Liberalization of air transport

Traditional regulation system

Air Transport liberalization must be analyzed though comparison with the traditional regulation system prevailing world-wide before the drive towards liberalization began about 30 years ago. This system was based on the principle of full sovereignty of States over their airspace, recognized in the Chicago Convention of 1944. The main implications of this principle were that:

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

BASAs provide rules fixing:

- the nature of rights granted (the traditional 1st to 5th freedoms and further “freedoms”);
- the nature of operations authorized (carriage of passengers and cargo, scheduled and non-scheduled operations);
- the method of designation by each State of carriers authorized to operate the rights;
- ownership rules regarding the eligibility of carriers for designation (“nationality clause”);
- the method of regulating capacities and flight frequencies of the respective designated carriers;
- the method of regulating fares;
- the points which a carrier designated by a State is authorized to serve in the other contracting State’s territory and the rights to carry traffic between the other contracting State and third party States under the 5th freedom regime (“Table of Routes”);
- the rules for the approval of flight programs, exceptions to basic programs (additional flights) and case-by-case approval (especially for charter flight);
- a number of rules regarding the right for a carrier designated by a State to establish permanent offices, post personnel, import spare parts and other materials necessary to the operations and, generally conducting business in the other contracting State’s territory, including rules for repatriation of the proceeds of sales to the carrier’s home country, etc.
- procedures for resolving disputes on the interpretation of the Agreement.

Liberalization concepts

One must distinguish between domestic and international liberalization.

Domestic liberalization consists in relaxing the rules governing carrier ownership, market access and specialization of carriers, opening and discontinuation of routes, approval of fares, capacities, frequencies and flight programs, competition regulations, within one particular

---

1 From a long-term historical perspective, the origin of this doctrine can be traced back to the Navigation Acts enacted by Cromwell’s England in 1651.
State. It is usually carried out through internal legislation. Historically, the first major
domestic liberalization was carried out in the late 70s by the United States.

The concept of international liberalization, in its broadest sense, refers to the partial or
total relaxing of rules stipulated in the BASA. International liberalization can be established
on a bilateral basis (through an amendment of the BASA), a multilateral basis (through the
replacement of the existing BASAs between a number of States by a multilateral instrument)
or a bloc-to-bloc basis (i.e. between two blocs of countries dealing with each other as if they
were two States).

All degrees of international liberalization exist, from the most restrictive (e.g. with just the
right to designate several carriers, known as “multidesignation”, instead of one for each State,
known as “single designation”), to fully open competition (often referred to as “open sky
agreement”) permitting any carrier (without limitation in the number of authorized carriers)
licensed in one of the contracting States or bloc of States to operate any type of service and
any route, with any level of capacity and frequency, at fares freely fixed by each carrier. In
practical terms, there are very few examples of such unrestricted competition regimes, as
some limitations (especially in the operation of 5th freedom traffic rights) are generally
maintained. On the other hand, just a few BASA have not yet been liberalized to some extent
in the past 20 years. Consequently, about 70% of liberalization agreements in force to-day are
of an intermediate type.

Liberalization policies and doctrines

As the first major market to have been liberalized at domestic level, there is no wonder that
the USA have been among the most active promoters of international liberalization. As soon
as the mid-eighties, they have embarked in a consistent policy of renegotiating their BASAs
with the objective of achieving open-sky agreements with all their key partners, on a bilateral
basis. This policy was met with some resistance, especially from East Asia and European
Union countries (although many of those finally accepted agreements nearing the open-sky
regime in the nineties, whereas the USA accepted compromise on the open-sky concept).
However, the USA remained very firm on the nationality clauses, thus making it nearly
impossible for foreign airlines to acquire interests in US carriers and very difficult to
implement cross-border mergers on their own side.

During the nineties, the most important development affecting the process of Air Transport
liberalization world-wide was related to the finalization of the establishment of the World
Trade Organization (WTO) and the preparation of the General Agreement on Trade in
Services (GATS). Although some States wished to transfer to WTO the responsibilities
hitherto assigned to ICAO in the field of Air Transport economic regulation, the international
aviation community strongly opposed this move, which would have placed Air Transport
regulatory matters in the hands of an organization for which Air Transport is not a matter of
prime interest. The negotiations then resulted in a temporary compromise exempting the
exchange of traffic rights from the scope of the agreement (annex to the Marrakech Treaty of
1994), subject to reviews to be conducted every five years. The second review has started in
2005 and its conclusion is tentatively scheduled for 2012-2013.

---

2 Airline Deregulation Act (Public Law 95-504), signed into law on October 24, 1978 by President
Carter.

3 Initially referred to as “deregulation”. During the eighties, the term of “liberalization” came to be
preferred to that of “deregulation” as it suggests a more flexible interpretation of the concept and
because it soon became evident that some form of regulation would still be needed anyway, especially
in technical safety matters.
The international liberalization policy of the European Union is focused on the concept of bloc-to-bloc liberalization agreements. Initially, this was met with some resistance by member States which were anxious to retain full national authority over the negotiation of BASAs, and whished to put strict limitations to the mandate given to the European Commission to negotiate them on behalf of member States. Obstacles were overcome and the first bloc-to-bloc agreement (with the USA) started to be negotiated in 2003 to eventually come into force as of 30th March 2008. Negotiations towards a second-stage agreement are underway. Other agreements, in particular with Africa, are in negotiation, but there still is no full consensus within African countries on a key issue: should agreements with the EU be contracted at the level of the African Union (AU) itself or of the Regional Economic Communities (REC) ? Meanwhile, an agreement was signed in 2008 between the UE and the West African Economic and Monetary Union (UEMOA) and is awaiting entry into force. A similar approach has been proposed to the North African States. The agreement signed with Morocco in 2006 can be a first step towards implementation of this policy. A similar agreement was signed with India in 2008.

**Economic impact of Air Transport Liberalization**

During the seventies, a number of theoretical studies had demonstrated that State interference (approval of routes, flight schedules, capacities and fares) had operated as disincentive for air carriers to optimize their business models and enhance productivity. The main objectives assigned to Air Transport liberalization were to eliminate bureaucratic obstacles and to foster competition for the benefit of consumers.

All *ex-post* evaluations of the impact of liberalization agree that it has had a deep impact on the industry’s economy and structures.

Average fares have gone down (by about 7% in real terms, according to studies) and overall traffic growth has been much higher than it would have been under the traditional regulated systems. It has also been noticed that the markets which have been less liberalized also are those where fares remain higher and growth lower4.

Liberalization benefited to the stronger air carriers, and further weakened weaker ones. Many carriers have been forced out of the market. Among small airlines as well as among the major legacy carriers, some have been liquidated (Sabena, Nigeria Airways). Some have been rescued by, and absorbed into, bigger and financially sounder groups (e.g. Swissair into Lufthansa). However, rescue plans have not all been successful, as illustrated by the examples of the rescue of Sabena by Swissair (which in turn contributed to the subsequent failure of the Swiss flag carrier) and of the partnership agreements between the Government of Tanzania and South African Airways aimed at revamping Air Tanzania. Surviving carriers have been forced to restructure their route systems and/or their business models. This might, arguably, have had an adverse effect on competition (e.g. Air Tanzania phasing out its Dar-es-Salaam-Nairobi route), but in most cases, it did not, as liberalization has allowed new entrants to show up on routes abandoned by legacy carriers. Beyond downsizing their route system and cutting in their workforce, the most conspicuous effect of Air Transport liberalization has been the adoption of the hub-and-spoke model by legacy carriers. They increased frequencies on their trunk routes in order to provide better connection opportunities at their hubs, and organized secondary routes as feeder services to/form their hubs. Routes not fitting in this scheme were often phased out. This in turn resulted in declining average planeloads, thus increasing the

---

4 However, very high traffic growth has been recorded in some regions, such as East Asia, where Air Transport continues to be relatively more strictly regulated. This does not invalidate the general observation, since traffic growth has been driven by the much higher growth of the economy observed in such regions.
demand for aircraft of lower unit capacity. The rise in flight frequencies also required higher
numbers of flight deck crews, thus providing additional job opportunities in the profession.

On the other hand, critics of liberalization have mentioned the fact that these positive
impacts, though valid on the average, were accompanied by growing disparities between the
trunk routes and those serving areas generating less dense air traffic. The cross-subsidy effect
permitted by regulated systems (high traffic routes where substantial economies of scale could
be achieved paid for unprofitable services provided to regions of low activity) could not
function in a liberalized market-driven system. In particular, airfares have substantially gone
up on low-traffic routes. Some countries have attempted to mitigate these adverse effects
through a range of measures, such as the “Essential Air Services program” in the USA and the
EU regulation 2408/92 authorizing member States to enact “Public Services Obligations”
applicable to economically marginal routes under strict eligibility criteria.

Other critics observe that the increase in frequencies is contributing to added airport and
ATC congestion at the major hubs, although it helped spread the traffic over longer periods of
time, thus reducing the peak/off-peak ratio.

Another consequence of liberalization was the emergence of a new category of airlines, the
so-called “low-cost” carriers. Actually, these carriers have been instrumental in making
liberalization effective quicker than expected. In many regions, legacy carriers, who felt
relatively comfortable with the “good old” regulated system, were not so eager to promote
new strategies and practices. New entrants, not bound by the “rules of the club”, were active
in inventing new business models to challenge the hub-and-spoke model developed by legacy
carriers in response to liberalization. In many cases, structurally unprofitable “spoke” routes
have the role of feeding traffic into the highly profitable trunk routes (especially long-haul
routes) and they are, to some extent, cross-subsidized by the profits made on these trunk
routes. The chart below shows how the system operates:

![Chart showing the relationship between distance and costs in the aviation industry]

---

5 The Public Service Obligations system authorizes member States to grant monopoly rights for the
operation of routes where traffic is too low to support competition and to set up autonomous Funds
administering the proceeds of a specific tax levied on air tickets to subsidize eligible routes (e.g. those
serving certain small Greek islands or isolated communities in French Guyana) through.
The main weakness of this “hub-and-spoke” model in its competition with the “low-cost” carriers is that passengers using the feeder segments only are charged higher fares to cover the loss of revenue caused by the fact that passengers connecting to long-haul or trunk routes are often not charged extra for the feeder segment (except taxes levied at the connecting point). “Low-cost” carriers (which should rather be called “point-to-point” carriers) usually charge connecting passengers a mere addition of the fares applicable to each segment\(^6\) and thus do not have to absorb connecting costs. Point-to-point passengers then pay the “true” price of their own carriage and do not have to contribute to cross-subsidize long-haul passengers. More than a tighter control on costs and lower level of service\(^7\), this is the key factor of the lower prices they are able to quote. The fact that the operation of the point-to-point carriers is not based on connecting traffic also enables them to use cheaper and less-congested secondary airports, and to free themselves from the constraints of slots. Critics of the “low-cost” carrier’s practices (who often also are critics of the liberalization) also claim that liberalized regimes have tended to favor new entrants at the disadvantage of legacy carriers.

From an international perspective, it is noticeable that the heavily regulated system had provided the basis for the expansion of some flag carriers based in newly independent States, offering them a protective frame through designation, capacity balance\(^8\) and 5th freedom limitation clauses. In a fully liberalized context, it is doubtful that a carrier such as Singapore Airways would have been able to grow as it did after it commenced operations in 1963. On the other hand, it must be noted that it is the liberalization of capacity clauses which enabled it to attain the status of a global carrier\(^9\). A theoretical argument can also be raised: under the regulated system, especially where single designation applies, the “ownership”\(^10\) of traffic rights on a route by a carrier is an important element of intangible assets contributing to the net value of this carrier\(^11\); from this perspective, air transport liberalization, especially the relaxing of clauses governing market access, resulted in a huge destruction of value at the detriment of the industry as a whole.

Whatever valid are the arguments of the pro and anti-liberalization, its is clear that “low-cost” carriers have now become a sizeable segment of the Air Transport industry (some of them now carry more passengers than major legacy carriers\(^12\)) and can now put a strong

\(^6\) This is materialized by the fact that they generally issue different tickets (with different ticket numbers) for each segment when selling a trip involving a connection.

\(^7\) In particular in terms of punctuality, as they do not have to guarantee connections; this in turn makes them able to have tighter fleet rotation schedules, thus increasing aircraft daily utilization. For “network carriers”, it is exactly the opposite: punctuality is essential for a smooth functioning of their hub-and-spoke system, and flight schedules must make provision for absorbing delays.

\(^8\) The concept of capacity balance derives from the principle, embodied in the Chicago Convention, of the contracting States’ “equal right of to participate in international air transport”.

\(^9\) Lifting capacity restrictions for 3rd and 4th freedom traffic allows a carrier to offer seats in excess of the needs of the bilateral market alone in order to carry unlimited traffic to and from a third-party State through a connection at its home base, i.e. 6th freedom traffic. This has historically been the basis of the business model of Swissair, KLM, etc. and, later, of Singapore Airways, Cathay Pacific, Emirates, etc. before becoming the basis of the international hub-and-spoke system world-wide.

\(^10\) From a legal standpoint, the argument is not valid, as the ownership of traffic rights rests with the State; they are just assigned to the designated carriers, for a limited period of time (generally 5 to 20 years); but, in practical terms, it has some relevance, especially where only one airline exists in a country, and the State has no alternative for designating another carrier for its international routes.

\(^11\) Cf. a statement made in 1994 by the CEO of a small State-owned flag airline based in an island country in the South Pacific: “We do not own our aircraft, as they are all leased from other carriers; we do not own our offices which are rented; we do not own maintenance and other technical facilities, as we outsource most of our maintenance; the only element of value of the company is our portfolio of traffic rights”.

\(^12\) More passengers, but usually much less RPK (and generate much less gross income), because “low-costs” mainly operate short/medium haul services. South West Airlines in the USA has become the
competitive pressure on their legacy counterparts in terms of fares, number of destinations served and market share, but also on the hub-and-spoke model itself. This is now one of the most pressing challenges legacy carriers are faced with. So far, low-cost carriers have developed only in strongly liberalized homogeneous markets, such as North America, the EU, and the domestic markets of emergent countries (India, Brazil, South Africa, etc.). But this is to change quickly with the development of bloc-to-bloc liberalized agreements. As an example, with the second step of the US-UE liberalization agreement, it can be anticipated that low-cost carriers of both sides would quickly enter the transatlantic market once the agreement enters into force.

**Liberalization regimes**

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

**The US case**

As mentioned above, Air Transport liberalization started in the USA at the end of the seventies, under President Carter. But the *Airline Deregulation Act* of 1978 was the result of a complex process involving the academic community, the industry and other business interests, public interest groups, Government and the regulatory body itself. As soon as the early seventies, theoretical research began to challenge traditional theories and common sense assumption about “natural monopolies”, the “specificity of network activities” and “the State as the guardian of public interest”. More specifically, the US Air Transport system under the regulated regime, was based on the ideas that: (i) air carriers should be able to absorb the high costs of guaranteeing safety, thus implying a review of their technical abilities and financial strength; (ii) only a few companies can meet these requirements, thus limiting competition; (iii) to protect the consumer in a market with a limited number of entrants, strong Government regulation is needed to avoid collusive and/or predatory practices; (iv) all areas of the country should have fair access to air transport, including those with limited market potential which would not be attractive for prospective entrants.\(^{13}\)

Such ideas have undergone extensive review and discussions and it was felt that some of the basic assumptions, though valid at the time when the regulatory system was set up, were no more relevant since the growth of the market volume had made it possible to envision alternative, competition-based mechanisms to take care of most issues hitherto resolved through regulation. The then-chairman of the Civil Aeronautics Board (the regulatory authority) supported the move and legislative action could be initiated with a reasonable assurance that it would be supported by civil society and public opinion.

---

13 As the American political vocabulary is rather suspicious about the word (and concept) of “subsidy”, the unprofitable routes serving low-density markets were supported by specific fares charged for the carriage of mail. On the other hand, overcapacity in the fleets resulting from low load factors in services to destinations with low traffic, was supported by military funds, with the argument that the needs of national defence required maintaining “reserve capacities”. Typically, load factors on US domestic services in 1970 were in the tune of 45 to 55%, against a world average of 55 to 60%. Nowadays, airlines cannot be profitable below a 75% to 80% load factor.
For constitutional reasons, the proposed legislation covered only interstate air transport, but intrastate carriers (who were important chiefly in California and Texas\textsuperscript{14}) were obliged to follow the move, should they wish to extend their markets and operations beyond the limits of their state in order to keep up with stronger interstate carriers, as the classification between “trunks”, “regionals” and “feeder” were abolished. The liberalization did not either concern international operations as these continued to be governed by the BASAs, but this still was a minor aspect because international traffic then represented a marginal volume compared to the huge domestic market.

During the eighties, several major legacy carriers failed and were liquidated such as Eastern Airlines, Braniff and Pan Am (following an unsuccessful merger with National, aimed at providing Pan Am with a domestic network) whereas the former “regionals” were entering into mergers, some successful, some not\textsuperscript{15}. In this process, many routes operated by the former “regionals” were abandoned, leaving entire regions with a much lower level of service than before. During the nineties, the issue for major US carriers was to remain alive, with the US domestic market being the arena of the competitive battle. This defensive strategy somehow diverted these carriers from the international market, where they preferred to rely on alliances with foreign partners to feed international traffic into their hubs, to concentrate their own resources to retain and, if possible, gain domestic market shares. Consolidation of the US air transport industry is still going on with several mergers underway, but we can currently observe a strong renewal of its interest for international markets, as shown by the large number of new intercontinental routes opened in the past few years.

The EU case

Air Transport liberalization in the EU took a completely different path. It had not been accompanied by a public debate, and Governments were not eager to put it on the legislative agenda of the European Community (EC). European air transport liberalization was not the intentional product of political will, or of a dialogue between stakeholders, but rather the outcome of a sequence of events in which the judiciary branch of the EC institutions played a key role to resolve conflictive issues arising from the opportunities open to a bunch of innovative actors skillfully exploiting loopholes and contradiction in the EC constitutive treaties. The Governments’ prime concern was to protect their interests in their flag airlines, most of which being fully or partially State-owned. Some Governments, however, had embarked into domestic liberalization of limited scope, under pressures from local interests (municipalities, local business representatives) complaining about the monopoly of the national carrier, claiming that “domestic airfares in their countries were the highest in the world”\textsuperscript{16}.

A first step in Europe-wide liberalization had been initiated in the seventies, not by the Community authorities, but under the aegis of the European Civil Aviation Conference

\textsuperscript{14} For obvious reasons of size and population.

\textsuperscript{15} Two examples are Allegheny and Texas International. One of the “regionals”, Allegheny, became part of the “majors” after several acquisitions and rebranding as USAir. Texas International, initially an intrastate carrier, tried to take advantage of the Deregulation Act to expand into to the interstate market, and promoted the “low-cost” concept (then referred to as “discount airlines” or “no-frills airlines”), which had been pioneered as soon as the early seventies by PSA, a Californian intrastate carrier (later merged into USAir). It eventually had to accept merger into Continental Airlines.

\textsuperscript{16} This indeed was far from true, e.g. the return fare for Paris-Nice was then about $450 (published unrestricted fare), against $950 for Paris-Milan, with exactly the same distance of 690 km in both cases. Similar statements are often heard in Africa (“Africa has the highest airfares in the world”), although they are not supported by empirical evidence.
ECAC, an autonomous institution with a membership of 44 States, different than that of the EU, regarding the liberalization of the grant of traffic rights to charter operators.

In the first half of the eighties, the agenda of the European Community was primarily concerned with the consolidation of the single European market, with a broad scope covering the circulation of goods, services and capital, the unification of technical standards and competition rules, and elimination of customs controls between member States. This resulted in the negotiation and adoption of the Single European Act in 1986. However, the States failed to agree on a common set of rules for Air Transport services, and the Act expressly excluded them from the scope of common policies. In the late eighties, domestic liberalization had generated number of new entrants in the Air Transport market, competing for domestic routes and designation for increasingly liberalized international routes. This situation led to growing litigation between member States and air carriers, mostly with new entrants. Some of the cases were eventually brought to the European Court of Justice, which systematically ruled that “the principles of the single European market should take precedence on the exception provided in the Act”. The European Commission eventually convinced the (generally reluctant) member States that the only solution to this stalemate was a Europe-wide liberalization. This was carried out in three successive stages (referred to as “liberalization packages”).

European liberalization differs from US liberalization in many respects. Its scope covers domestic (intra-State) as well as inter-State services and it vests in the European Commission a monitoring and regulatory authority. It is also accompanied by a set of measures aimed at

- regulating relationship between air carriers, infrastructure providers (e.g. rules of fair treatment in the access to infrastructures and slot allocation), travel agencies and computerized reservation systems,
- standardizing the protection of consumer rights and
- promoting competition in ancillary services such as ground handling.

It also sets objectives for dealing with third countries on a coordinated basis, with the ultimate goal of transferring to the Union the authority for contracting BASAs on behalf of the member States.

The impact of European liberalization was mainly felt at some specific levels:
- the rapid emergence of “low-cost” carriers, and the competitive pressure put by them on fares, thus challenging the “hub-and-spoke” business model on which the network carriers were based,
- the development of “low costs”, combined with the expansion of high speed rail links, has led domestic and short-haul traffic of the majors to stagnate or even decrease,
- however, overall traffic (including low-costs) has experienced sustained growth,
- average fares have gone down, but not as much as expected; actually the range of fares has widened,
- the number of European city-pairs served by direct (generally non-stop) flights has significantly increased and, on city pairs generating a high volume of business or tourist traffic, there has been huge increases in frequencies, thus providing better flexibility for consumers.

The rules have been the source of some litigation regarding the right for an airport operator to grant “volume discounts”, which can be used to favour carriers having their home base at this airport. Critics have also been raised about the “undue advantage” conferred to new entrants, when all carriers using an airport have to contribute through increased fees to the funding of investments which would not have been required in the absence of these new entrants.
On the other hand, some of the anticipated effects did not take place:

- the abolition of limitations on intra-European 5th freedom has not produced any practical impact, because it fitted neither with the hub-and-spoke strategy of the majors, nor with the point-to-point strategy of the low-costs, and because it would have put air transport at a disadvantage (in terms of travel time) in its competition with rail transport, especially in view of the small size of the European territory and the increasingly dense network of high speed rail links.

- major air carriers have not, with a few exceptions, engaged in the operation of “cabotage” routes outside of their home base country. Actually, only low-costs have taken advantage of the cabotage rights granted by the EU liberalization “packages”.

- although trans-border mergers were encouraged by liberalization, very few have effectively taken place so far; in most cases, merged groups preferred to continue operating under legacy brands in the respective countries, when they were not forced to do it, sometimes under the cover of complex legal structures (such as the Air France-KLM group’s), to avoid the problems arising from the nationality clauses in the BASAs with third countries. The bloc-to-bloc liberalization strategy pursued by the UE is aimed at overcoming this obstacle.

The African case

The liberalization of Air Transport in Africa is dealt with in detail in another of the documents linked with the web site. Just a few general considerations will therefore be developed in the following paragraphs.

The liberalization process in Africa started in 1988 with the Yamoussoukro Declaration. This is not a legally binding instrument but just a statement of general principles. The Declaration is based on a political goal rather than on the economic objectives to provide more affordable and efficient services responding to the demand of the African consumer and economic development. These objectives were to promote continent-wide integration and to increase the share of African carriers in the international market of air transport to and from Africa, hitherto dominated by non-African airlines. The Declaration was followed by several years of discussions held under the auspices of the Economic Commission for Africa, with assistance from the World Bank. This process resulted in the Yamoussoukro Decision adopted in November 1999. The objectives of the Decision had changed since the Declaration of 1988 and were more focused on economic and practical aspects, making the Decision a technical instrument able to have a practical impact on the liberalization process. In particular:

- the Decision only deals with intra-African traffic whereas the Declaration had devoted much attention on the issue of setting up a coordination of the of African States to strengthen their position in their negotiations with non-African States;

- the idea of establishing a joint continent-wide airline on the model of Air Afrique to become a major entrant on the world market had been dropped;

- the need to raise local capital for the development of genuinely African carriers is not mentioned anymore.

On the other hand, the Decision put a strong emphasis on the liberalization of 5th freedoms and it still is underwritten by the idea that (pending the establishment of the big pan-African airline), state-owned legacy carriers would continue to be the backbone of the African air transport industry. One evidence of the persistence of this idea can be found in Article 6, devoted to the designation by Governments: this article contains neither any condition for eligibility to be designated, nor any provision for a carrier whose application for designation has been rejected, to challenge the Government’s decision. In this respect, the rules for market
entry are still far from being effectively “liberalized”, which is an essential ingredient for any “true” liberalization policy.

Over ten years after the Decision was adopted, and eight years after its entry into force, many questions arise regarding the effective degree of its implementation. Critics have pointed that the establishment of the institutions provided by the Decision (such as the “Monitoring Body”) has been slow and recurrently complain that “the implementation trails behind schedule”. There is no need to discuss these aspects here as they are reviewed in detail in other documents available from this website. But the institutional implementation of the Decision is just one aspect of the liberalization of air Transport in Africa.

From a practical viewpoint, there is strong evidence that the Decision has had an effective impact, at least in three major aspects:

- although the Decision had put a strong emphasis on the liberalization of 5th freedoms, it is rather the liberalization of 3rd and 4th freedoms which had the deepest implications, thus enabling a limited number of carriers to develop as 6th freedom operators to and from long-haul destinations in Europe, Asia, North America and the Middle-East; in this process they gained the opportunity of growing stronger, capturing higher market shares in the intra-African market and making it more difficult for other operators to compete on intercontinental routes (especially those to Europe);

- liberalization put a heavy competitive pressure on African carriers; some were forced out of the market and have been liquidated, quickly replaced by new entrants in some countries, but still leaving a number of African States without a flag carrier; attempts to rescue failed carriers through partnership agreements with stronger African carriers were generally unsuccessful, partly because of conflicts of interests arising between the partners and the home State of the failed carriers, partly because of the difficulties inherent to downsizing inefficient and overstaffed enterprises, whatever the sector;

- stronger carriers became able to acquire dominant positions regionally and eliminate weaker competitors from the most profitable regional routes. Although the source of their problems can be traced back to long before, it is noticeable that a large number of legacy carriers have disappeared from Africa’s Air Transport scene since the Decision entered into force. Actually, among the legacy carriers, only those which have succeeded to enter the 6th freedom market or to have acquired a regional dominant position, are still successfully operating.

It should however be wrong to conclude that competition is weaker than before the Yamoussoukro liberalization regime was established: the competitive context has changed from a situation where a large number of actors were competing softly, to one where a limited number of competitors compete aggressively, with subsequent pressure on airfares. Additionally, dominance of non-African carriers on the intercontinental market to and from Africa is now strongly challenged by a bunch of African carriers, thus achieving, although not under the form initially envisioned, one of the goals which had underwritten the Yamoussoukro Declaration of 1988.

Michel Iches/2010

---

18 Actually, these bodies have eventually been created and some have commenced their activities.