2017 IATA report, Africa commands only 2.2% of global passenger traffic. According to ICAO's long-term traffic forecasts, passenger traffic for the Africa region is expected to grow by around 3.8 percent annually up to 2032.

²⁷ Regulation (EC) No 1008/2008 of The European Parliament and of The Council

²⁸ Regulation (EC) No 261/2004 of the European Parliament and of the Council

This differs with IATA's 2016 forecast that Africa will grow by 5.9 percent by 2036 higher than the global average of 3.6 percent. Given Africa's underdeveloped road and rail infrastructure as well as the size of the continent, air transport will be an important means of transport going forward. However, for this to be achieved, Africa needs to first facilitate the growth in capacity by addressing two major obstacles to capacity growth: high airfares and the free movement of people.

Air transport in Africa is expensive. This situation is further exacerbated by the relatively low disposable incomes across the continent making air transport less accessible to the average African. More worryingly is that it is sometimes more expensive to travel within Africa than it is to travel out of Africa. For example, a 5-hour non-stop flight from Nairobi to Dubai costs about USD 365, while a 4hr 40min non-stop flight from Nairobi to Johannesburg will cost you a minimum of USD 815. In order to travel to Johannesburg at a fare similar to the Dubai one, one needs to take a 9-hour flight with a stop at Addis Ababa. The second option may be attractive to a leisure traveller on a budget, but may not be attractive to a business traveller. The relatively low fare on the second option to Johannesburg raises a question of whether the flight is commercially viable and whether any anti-competitive practices may be in play such as state aid.

The second area that will need to be addressed to enhance capacity is the free movement of people. Opening up of the skies will need to be accompanied by less restrictive visa requirements between member states. The African Passport and free movement of people is one of the AU's flagship projects under Agenda 2063. This needs member states to sit at a table to harmonise visa rules amongst each other and to eventually implement these standards. The AU already has in place a “Draft protocol to the treaty establishing the African Economic Community relating to free movement of persons, right of

residence and right of establishment.” The ratification of this protocol will go a long way in facilitating intra-African travel.

The fact that travel within Europe is unrestricted for Europeans and for non-Europeans with a Schengen VISA has been key to promoting the fortunes of Europe's carriers. European carriers surpassed 2014's operating profits²⁹: USD 7.4 billion in 2015 compared to USD 1 billion in the previous year. IATA forecasts that Airlines in Europe are expected to deliver a net profit of USD 11.5 billion in 2018. In 2015, Europe's top three airlines by profitability were Lufthansa, Ryanair and IAG, the first and the latter Full Service Carriers (FSC), while Ryanair operates as a Low Cost Carrier (LCC). In terms of passenger volumes, Ryanair was the top European carrier in 2015, followed by Lufthansa and EasyJet. The growth of Ryanair and EasyJet serves to demonstrate the potential for LCC's in Africa given the right market conditions.

The right market conditions in Africa will need to be within a well-established legal framework. One of the key issues to be tackled within this framework will be capacity. In this regard, we can refer to the Bermuda I and II treaties that governed USA and UK open skies treaty. These treaties state “there shall be a fair and equal opportunity for the carriers of the two nations to operate on any route between their respective territories (as defined in the Agreement).” They also go further and say, “in the operation by the air carriers of either Government ..., the interest of the air carriers of the other Government shall be taken into consideration so as not to affect unduly the services which the latter provides.” In essence, airlines of either country could introduce as many services as they saw fit within the overall capacity constraints set out by the Agreement. However, it remained open for either Government to object that the airlines of the other country were putting too much capacity on a route, a matter which would then be reviewed, possibly leading to a reduction or an increase in frequency.

²⁹ 2016 EU Air transport Industry Analyses report

What about cargo?

When it comes to Cargo, SAATM will facilitate trade in Africa, and allow connections beyond areas where the cargo airlines have not reached before. IATA forecasts a growth in Airfreight in Africa due to a strong upward trend in traffic between Africa and Asia. SAATM would enhance Africa's intra-continental trading. However, this has limitations. The first constraint is that African countries generally produce similar products limiting how much trade can effectively take place between them. Second, according to stakeholders in the airline industry view, while SAATM is a noble initiative it is mainly passenger driven with Cargo as an afterthought. In this regard, SAATM did not look at some of the imbalances that would affect the cargo trade in the continent.

Africa has the least intra-continental trade; currently standing at 10 percent as compared to other continents such as Asia. Most countries in the continent produce the same primary goods. Another challenge seen in the cargo industry is lack of infrastructure with some countries not being able to handle cargo. Thirdly, in Africa, countries are protective of their space and there is use of covert practices such as imposing high navigation and freight costs. For example to transport cargo to Ethiopia costs 4 times more than what it costs to bring in cargo to Kenya and it is cheaper to deliver flowers to West Africa through Europe as compared to delivering them straight from Kenya! One industry stakeholder in the logistics space noted that, "the challenge with air transport is not in flying the goods to a country, but rather in getting the goods through customs in a speedy manner while paying a fair taxes and duties."³⁰ According to them, customs clearance may take as long as the actual flight to bring in goods. In addition, the valuation of items can sometimes be arbitrary especially for unique items.

SAATM should be driven by trade and each country assured of the benefits to be attained. For SAATM to work, there is a need for reciprocity and clear rules of engagement.



These rules of engagement should encompass all aspects of transportation of airfreight in accordance with ICAO guidelines. Stakeholders in the logistics space will also be looking to aspects of optimisation in terms of cost and transit time and this may call for a change in their business models to take full advantage of SAATM. It is also anticipated that the proper implementation of the Continental Free Trade Area will go a long way in addressing trade barriers that they face.

³⁰ Logistics Company

Tax regimes, airport fees and repatriation of funds

Specific national taxes on aviation are applied by different countries. Depending on their application, these taxes could promote or harm the competitiveness of the air transport sector with wider economic repercussions. SAATM in its current form does not have any direct mention of the harmonization or application of taxes and fees. However it identifies "high charges" at some airports and "other restrictions imposed to restrict competition to national airlines" as challenges faced by airlines in the market. It goes further to state that "these challenges will be resolved the once the Executing Agency of YD, AFCAC, becomes effectively functional."

Hence, until AFCAC becomes fully operational, there remains the possibility of some states unfairly applying their tax regimes and regulations to take advantage of SAATM. Of concern are government backed airlines and the advantages they receive in taxes as compared to private owned airlines.

Regarding repatriation of funds, Article 11 of the Yamoussoukro Decision grants airlines to the right to request, and in accordance with applicable foreign exchange regulations, convert and remit to the country of its choice, all local revenues from the sale of air transport services and associated activities directly linked to air transport in excess of sums locally disbursed. Conversion and remittance is to be permitted promptly without restriction, discrimination taxation in respect thereof in accordance with the applicable foreign exchange regulations. The application of this article will remain a hurdle in today's African context. In the last few years, several African countries have imposed limits on the exchange and remittance of foreign currency. This has put many airlines in dire straits due to working capital being locked in a foreign state.

An example of how to address issues around taxes, airport fees and repatriation of funds can be borrowed from the West African Economic and Monetary Union (WAEMU)³¹ Competition Law that was adopted in May 2002, which consisted of among others:

- Control of state support within WAEMU that could distort competition, for example, subsidies or no landing taxes for a particular corporation or airline; and
- Cooperation between the WAEMU Commission and national authorities in law enforcement. WAEMU competition law takes precedence when in case of a conflict with national law

³¹ West African Economic and Monetary Union



Conclusion

Aviation is one of the greatest enablers of economic growth and largest tourism enabler. States should view aviation as an instrument of economic advancement. This can only materialise should states see the aviation industry and specifically airlines, as infrastructure to enable growth and not necessarily for commercial objectives. This is best exhibited by the Economic Impact of aviation in the United Arab Emirates³² where their Emirates Airline, Dubai Airports and the aviation sector as a whole contributed \$26.7 billion to the Dubai economy in 2013, which was almost 27%* of Dubai's GDP and supported a total of 416,500 jobs accounting for 21% of the emirates' total employment. The region is seen to have a potential economic contribution of 44.7% of total GDP and 35.1% of total employment by the year 2030. These lofty growth ambitions are exactly what SAATM should be seen as providing. However, it should only be implemented under certain terms and agreements that benefit all member states.

In order for SAATM to be implemented successfully, African states must ensure that the necessary mechanisms and regulations are put in place to ensure fair play. This would not require the AU to start from scratch, but examine the declaration in its current form against the 1988 YD to determine if the objectives of the original declaration are achievable through the implementation of SAATM. Currently, SAATM leans heavily towards instantaneous deregulation as opposed to gradual liberalization and its implementation will do more harm than good to the African air transport market.

Additionally The AU should not be in a hurry to implement all provisions of SAATM at once. The original Yamoussoukro Decision proposed a phased approach through regional blocks that would be necessary to allow the proper harmonisation of the air transport market to the benefit of all stakeholders.

“The Kenyan aviation market and indeed majority of the EAC aviation market is not adequately prepared for full liberalization given that the region is yet to establish functioning competition and consumer protection regimes. Attempts at establishing a competition mechanism so far have not been successful, with the latest being the establishment of the tripartite COMESA – EAC – SADC Joint Competition Authority, which has stalled. Kenya's own competition regime is still nascent, and we are yet to complete the development of aviation specific competition ruling. Without a functioning and binding competition regime, Kenyan airlines stand at a gross disadvantage and are unlikely to survive should instantaneous deregulation occur.”

Joan Chesoni (2018)

This phased approach could take the form of domestic operations and international operations where domestic operations would consist of agreements encompassing regional blocks first. These blocks would have effective control and mechanisms. These blocks would then form the second phase where agreements are made with other blocks and eventually with other continents.

Finally, at its core, SAATM MUST be based on treaty law of reciprocity that states “favours, benefits, or penalties that are granted by one state to the citizens or legal entities of another, should be returned in kind”. This will ensure a fair playing ground for all member states and ensure all member states benefit from the declaration. From our discussions with stakeholders it is clear that should SAATM be implemented as is, it could most probably lead to the collapse of some national airlines due to lack of reciprocity amongst nations.

On the other hand, should SAATM not be implemented, what would it mean? Currently in EA, Tanzania have launched their national airline and have begun with their domestic flights while Uganda have put in place plans to revive their national carrier. Further, afield, a partnership between Ethiopian airlines and the Zambian government is set to revive the national airline for Zambia while Nigeria is also planning to relaunch its own airline. Without SAATM, airlines across the continent would have to navigate the air on their own and only time would tell if they survive or not.

³² Quantifying the Economic Impact of Aviation in Dubai

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