

## **Liberalization of Ownership and Control - How quick and how far for Africa**

(Presented by Airlines Association of Southern Africa - AASA)

Liberalization of the skies and its evolution from the regulated environment of the 1944 Chicago Convention, continues to be one of the hottest discussion topics and the often expressed solution to the long term sustainability, profitability and success of the global aviation industry. Many States or regions within the USA, Europe, Asia, the Gulf, South America, have liberalized to varying degrees, with Africa probably making the least progress in this regard. Liberalization has been achieved largely through:

- Unlimited third and fourth freedom frequencies,
- multiple designation of airlines,
- free and fair competitive pricing,
- use of sixth freedom traffic rights,
- granting of fifth freedom rights (although this is still a contentious issue in several regions, not liberally implemented, and normally the subject of negotiation between the interested parties), and
- the liberalization of ownership and control, the subject of this discussion.

Although liberalization is taking place between some States and within some African regions, the agreed implementation of a continental wide policy envisaged through the Yamoussoukro Declaration of 1988, thereafter the Yamoussoukro Decision (YD) of 1999, and now the recently launched Single African Air Transport Market (SAATM) of 2018, has not been realized.

The above perspective provides the context as to where Africa finds itself within the initiative of global liberalization of air transport including ownership and control. At the 39<sup>th</sup> ICAO Assembly held in 2016, there was no shortage of encouragement and the call to liberalize air transport. The Air Transport Regulation Panel (ATRP) was mandated to continue with its work in this area as well as ownership and control, where the ATRP was encouraged to look at several options. One such option is the ATRP considering bringing in principal place of business and effective regulatory control as terms that could substitute designation based on nationality of airlines. It was noted that only a select number of States, mainly from South America, openly pushed for the removal of ownership and control restrictions whilst many States varying limits of foreign ownership of international airlines.

The extent of liberalization of ownership and control is therefore issue. Most States have policies limiting foreign ownership percentage to maximum levels ranging from 25% to 49% for international airlines. This model has worked in several jurisdictions in Australasia, Europe, South America and in Africa. For example, Ethiopian Airlines has a 49% share in Malawi Airlines and KLM has a 7.8% interest in Kenya Airways (reduced from a previous 26% stake). However, widespread ownership investment has not taken place, probably due to investors not being able to take a majority stake in the airline. Without that control, investors could have concern over the security of their investment. Whilst there may be limited foreign investment in airlines as noted

above, certain jurisdictions which advocate open skies, have not liberalized ownership and control, for example, the USA (maximum 25% foreign investment), the Gulf and some Asia jurisdictions which only permit minority ownership by foreign investors in their international airlines. From a World Economic Forum report 2016, only Chile was noted as allowing 100% foreign investment in its airlines.

The benefits for liberalization of ownership and control are clear. Taking Africa as an example, many African airlines are undercapitalized, and require financial restructuring and significant investment to implement turnaround strategies. Removing restrictions on ownership together with effective control in the hands of a controlling interest would open the doors for investment, with opportunities for possible mergers and acquisitions across Africa, creating a base for the necessary growth and development of the industry.

Why is there a reluctance to relax ownership and control restrictions? The national pride and desire of States to retain control their national carriers is probably at the heart of retaining the status quo. In Africa, the YD does make provision for relaxing ownership and control conditions, but with renewed hope from the launch of the SAATM, States want to strengthen African Aviation through growth and development of an integrated network, and want their airlines to participate in this process. Foreign investors will invest in airlines based on commercial and business principles, not on sentiment. Long term commitment may not be guaranteed and this carries some risk for long term investment support. On this basis, some African States are probably reluctant to relinquish control to foreign interests at this stage.

What is the way forward? ICAO cannot dictate policy on international aviation to States, but makes recommendations to States. To change policy on issues such as ownership and control, States need to be convinced of overriding benefits to the State to change their views and policy on ownership and control. Over the past 30 year journey of the Yamoussoukro Declaration, the YD and now the SAATM, numerous studies have shown the benefits of liberalization, but for several reasons, this has not been implemented. These include some States being concerned at the perceived potential negative impact of liberalization on their airlines and a fear that larger airlines will dominate a liberalized market. Resolving this impasse will need to be dealt with, and then ultimately, complete relaxation of ownership and control conditions will remain the final hurdle to full liberalization particularly in Africa.

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