CHAPTER 3

DEREGULATING AFRICAN SKIES: THE YAMOUSSOUKRO DECISION

3.1 INTRODUCTION

In Africa, where poor road, port and railway infrastructure often constrains the rapid and efficient transportation of both goods and passengers, air transport offers potential for growth and economic development by fostering trade, as well as foreign investment. However, Africa's air transport industry has always been a relatively small player compared to the global one. In terms of revenue passenger-kilometres[9] flown, the intra-African market represents less than 1% of the global market and total African revenue passenger-kilometres (intra-Africa and intercontinental traffic) account for only 4.12% of the global revenue passenger-kilometres (Schlumberger, 2010). Given a potential market of more than 12% of the world's population, African air traffic is expected to grow at a 5.7% per year, which is considerably faster than the world average of 4.9%. Despite strong expected growth, intra-African markets in particular are still thin and most regions lack a true competitive environment (Schlumberger, 2010:1). Thus, the implementation of the Yamoussoukro Decision across Africa would serve as an effective tool for creating and enabling true competitiveness and homogeneity within the fragmented intra-African air transport market.

The concepts of the Yamoussoukro Declaration and Decision, the chronological progress of events related to the Decision, the role of sub-regional and regional organisations in the Yamoussoukro Decision process, as well as the progress and hindrances in the implementation of the Decision in sub-regional and regional organisations, are discussed below.

[9] 1 revenue passenger-kilometre is defined as 1 fare-paying passenger transported 1 kilometre (Schlumberger, 2010:1)

3.2 LIBERALISATION IN AFRICA

The Yamoussoukro Decision (YD) remains the single most important air transport reform policy initiative undertaken by African governments to date. It was adopted out of recognition that the restrictive and protectionist intra-African regulatory regime, based primarily on BASAs, hampered the expansion and improvement of air transport on the Continent (Meshela, 2006:1). The BASAs enabled the stakeholders to limit capacity, therefore driving up prices, maximizing profits and creating an expensive air sector. As a result, intra-African air traffic remained costly and inefficient, especially in those cases where the bilateral air services agreements protected a state-owned carrier (Schlumberger, 2010:6).

One of the vital parts of the Decision was intra-African liberalisation, the objective of which was to develop air services in Africa and to stimulate the flow of private capital in the industry (Meshela, 2006:1). As of today, the governments of Africa have not yet fully implemented the YD, although, on a small scale, some like-minded countries apply the principles of the Yamoussoukro; but not, however, on a continental-wide basis. The reasons for not applying the YD, which will be discussed in detail below, range from non-implementation of certain elements of the Decision: for example, establishing competition rules, a dispute settlement mechanism and an operational monitoring body to simply ignoring it by continuing to implement the traditional restrictive bilaterals (Schlumberger, 2010:6). Implementation of the YD would have been the biggest single development in African aviation history. Apart from the benefits to the airlines and passengers, it would have made a significant contribution to the national economies of African countries (Morrison, 2007:7).

3.2.1 Yamoussoukro Declaration

Prior to gaining independence, most African countries had air services that were primarily based on the European relationships and agreements. Only in the 1960s, when many colonies became independent countries, did African states start negotiating and concluding their own air services agreements. During this time, the majority of the newly independent African states created their own, mostly government-owned, national air carriers, many of which failed (Guttery, 1998).[10] Most African national air carriers pursued a business model that consisted of using profitable international routes to and from the territories of their former colonial masters to cross-subsidise their costly, yet extensive domestic route networks (Guttery, 1998:1). This often resulted in the maintenance of strict bilateral relationships for intercontinental routes, where capacity was limited and controlled to maximise profitability. Governments tended to view the development of regional air services as secondary, especially when they were obliged to maintain a costly domestic network (Schlumberger, 2010:2).

Following the international example at that time, intra-African air transport services became regulated by the traditional framework of bilateral air services agreements. The typical BASAs of 1960s were based on the traditional predetermination model, by which market access and capacity were predetermined. This model controlled the market through effectively restricting competition (Doganis, 2001:16). Whereas liberalisation had been actively pursued in the United States since the late 1970s and in Europe since the late 1980s, African air services remained generally restrictive, costly and inefficient (Schlumberger, 2010:2).[11]

In November 1984, the Economic Commission for Africa of the United Nations Economic and Social Council (ECA) organised a conference in Mbabane, Swaziland to discuss the reasons why African carriers faced difficulties in obtaining traffic rights in other African states. The conference ended with the Declaration of Mbabane, which called for the creation of a technical committee that would develop “a common African approach for the exchange of third and fourth freedom rights” and “encourage the exchange of fifth freedom rights”. It further proposed an additional set of measures that focused primarily on closer cooperation between African carriers. These measures, which later became the core of the

---

[10] Examples include Botswana National Airlines (1966-69); Air Burkina (1984); Royal Air Burundi (1960-63); Air Congo-Brazzaville (1961-65); Gambia Airways (1964); Ghana Airways (1958); Air Malawi (1964); Nigeria Airways (1958-2003); Air Rwanda (1975-96); Zambia Airways (1963-94); and many others (Schlumberger, 2010:7).

[11] A World Bank Study (1998:30) states that the reasons for this are high operating and capital costs, which include 40% higher airline insurance premiums, 50% higher fuel costs, 15 to 30% higher lease rates for equipment and 100% higher air navigation fees (compared with South America); high handling and maintenance costs; and difficulties in obtaining necessary working capital.

Yamoussoukro Declaration, included a joint financing mechanism, a means of coordination for scheduling air services, a centralised databank and research programme as well as the promotion and creation of sub-regional carriers (ECA, 1988:1).

The need for a continental consensus on how air transport should be used as an important instrument for social and economic development in Africa, as well as on how to speed up liberalisation of African air services, was discussed at length under the auspices of the ECA by the Ministers in charge of Civil Aviation of 40 African states in Yamoussoukro, Cote d'Ivoire. This led to the adoption of the Yamoussoukro Declaration in October 1988. The Declaration, on a new African civil aviation policy, included comprehensive proposals for a general framework of air transport reform in Africa, the unification of the fragmented air transport market and commitment from the governments represented to make all necessary efforts to integrate their airlines within eight years (ECA, 1988:2 & ECA, 2001:2). The following were the salient objectives of the Declaration (Fatokun, 2005:27):

- Ensure flexibility in granting of traffic rights among African countries;

- Encourage joint use of air transport facilities;

- Encourage cooperation and ultimate merger among African carriers;

- Encourage further financing of air transport sector.

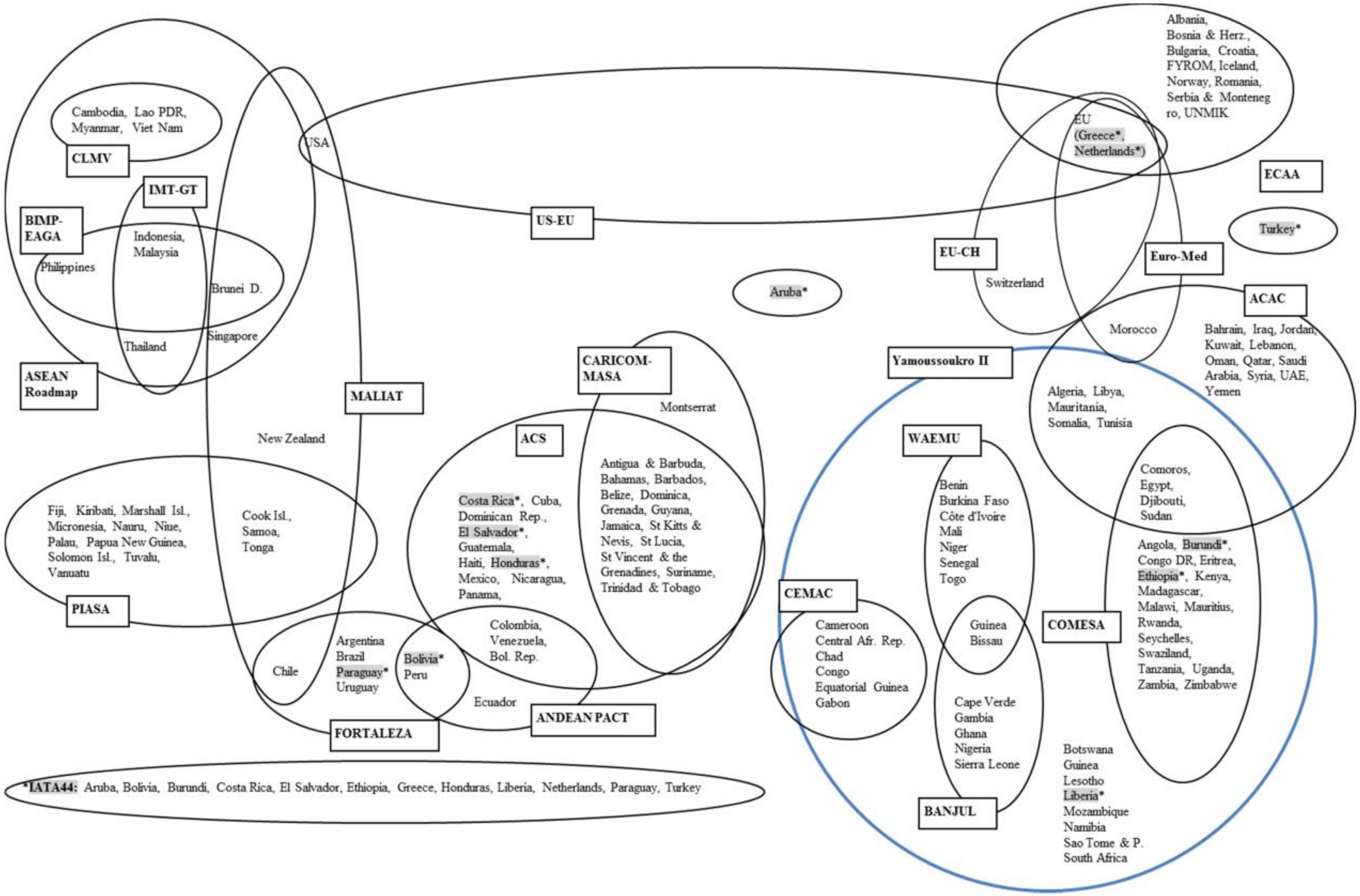
The Yamoussoukro Declaration also foresaw the gradual elimination of traffic restrictions, specifically the granting of fifth freedom rights to African airlines during the implementation period. Despite its too ambitious objectives and the weak likelihood of its implementation, the Declaration stimulated further initiatives aimed at liberalising the African air transport market (Schlumberger, 2010:10). In 1994, having evaluated the steps required to implement the Yamoussoukro Declaration, the African Ministers in charge of Civil Aviation met in Mauritius and agreed on a set of measures to facilitate the granting of third, fourth and fifth freedom rights to African carriers (ECA in Schlumberger, 2010:10). Of significance was the fact that the Yamoussoukro Declaration enforced the notion that the air transport sector in Africa needed to be liberalised. This led the ECA to include the liberalisation of air services in its work programme.

3.2.2 Yamoussoukro Decision

In line with the above efforts, a further important step forward towards intra-African air transport liberalisation was taken in November 1999 by African Ministers in charge of Civil Aviation. The conference was held in Yamoussoukro, Cote d'Ivoire, under the auspices of the United Nations' Economic Commission for Africa. After intensive discussions, the Ministers adopted a "Decision Relating to the Implementation of the Yamoussoukro Declaration concerning the Liberalisation of Access to Air Transport Markets in Africa". The Decision, called the Yamoussoukro Decision came into force on 12 August 2000 and was ratified by 44 African countries, and became fully binding on 12 August 2002 (ECA, 2001:2). In accordance with Article 2, the YD takes precedence over all bilateral and multilateral agreements within the regions which are not in conformity with it (ECA, 1999:4). Figure 3.1 presents a stylised map of the YD in the context of existing global plurilateral agreements.

.

Figure 3.1: YD in the context of existing plurilateral agreements



Source: WTO Secretariat (2006)

In essence, the main aim of the Decision is to provide a continent-wide aviation agreement to liberalise African air transport market and eventually create an "open skies" environment in Africa. The major policies of the new air transport framework agreed upon by African Ministers were:

- Gradual liberalisation of scheduled and non-scheduled intra-African air services (as defined under Article 2 of the YD);
- Free exchange of traffic rights including third, fourth and fifth freedom rights on both scheduled and non-scheduled passenger and air freight (cargo and mail) air services performed by an eligible airline (as defined under Article 3 of the YD);
- Non-regulation of tariffs by government (as defined under Article 4 of the YD);
- No restriction of frequencies and capacities offered on air services linking any city-pair combination (as defined under Article 5 of the YD);
- Multiple designation by each party on a city-pair basis (as defined under Article 6 of the YD);
- Competition regulation (as defined under Article 7 of the YD);
- Settlement of disputes through negotiations (as defined under Article 8 of the YD);
- A monitoring body[12] to oversee the implementation process (in accordance with Article 9 of the YD);

[12] A monitoring body was established composed of representatives of the ECA, OAU, AFCAC and AFRAA, which can be assisted, if necessary, by representatives of sub-regional organisations (ECA, 1999:8).

- Encouragement of commercial and other forms of cooperation between African carriers (ECA, 1999:4-8; ECA, 2001:2-3).

3.2.3 The Abuja Treaty as the legal basis of the YD

It must be noted that the YD has its legal basis in the Abuja Treaty, which entered into force on 12 May 1994. The Treaty was the culmination of more than 30 years of initiatives all aimed at achieving greater economic, social and cultural integration among African countries. Under the Yamoussoukro Decision, signatory member states of the Abuja Treaty are required to liberalise air transport almost immediately to allow African carriers unrestricted access to air transport markets within Africa, thereby enhancing connectivity to promote intra-African trade and tourism opportunities (ICAO, 2010:2). Of the 54 African states[13], 44 signed and formally ratified the Abuja Treaty and became parties to the YD (Schlumberger, 2010:24). The other ten states can be grouped into three categories: a) states that never signed the Abuja Treaty (Eritrea and Morocco); b) states that signed but never ratified the treaty (Djibouti, Gabon, Madagascar and Somalia); and c) states that ratified and/or deposited the instruments of ratification after the African Union entered into force (Equatorial Guinea, Mauritania, South Africa and Swaziland). The summary of the African countries membership in relation to the YD is presented in Appendix A.

In essence, the YD is a multilateral agreement amongst most of the 54 African states and allows the multilateral exchange of up to the fifth freedom air traffic rights between any African YD-party state using a simple notification procedure (Schlumberger, 2010:6). The Decision is a comprehensive proposal to improve the fragmented regulatory regimes through a unified system that accords African airlines commercial opportunities on an

---

[13] The research period selected ends with the year 2010; hence the number of African countries officially recognised is based on this year. The AU has granted membership to the Saharawi Arab Democratic Republic (Western Sahara), which proclaimed itself a country despite territorial claims by Morocco; however, internationally Africa has 53 recognised states. This study therefore assumes a total of 53 countries for the purposes of further discussion.

equal basis within the Continent and ensures that their activities are governed by a common body of air transport rules (Fatokun, 2005:29).

3.2.4 South Africa's position on the implementation of the YD

In July 2006, South Africa adopted a five-year Airlift Strategy which sets out to enhance the air transport sector's contribution to sustainable growth and development. The implementation of the Airlift Strategy supports the government's aim to increase the volume of international air traffic capacity to and from South Africa, as well as the creation of capacity ahead of demand (Department of Transport, 2006). In the context of the Decision, the Strategy recognises the adoption and implementation of the key principles of the YD continentally, as well as the regulation of international markets through BASAs with managed liberalisation. In 2010 at the 37th Assembly of the Economic Commission, South Africa reconfirmed its full support of the common position on the African liberalisation and the principles of an open market in the African region for African operators. South Africa urged African states to strengthen the Regional Economic Communities in the drive to implement the YD (ICAO, 2010:4).

3.2.5 Progress achieved

Despite the fact that the Yamoussoukro Decision has not been fully implemented throughout Africa, progress has been made in the countries involved. Below is a summary of the main developments related to the implementation of the Decision (ECA, 2003; ICAO, 2010):

- **A number of countries**, such as South Africa, Kenya, Ethiopia, Uganda and Tanzania among others, **have taken urgent measures towards the implementation of the Decision**, applying the agreements on the liberalisation of traffic rights on a bilateral basis. In line with these measures, the South African Airlift Strategy of 2006 has set up liberalisation targets to speed up the implementation of the YD with like-minded African countries (Department of Transport, 2006:59);

- **Development partners** have lent support to the process of liberalisation of air transport in Africa. The World Bank and the European Union have been assisting the sub-regional economic communities to manage liberalisation and strengthen institutional capacities;

- **New routes** have come into use **and frequencies** have been enhanced between African countries, thus streamlining the movement of passengers and goods. Examples include bilaterals signed between Gabon and Ethiopia, allowing operations to any point in either country, any three points within Africa and any five open points beyond; Air Senegal's success on regional fifth freedom sectors, such as Bamako-Abidjan and Bamako-Niamey; a bilateral between South Africa and Botswana virtually creates an "open skies" market, including multiple designations, multiple entry points and unrestricted capacity and frequency (Ndhlovu & Ricover, 2009:23); the impact of liberalisation is particularly evident on the Nairobi-Johannesburg route, which increased frequencies from 4 in 2 000 to an unlimited number in 2003, where research by Myburgh *et al.* (2006:7) indicates that the passenger volumes have increased by 69% over the pre-liberalisation period;

- **The African positions**, as expressed through the regional economic communities or groupings, such as COMESA, SADC, WAEMU, EAC and BAG in relations to air transport regulations **have been properly coordinated and defined** at international forums as African countries are becoming increasingly aware of the importance and the implications of new air transport policies. The progress achieved in regional economic groupings will be discussed below;

- **An element of competitiveness has been introduced**, bringing about an improvement in services and the emergence of a broader range of tariffs. The results of the study by Myburgh *et al.* (2006:9), which analysed the impact of air fares on 56 routes in SADC, indicate that air fares are 18% lower on liberalised routes and that this reduction in air fares is expected to increase passenger volumes by 14 to 32%;

- **Alliances and cooperation arrangements**, such as SAA and Air Tanzania, have been established among African airlines in certain sub-regions, such as the EAC and SADC.

3.2.6 Hindrances to implementation

It has been more than 20 years since the inception of the Yamoussoukro Declaration and almost ten years since the adoption of the YD. Nevertheless, the main objectives are still far from being realised as their implementation is moving at a slow pace in most African countries. Some of the reasons for the slow pace of progress include (Fatokun, 2005:29-30; ECA, 2001:6-7):

- **Lack of political commitment and unification**: firm political commitment and actions are necessary to unify the liberalisation process at the national level, as well as to make it less heterogeneous in various sub-regions. Strong commitment is required from all member states to implement the Decision as the member states are currently at different levels of the YD implementation. Sections 3.4.1.1 to 3.4.4.2 comprehensively discuss the current heterogeneous and fragmented state of liberalisation within the various regional communities, highlighting the varying degree of liberalisation achieved within these air transport markets. An example of the lack of political commitment is illustrated in the Arab Maghreb Union, in which the need for the liberalisation of air services was only recognised by the Arab Maghreb Union Transport Ministers in 2007, however no liberalisation has to date been initiated. In those regions, where liberalisation has taken place in line with the key elements of the YD, such as the BAG, WAEMU and CEMAC positive impact on air transport services is evident as discussed in section 3.5;

- **Barriers to liberalisation**, such as immigration restrictions and foreign exchange control, *inter alia*, that still exist, need to be relaxed for effective implementation of the liberalisation process. For example, travel between SADC countries requires a visa, which impacts on the ease of travel and the flow of visitors to and within the region. Another example is that of residents of Angola and the DRC requiring a visa to enter Lesotho. In order to mitigate the above, SADC's tourism industry has proposed a single visa (UNIVISA) for the region (RETOSA, not dated);

- **Competition policies and institutions**: the vast majority of African countries do not regulate competition or have institutions that specialise in competition matters. The First Ordinary Session of the Ministers Responsible for Air Transport, held by the African Union in 2005 in South Africa, concluded that harmonisation of the rules for liberalising air transport was necessary as different rules in different sub-regions were hindering full implementation of the Decision (African Union, 2005). Mauritius had informally indicated that it was withdrawing from the YD because of the failure of SADC countries to adopt the competition rules relating to the full liberalisation of air transport. In 2007, the African Union drafted its own common competition rules, including special provisions on air transportation (African Union, 2007). At the Third Session of African Union Ministers Responsible for Air Transport, held in May 2007 in Ethiopia, the Ministers noted the preparation of draft texts concerning the harmonisation of common competition rules. While the objective was to have the heads of state formally adopt these rules at the Ninth Ordinary Session of the Assembly of the African Union, which was held in Ghana in July 2007, this matter is still pending (Schlumberger, 2010:34). This is further inhibited by the fact that no regional or AU competition rules and arbitration procedures have been implemented to support the implementation of the YD. No community treaty has been implemented in Africa that would ensure that competition in the African market is not distorted and that markets operate as efficiently as possible within a single economic market. In addition, no International Convention on Competition Law for across the border trade currently exists, making this hindrance particularly difficult to overcome. Unlike the Directorate

General for Competition in Europe there is also no super national authority to enforce a single set of competition rules within Africa. An important distinction between the YD and the EU regulatory regime is that a single set of EU competition rules apply to air services within the EU whilst intra-African air services within the scope of the YD will remain the subject of treaties between African states by means of BASAs. International air services present complications when considered from the traditional competition Structure-Conduct-Performance (SCP) approach as competition authorities in different jurisdictions may have diverging ideas on how such competition rules would be enforced and under what local laws (Vermooten, 2008). Richman and Lyle (in Myburgh *et al*., 2006) state that the enforcement of competition rules will prevent unfair competition and ensure that passengers derive ongoing benefit from the liberalisation of air routes;

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

- **Infrastructure, safety and security concerns**: the issue of aviation safety and security was considered important by the YD, which made it one of the criteria of eligibility of an air carrier to operate air services. Several articles of the YD address safety and security directly and indirectly. Article 5.1, for example, notes that a state may unilaterally limit the volume of traffic, the types of aircraft to be operated or the number of flights per week for environmental, safety, technical or other special considerations. Article 6.9 declares that the eligibility criteria for a designated airline to operate under the YD are that the airline must be capable of demonstrating its ability to maintain standards at least equal to ICAO and to respond to any query from any state to which it provides air services. The analysis by Schlumberger (2010) on the quality and progress of safety oversight in Africa revealed that the majority of regional economic communities had taken only minor steps in this regard and that most regions of Sub-Saharan Africa rated as poor in relation to safety. Thus, the current situation with respect to safety oversight in Africa could be considered as one of the main obstacles to implementation of the YD (Schlumberger, 2010:52);

- **Excessive protection of national carriers**: the current situation in Africa concerning the liberalisation of intra-African air services reflects a heterogeneous picture. On the one hand there are those states that maintain a small, often struggling carrier and generally remain very protective in their bilaterals. By not applying the principles of the YD, they aim at regulating access, capacity and frequency so as to limit competition, which keeps tariffs at high levels. On the other hand there are two groups of countries that actively support the liberalisation of air services: the first group comprises states that have strong and often market-dominant air carriers, while the second group is represented by states that have lost or have never had a significant national carrier (Schlumberger, 2010:38). Mozambique is a clear example of a conflict between the interests of tourists and those of the national airline. The Mozambican government has recognised the importance of tourism to its national economy, however, it continues to protect the national airline, LAM, by restricting competition on international routes. The negative effect of these restrictions is seen in excessive fares: return flights to Maputo from Johannesburg are 163% more expensive than return flights to Durban from Johannesburg, despite a similar distance between the country-pairs (Myburgh *et al*., 2006:8);

- Due to **capacity and bilateral constraints** in certain parts of Africa, points either on a North/South or East/West axis can only be accessed via hubs outside the Continent, which makes no business or economic sense (ICAO, 2010);

- **Lack of an effective enforcement mechanism**: although there is a Monitoring Body, as stipulated under Articles 9.1 to 9.3 of the YD, that assesses and oversees the implementation of the Yamoussoukro Decision, its role in enforcing the Decision has been ineffectual. The Monitoring Body has met only a few times since its legal creation (in Ethiopia, 2004 and South Africa in 2005 among others); its infrequent meetings are thus an indication of the overall slow pace of the implementation of the YD (Schlumberger, 2010:35). It must be noted, that the Monitoring Body relies on the willingness of the states to cooperate as it does not have any enforcement rights on its own. To ensure successful implementation of the YD, Article 9.4 provides that an African air transport executing agency should be established. The AFCAC was entrusted with the functions of the Executing Agency in 2007. To date, it has not enlarged on details of either the competition rules and regulations, or the arbitration procedures and the dispute settlement mechanisms (Schlumberger, 2010:37). It can therefore be concluded that strong intergovernmental institutions, which are practically non-existent in Africa, are essential for the successful continent-wide implementation of the YD; solving this issue may assist in solving many of the hindrances discussed above.

3.2.7 Measures to help accelerate African air services liberalisation

The following measures or conditions play an important role in accelerating the implementation of the Decision. It must be noted that most African countries adopt their own level and pace of incorporating these measures into their policy documents. The various economic groupings in Africa, such as ECA, the RECs[14] and the African Union among others, have attempted to address some of the measures in an effort to bridge the gaps and accelerate air transport liberalisation (Meshela, 2006:2):

- **Integrated African air transport policy**: the air transport industry in Africa can only survive a fiercely competitive environment if it is backed up by such a policy. A Draft African Common Aviation Policy was presented at the Second Session of the African Union Conference of the Ministers Responsible for Air Transport in November 2011 in Angola (African Union, 2011b);

- **Development and harmonisation of competition rules and dispute settlement mechanisms on a continental basis**: the First Ordinary Session of the Ministers Responsible for Air Transport in 2005 concluded that harmonisation of the rules for liberalising air transport was necessary, as the fragmented state of the Continent was hindering the full implementation of the Decision (African Union, 2005). The first real attempt to enact regional competition law was undertaken by COMESA. COMESA's draft competition regulations and those prepared by SADC were adopted in 2004 as a common draft by the Ministers responsible for Civil Aviation in COMESA, EAC and SADC (COMESA, 2005:3). The formulation of a harmonised set of rules governing competition is necessary at the regional level to avoid the emergence of sub-regional blocks and to enable the uniform implementation of the Decision (Ssamula & Venter, 2005:281). To date, the absence of the competition rules is regarded as a missing element in the implementation of the YD (Schlumberger, 2010:32). As discussed earlier this is a complex issue given that the competition authorities derive their mandates from local legislation and currently no International Convention on Competition Law exists, which can only be applied if markets are "internalised" under the jurisdiction of a single Competition Authority;

[14] REC - Regional Economic Community

- **Provision of the necessary technical assistance**: towards capacity building, including training, development of appropriate policy regulation and setting up of relevant institutional organisations, in the air transport sector at national and sub-regional levels (ECA, 2003:12);

- **Dissemination of information** related to the liberalisation of air transport markets, as well as private sector participation in the development of the air transport industry, should be intensified among the YD countries (ECA, 2003:12);

- **Strengthening the institutional capacity of the Monitoring Body** by allocating enough resources to it should be given due attention so that the implementation of the Decision can be accelerated (Muinde, 2006:4);

- **Infrastructure development**: it is clear from several studies (Myburgh *et al*., 2006; Velia, Van Bastern & Dykes, 2008; Ndhlovu & Ricover, 2009) that liberalisation will have a significant impact on infrastructure development. A plan of action to achieve balanced regional development needs to be put in place, taking into account the different views on funding, ownership and revenue base for infrastructure within the African Continent.

- **Safety and security**: the complexities of addressing and monitoring safety standards dictate that harmonising an air safety regulatory framework is of paramount importance. Aviation policies should be amended to ensure that only airworthy aircraft are allowed to enter the market (Ndhlovu & Ricover, 2009:78). One of the strong elements of the YD is its focus on safety and security. However, this has become the main obstacle to timely implementation as many African states do not, or only marginally, comply with ICAO's safety and security standards and recommended practices (Schlumberger, 2010:13);

- Steps that can be taken to **strengthen national airlines** include: separating the airline from the state bureaucracy, a step which does not require privatisation but rather the application of commercial principles such as entering into mergers, alliances, joint ventures and lease agreements; as well as the removal of ownership restrictions (Myburgh *et al*., 2006:10);

- **Removing barriers to liberalisation** (such as relaxing the immigration formalities and foreign exchange control among others). Three sub-regions, ECOWAS, CEMAC and EAC, have made considerable progress in enhancing the movement of people across regional borders (Ndomo, 2009:20). The latter two have instituted a regional passport. This is a clear example of the fragmented African aviation market, where liberalisation initiatives are driven by a number of economic groupings; however, to effect continent-wide removal of barriers to liberalisation, their efforts should be streamlined and unified to achieve the YD objectives.

To summarise, the Decision is a relatively ambitious framework that aims at opening up air services between African states, thus creating "open skies" in Africa; however, most of the said states have not yet implemented the YD, a decade after its adoption. The implementation has been hampered by numerous obstacles ranging from the excessive protection of national carriers to a lack of competition rules; nonetheless, on a small scale, progress has been made by those like-minded states that have applied the principles of the YD. Tables 3.1 and 3.2 provide an overview of the size of the Yamoussoukro agreement in terms of the traffic covered by its members and its share within total international traffic. Traffic data are for 2005.

Table 3.1: Traffic relations of the individual members of the YD agreement

Members	Traffic with the other members of the YD (pax)	Contribution of each member to the total traffic of the YD agreement (%)	Total international traffic of the member (pax)	Share of the YD agreement within total international traffic of the member (%)
Algeria	222 944	1.2	4 083 938	5.5
Angola	197 771	1.0	495 437	39.9
Benin	450 248	2.4	672 974	66.9
Botswana	276 233	1.5	313 343	88.2
Burkina Faso	232 057	1.2	356 615	65.1
Burundi	94 935	0.5	106 611	89.0
Cameroon	562 863	3.0	950 434	59.2

Members	**Traffic with the other members of the YD (pax)**	**Contribution of each member to the total traffic of the YD agreement (%)**	**Total international traffic of the member (pax)**	**Share of the YD agreement within total international traffic of the member (%)**
Cape Verde	34 593	0.2	316 256	10.9
Central African Republic	64 976	0.3	102 365	63.5
Chad	125 075	0.7	196 983	63.5
Comoros	128 203	0.7	463 065	27.7
Congo Dem. Rep.	216 926	1.1	380 052	57.1
Côte d'Ivoire	1 078 835	5.7	1 479 501	72.9
Djibouti	126 921	0.7	298 326	42.5
Egypt	589 874	3.1	8 367 133	7.0
Equatorial Guinea	145 084	0.8	230 232	63.0
Eritrea	50 606	0.3	196 512	25.8
Ethiopia	324 847	1.7	901 033	36.1
Gabon	353 746	1.9	596 909	59.3
Gambia	248 450	1.3	299 625	82.9
Ghana	665 476	3.5	1 214 241	54.8
Guinea	256 595	1.4	359 191	71.4
Guinea Bissau	37 744	0.2	68 330	55.2
Kenya	1 285 849	6.8	2 646 410	48.6
Lesotho	36 405	0.2	38 419	94.8
Liberia	106 167	0.6	124 572	85.2
Libya	481 296	2.5	1 415 448	34.0
Madagascar	133 065	0.7	495 468	26.9
Malawi	209 103	1.1	279 114	74.9
Mali	592 871	3.1	815 999	72.7
Mauritania	88 769	0.5	245 745	36.1
Mauritius	296 762	1.6	1 875 972	15.8
Mozambique	276 546	1.5	352 760	78.4
Namibia	360 495	1.9	564 499	63.9
Niger	217 511	1.1	293 223	74.2
Nigeria	991 821	5.2	2 214 913	44.8
Rwanda	208 997	1.1	249 567	83.7
Sao Tome and Principe	26 168	0.1	57 010	45.9
Senegal	662 101	3.5	1 410 482	46.9
Seychelles	78 449	0.4	368 082	21.3
Sierra Leone	224 136	1.2	334 806	66.9
Somalia	65 653	0.3	97 523	67.3
South Africa	2 804 484	14.8	7 891 998	35.5
Sudan	315 885	1.7	1 227 321	25.7
Swaziland	66 728	0.4	69 635	95.8
Tanzania	572 602	3.0	1 079 603	53.0
Togo	644 290	3.4	815 262	79.0
Tunisia	350 884	1.9	3 943 564	8.9

Members	Traffic with the other members of the YD (pax)	Contribution of each member to the total traffic of the YD agreement (%)	Total international traffic of the member (pax)	Share of the YD agreement within total international traffic of the member (%)
Uganda	395 829	2.1	626,431	63.2
Zambia	444 751	2.3	561 946	79.1
Zimbabwe	522 161	2.8	721 888	72.3

Source: WTO (2007)

Table 3.2: Traffic covered by the YD agreement in the context of international traffic

Total traffic covered by the YD agreement (pax)	Total international traffic (pax)	Share of YD agreement within total international traffic (%)
9 472 390	495 343 012	1.9

Source: WTO (2007)

Implementation of the Decision has encountered two opposing realities. Execution in terms of carrying out public policy has seen little progress at the intra-African level; many of the key policy elements are still missing or exist only on paper, such as competition rules and arbitration procedures. At the same time, in terms of operational implementation, many examples can be seen of countries (Uganda, Ethiopia, Kenya, South Africa) opening up by applying the YD at the bilateral level (Schlumberger, 2010:172). According to the World Bank study (2010), about two-thirds of African countries are willing to apply the YD because they see little value in protecting their own markets from outside competition.

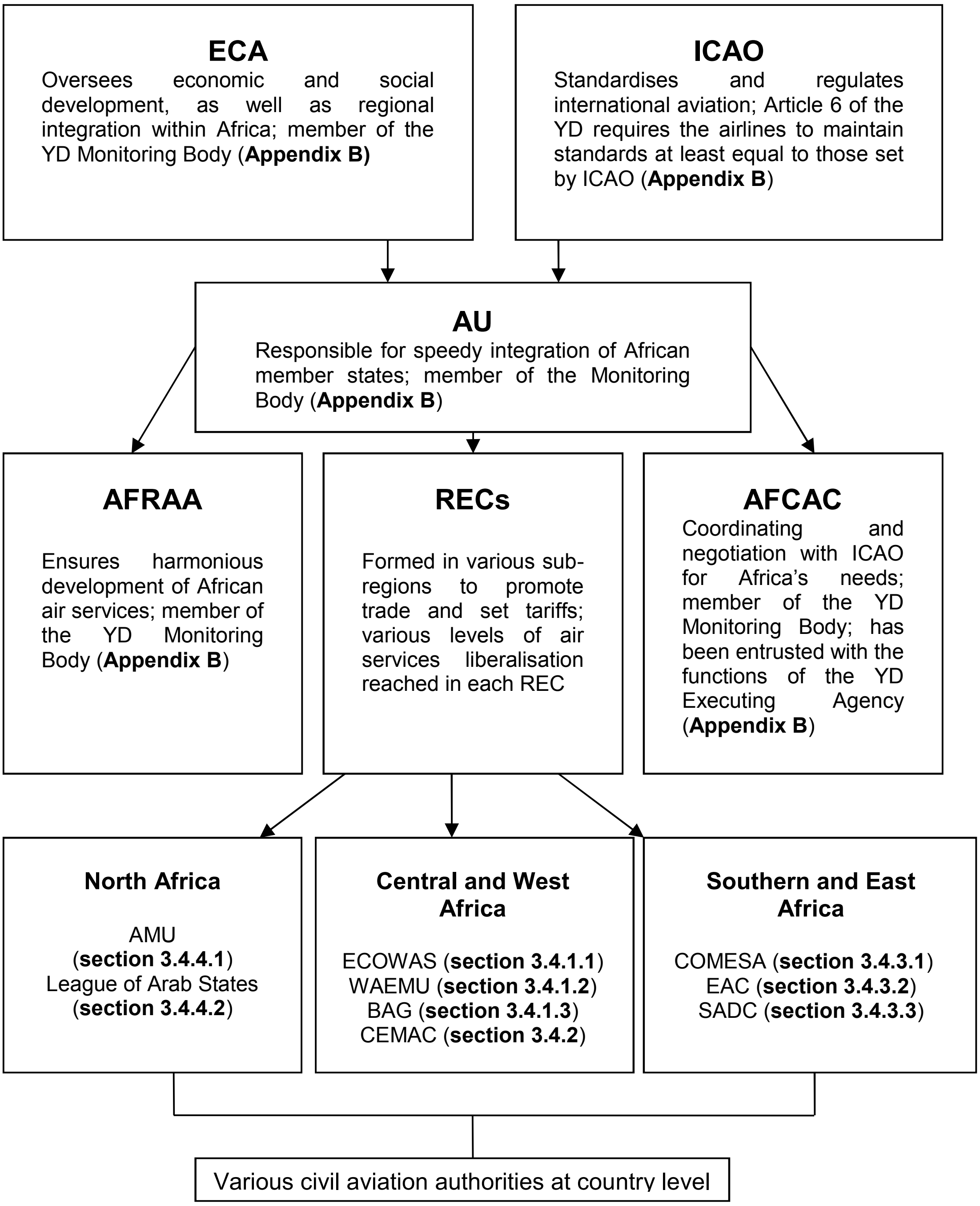
The African states recognised that the implementation of the YD depended mainly on regional initiatives that were to be carried out by the RECs (ICAO, 2003). The next section therefore describes the institutional frameworks that govern the implementation process of the Decision on regional and sub-regional levels, as well as the roles and functions of the organisations that have been instrumental in pushing the implementation of the YD forward.

3.3 ORGANISATIONS INVOLVED IN IMPLEMENTING THE YD WITHIN AFRICA

There are many institutions and regional organisations within the African Continent that govern the progress of the implementation of the Decision. Some of these were set up to regulate and standardise the aviation industry, while others were formed to accelerate the implementation of the YD. The importance of the regional economic groupings in the implementation of the Decision was recognised by the African states in 2004 at the Worldwide Air Transport Conference: Challenges and Opportunities of Liberalisation. It was highlighted there that the implementation of the YD should be carried out through five possible groupings: the AMU, ECOWAS, CEMAC, SADC and COMESA (ICAO, 2003). However, in some instances other regional organisations, such as the League of Arab States, WAEMU, BAG and EAC that play an instrumental role in the liberalisation of air transport in Africa will also be examined.

A description of the institutions and organisations, their respective roles in opening up Africa’s skies and the progress that has been made in sub-regional and regional implementation of the YD is presented below. To make this section more logical, figure 3.2 summarises these institutions; table 3.3 presents the various groupings and organisations related to the implementation of the Decision while providing an overview of the membership of the African countries in relation to them.

Figure 3.2: Institutions and organisations linked to the YD



Source: adopted from Ssamula (2008)

Table 3.3 provides an overview of the membership of the African countries in the respective regional groupings, instrumental in the progress achieved in the implementation of the YD, and highlights the overlaps within the groupings. It is important to note: the South African Department of Transport groups the existing South African – African bilaterals into four mutually exclusive regions, namely, the SADC, West, East and North African regions in all its official documents. These groupings are not based on the regional groupings or geographical location and are also presented in table 3.3. For the purposes of the empirical research, which required mutually exclusive groupings due to the selected research methodology in the form of a fixed one-way panel regression, the grouping of the regions followed the DOT approach.

Table 3.3: Matrix of African countries in the context of regional groupings

	Regional groupings and organisations								SA's DOT grouping			
Country	**ECOWAS**	**WAEMU**	**BAG**	**CEMAC**	**COMESA**	**SADC**	**EAC**	**AMU**	**SADC Region**	**West Region**	**East Region**	**North Region**
Algeria								▲				▲
Angola					▲	▲			▲			
Benin		▲								▲		
Botswana						▲			▲			
Burkina Faso		▲								▲		
Burundi					▲		▲				▲	
Cameroon				▲						▲		
Cape Verde	▲		▲									
Central African Republic				▲						▲		
Chad				▲						▲		
Comoros					▲						▲	
Congo				▲						▲		
Congo, the Democratic Republic					▲	▲			▲			
Côte d'Ivoire		▲								▲		
Djibouti					▲							
Egypt					▲							▲
Equatorial Guinea				▲								
Eritrea					▲							
Ethiopia					▲						▲	
Gabon				▲						▲		
Gambia	▲		▲							▲		
Ghana	▲		▲							▲		
Guinea	▲		▲									
Guinea-Bissau		▲										
Kenya					▲		▲				▲	
Lesotho						▲			▲			
Liberia	▲		▲							▲		
Libya					▲							▲
Madagascar					▲	▲			▲			
Malawi					▲	▲			▲			
Mali		▲								▲		
Mauritania								▲		▲		

	Regional groupings and organisations								**SA's DOT grouping**			
Country	**ECOWAS**	**WAEMU**	**BAG**	**CEMAC**	**COMESA**	**SADC**	**EAC**	**AMU**	**SADC Region**	**West Region**	**East Region**	**North Region**
Mauritius					▲	▲			▲			
Morocco								▲				▲
Mozambique						▲			▲			
Namibia						▲			▲			
Niger		▲								▲		
Nigeria	▲		▲							▲		
Rwanda					▲		▲				▲	
Sao Tome and Principe												
Senegal		▲								▲		
Seychelles					▲	▲			▲			
Sierra Leone			▲							▲		
Somalia											▲	
South Africa						▲						
Sudan					▲						▲	
Swaziland					▲	▲			▲			
Tanzania						▲	▲		▲			
Togo		▲								▲		
Tunisia								▲				▲
Uganda					▲		▲				▲	
Zambia					▲	▲			▲			
Zimbabwe					▲	▲			▲			

Source: Various[15]

Institutions and organisations involved in speeding up the process of the YD implementation, as well as their main functions in relation to the YD, are discussed in Appendix B. In summary, the implementation of the YD has made little progress over the past nine years on a continent-wide basis, given the various challenges and obstacles discussed above. However, varying progress, spearheaded by several key organisations in conjunction with regional groupings, has been achieved on a regional basis. These instrumental organisations and their roles in moving the YD forward are comprehensively discussed in the subsequent section.

[15] Various sources were used to construct the table: AMU (2011); BAGASOO (2011); CEMAC (2011); COMESA (2011); EAC (2011); ECOWAS (2011); SADC (2011) and WAEMU (2011).

3.4 REGIONAL IMPLEMENTATION OF THE DECISION

It was stated earlier that the African Union has recognised the importance of each REC or regional economic grouping, as referred to in several documents, in moving forward the implementation of the YD within each REC, as well as between the RECs. For the purposes of this study, the focus will fall on five regional economic groupings, namely the AMU, ECOWAS, CEMAC, SADC and COMESA as well as several other regional organisations that play a role in the liberalisation of air transport in Africa, such as the League of Arab States, BAG, WAEMU and EAC.

3.4.1 West Africa's progress in implementing the Decision

3.4.1.1 Economic Community of West African States

The West African states can be grouped into several economic and/or political organisations. The largest, in terms of the number of members, is the Economic Community of West African States (ECOWAS), which encompasses 15 West African countries as depicted in figure 3.3.

Figure 3.3: ECOWAS member states

Source: ECOWAS (2011)

However, in relation to air transport policy and the implementation of the YD, the West African states have split into two distinct groups: the West African Economic and Monetary Unit (WAEMU)[16] and the Banjul Accord Group (BAG)[17]. It is important to emphasise that all three organisations play an instrumental role in driving the implementation of the YD, which will be discussed below.

In March 2001, Ministers responsible for Civil Aviation in the 23 West and Central African countries met in Bamako, Mali to discuss the steps towards the implementation of their air transport policy. This resulted in the Bamako Action Plan which aimed to:

- Strengthen the capacity of civil aviation authorities to enable them to undertake the economic and technical regulation of civil aviation more effectively;
- Harmonise the legal and institutional framework of air transport;
- Explore options for mechanisms to ensure that oversight of the industry is carried out on a cost-effective and sustainable basis at both state and regional levels.

Based on the Action Plan, project secretariats were established at ECOWAS and CEMAC (ECOWAS & CEMAC, 2004:4).

In February 2003, the Council of Ministers for the Implementation of the Yamoussoukro Decision in West and Central Africa met in Lome, Togo. However, in spite of strong declarations in support of the YD, including requests to the ministers of foreign affairs of member states to take urgent practical measures to fast-track the exchange of diplomatic notes on the mutual consent of the designation of airlines, no significant progress was made in taking concrete steps towards implementation. Despite this, the Air Transport

---

[16] WAEMU comprises eight French-speaking West African states: Benin, Burkina Faso, Ivory Coast, Mali, Niger, Senegal, Togo and Guinea-Bissau (WAEMU, 2011).
[17] BAG comprises seven predominantly English-speaking West African states: Cape Verde, the Gambia, Ghana, Guinea, Liberia, Nigeria, and Sierra Leone (BAGASOO, 2011).

Economic Regulation Harmonisation Committee was established to steer the process of developing common air transport economic regulations for West and Central Africa and to periodically monitor the implementation of the YD at state level.

Notwithstanding several inter-ministerial meetings, the various studies and reports prepared, as well as the financial support by international donors, such as the World Bank and the African Development Bank, ECOWAS has not adopted any legally binding legislation or regulation that could be interpreted as a step towards implementation of the YD (Schlumberger, 2010:75).

3.4.1.2 West African Economic and Monetary Union

On 27 June 2002, the statutory Council of Ministers of Transport of the WAEMU adopted the first package of a common air transport programme in Dakar while the final, second package was adopted on 29 November in Lome. The programme focused on four main items:

- Ensuring that infrastructure and equipment are in compliance with ICAO SARP;
- Harmonising air transport regulations;
- Enhancing air transport systems;
- Liberalising air transport services (WAEMU in Schlumberger, 2010).

In the eight years since the inception of the common air transport programme, WAEMU has made progress by instituting several regulations. In summary, the Union has adopted most of the regulations necessary to implement its union-wide air transport liberalisation programme, which at the same time complied with or exceeded the provisions and requirements of the YD (Schlumberger, 2010:80). These are presented in Appendix C.

It is clearly demonstrated, in Appendix C, that WAEMU has established most of the necessary regulatory framework that implements the main provisions of the YD within its territory and even goes beyond the Decision in relation to market access. The integration of WAEMU's air services market into the intra-African market, which is covered by the YD, is not effectively dealt with: even though each regulation related to air transport includes a reference to the YD, it also limits the scope of air transport policy to WAEMU territory. This indicates that WAEMU maintains reservations about embracing the full, continent-wide implementation of the YD (Schlumberger, 2010:81-82).

Nevertheless, WAEMU's full liberalisation of air services within its territory should be considered as a successful step towards the ultimate implementation of the YD. A future regulation by the Council of Ministers of Transport of the WAEMU, which clarifies access by non-WAEMU carriers, would finalise this step (Schlumberger, 2010:82).

3.4.1.3 Banjul Accord Group

On 29 January 2004, seven West African states signed the BAG Agreement (WTO, 2006:20). Article 3.1 explicitly states implementation of the Decision as an objective. However, while the intent of the YD is to liberalise access to air transport markets in Africa, the BAG Agreement seems to emphasise airline cooperation rather than aiming to focus primarily on liberalisation and free competition as stipulated in the YD. In addition to the Agreement, the BAG Plenary produced two documents: the Multilateral Air Services Agreement (MASA[18]) and the MOU for the implementation of a technical cooperation project (COSCAP) for BAG (BAG in Schlumberger, 2010). Appendix D summarises the main components of MASA, which is, in essence, an identical application of the YD for BAG member states.

[18] MASA was signed on 29 January 2004 by all seven West African states that signed the BAG agreement (WTO, 2006)

In summary, by means of the Multilateral Air Services Agreement, BAG has established a liberalised regime that is fully compatible with the provisions and obligations of the YD. Its clear obligations and focus on safety and security, as well as the simplified dispute settlement mechanism, should be an inspiration to implement the YD within the Banjul Accord Group region. It also serves as a good example that liberalised air transport markets may not require costly and complicated institutional supervisory mechanisms, such as the executing agency and monitoring body of the YD (Schlumberger, 2010:86). MASA offers a clear example of a liberalised air transport market that did not require institutional supervisory mechanisms to be fully and successfully implemented.

3.4.2 Central Africa's progress in implementing the Decision

Central Africa has one regional economic community, the Economic and Monetary Community of Central Africa (CEMAC), which is made up of six central African states[19]. The CEMAC states developed three measures before the YD was signed or took full effect in the CEMAC region, which were aimed at developing the region's air transport sector.

These were:

- The Agreement on Air Transport[20];
- The Civil Aviation Code;
- The Joint Competition Regulation (Schlumberger, 2010:88).

---

[19] The legal basis of CEMAC is a treaty that was signed in 1994 between Cameroon, Central African Republic, Chad, Republic of the Congo, Equatorial Guinea and Gabon (World Bank, 2011a).

[20] The Agreement on Air Transport was adopted on 18 August 1999 and is a programme that aims to develop CEMAC's intra-community air transport sector in order to establish greater access within the region and to promote economic and commercial relations between member states (ICAO, 2002:5).

Several provisions of the Agreement on Air Transport are similar, and even identical, to the YD and are presented in Appendix E. In addition, the CEMAC Agreement on Air Transport includes provisions in relation to the implementation of the intra-community liberalisation, such as the establishment of an executing agency responsible for implementing and supervising the liberalised air transport policy (CEMAC Article 21 in Schlumberger, 2010) as well as for granting permission to non-member states to join this framework and to participate in CEMAC's air transport market (CEMAC Article 24 in Schlumberger, 2010).

Given the objective of establishing a coordinated and harmonised legal framework for the air transport sector, in July 2000, the CEMAC Council of Ministers responsible for Transport adopted the CEMAC Civil Aviation Code. The new Code incorporated most of the provisions that had been decided just one year earlier in the CEMAC Agreement on Air Transport. In terms of the YD, all major provisions that have been developed for the CEMAC member states in the Agreement on Air Transport have been included in the Code (Schlumberger, 2010:90), as summarised in Appendix E.

The third element of liberalisation of air services among the CEMAC member states is the Joint Competition Regulation, which was adopted on 25 June 1999 by the CEMAC Council of Ministers responsible for Transport, the main objective of which was to prevent any form of interference with free and efficient competition (CEMAC in Schlumberger, 2010).

It is therefore clear from the summary in Appendix E and the above discussion, that CEMAC, in a manner similar to that of WAEMU, has implemented most of the necessary framework that constitutes the main provisions of the YD.

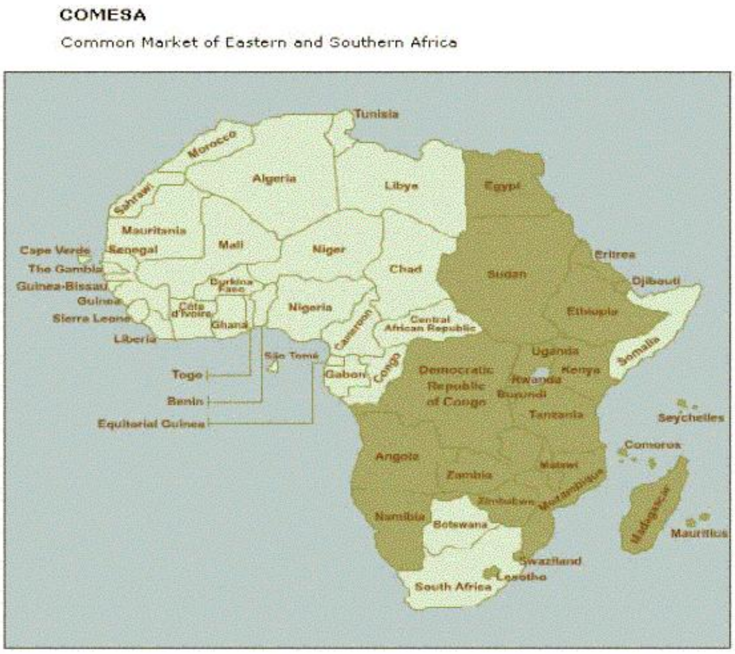
3.4.3 <u>Southern and East Africa's progress in implementing the Decision</u>

Southern and East Africa contain three regional groupings that address the air transport sector, namely a) the Common Market for Eastern and Southern Africa (COMESA), comprising 19 countries; b) Southern African Development Community (SADC), comprising 15 countries and c) East African Community (EAC), comprising five countries as depicted in figures 3.4 to 3.6. The progress that has been achieved in air transport liberalisation pertaining to the implementation of the YD in each of the regional groupings is covered in sections 3.4.3.1 to 3.4.3.3 below.

3.4.3.1 COMESA

COMESA's policy on air transport was already well established in the COMESA Treaty under Article 84, which noted that member states should undertake to develop coordinated and complementary transport and communication policies (COMESA, 1994:45). In 1999, running practically parallel to the YD, COMESA's Council of Ministers issued the Regulation for the Implementation of the Liberalised Air Transport Industry, according to which, air transportation within COMESA had to be liberalised in two phases. Phase I, which was initiated in October 1999, a) agreed to the inception of free movement of air cargo and non-scheduled passenger services within COMESA; b) introduced unrestricted movement of intra-COMESA scheduled passenger services with a frequency limit of up to two daily flights between any city-pair within COMESA and c) adopted multiple designations and the elimination of capacity restrictions (COMESA, 1999).

Figure 3.4: COMESA member states



Source: Wikipedia (2011)

The air transport liberalisation progress was achieved within one year of the commencement of Phase I. Following this, in October 2000, Phase II became the new policy. This in essence introduced free movement of air transport services within COMESA and liberalised air services far beyond the scope of the YD as summarised in Appendix F.

Despite the clear and concise liberalisation programme, its adoption was stalled in 2001 when COMESA's Council of Ministers decided to "defer the implementation of Phase II, awaiting the preparation of competition regulations" (COMESA, 2005:3). Subsequently, the implementation of liberalised air services within COMESA as specified in Phase II remained pending for several years. By 2004, only 12 member states had implemented Phase I while Djibouti alone had opened its airspace to COMESA carriers in line with Phase II (COMESA, 2004:22).

In November 2006, COMESA, SADC and EAC Ministers responsible for Civil Aviation jointly adopted the Guidelines, Provisions and Procedures for the Implementation of the Regulations for Competition in Air Transport Services within COMESA, EAC and SADC

(SADC, 2008). According to these guidelines, implementation of the competition regulations included the establishment of a joint competition authority that would be responsible for monitoring the implementation of the YD and competition regulations in air transport services within the three regional groupings. To date, the implementation of the joint competition regulations remains pending in all three regional groupings, despite the fact that its establishment was formally agreed upon by the heads of states at the 12th summit of COMESA in May 2007 (Schlumberger, 2010:99).

Thus, almost ten years after COMESA liberalised air services within its territory by instituting Phase II, application of this liberalisation policy is still pending. Currently, the understanding of all COMESA member states is that the establishment of a joint competition authority remains the missing link before liberalisation of air services can be applied (Schlumberger, 2010:100).

3.4.3.2 EAC

The EAC Treaty entered into force on 7 July 2000, initially comprising Uganda, Kenya and Tanzania, and expanded in 2007 when Burundi and Rwanda joined (Schlumberger, 2010:105). The objectives of the EAC civil aviation programme were to harmonise civil aviation policies among partner states and to facilitate the establishment of joint air services (EAC, 1999:73-74). The main steps outlined were:

- Adopting common policies to develop civil air transport in collaboration with other relevant organisations, such as ICAO and airline associations;

- Liberalising the granting of air traffic rights for passenger and cargo operations;

- Harmonising civil aviation rules and regulations;

- Establishing a system of air traffic control for the upper flight levels;

- Coordinating the flight schedules of designated carriers;

- Applying ICAO guidelines to determine user charges for scheduled air services;
- Adopting common aircraft and technical standards.

Some of these steps match elements of the YD, which was signed the same year as the Treaty of the EAC, but the latter is limited to liberalising the granting of air traffic rights for passenger and cargo operations and does not further specify the extent of liberalisation. The concrete objectives of establishing joint air services and facilitating the efficient use of aircraft are elements of the YD (Schlumberger, 2010:107).

Figure 3.5: EAC member states

Source: United Nations Multimedia (2011)

Even though the EAC Treaty did not incorporate all principles of the YD, the EAC's Sectoral Council on Transport, Communications and Meteorology worked continuously on several key measures of the YD. The most important was the application of a liberalised air transport policy for scheduled air services. While other RECs developed specific regulations that liberalised air services within their REC, for example, WAEMU and BAG, the EAC chose to focus on amending the BASAs between the partner states. The 11th Meeting of the Council of Ministers of the EAC formally approved several measures pertinent to air transport (EAC, 2006:61):

- The amendments to the bilaterals between the EAC states towards full implementation of the YD on air transport liberalisation have been approved and must be incorporated into the respective bilaterals;

- The amendments include full liberalisation of air services between any points within the territory of the EAC. Following the principles of the YD, no restriction shall be posted on frequency, capacity or types of aircraft operated by designated EAC carriers;

- The heads of civil aviation and airport authorities of each partner state are authorised and instructed to renegotiate the funding of civil aviation safety and airport projects with their respective ministers of finance and to seek other resources for such projects (ECA, 2006:62);

- The revised civil aviation regulations for the EAC are to be promulgated to facilitate establishment of the East African Civil Aviation Safety and Security Agency;

- The EAC Secretariat must develop a comprehensive funding arrangement for the priority airport projects, for consideration by the Sectoral Council on Transport, Communications and Meteorology.

The EAC took the first step towards implementing these decisions and directives on 18 April 2007, when the Extraordinary Council of Ministers Meeting approved the establishment of the EAC's Civil Aviation Safety and Security Agency. The main objective of the Agency was to promote the safe, secure and efficient use and development of civil aviation by having the partner states meet their responsibilities and obligations under the Chicago Convention (CASSOA, 2011).

The EAC has displayed great interest in and motivation towards liberalising and developing air services within its territory; however the key element of the EAC's approach towards implementing the YD, namely the amendment of BASAs between EAC states, is still pending. Currently the existing bilateral regime among the EAC partner states is more restrictive than the one established by the YD framework (Schlumberger, 2010:110).

In essence, the creation of the regional Civil Aviation Safety and Security Oversight Agency can be seen as an important step, not only for the implementation of the YD, but also for the development of international air services by any EAC state. However, it is only a tool and the revision of the BASAs remains the more essential step (Schlumberger, 2010:110).

3.4.3.3 SADC

SADC member states signed the Protocol on Transport, Communications and Meteorology in 1996. Its main aim was the establishment of transport and communication systems which were efficient, cost-effective, predictable, environmentally sustainable and meeting the needs of the users. In particular, the Protocol focused on the elimination of the hindrances and impediments to the movement of passengers, goods and services. Liberalisation of air services was mentioned in Article 9.2 of the Protocol, titled Civil Aviation Policy, which noted that member states would develop a harmonised regional aviation policy that included the “gradual liberalisation of intra-regional air transport markets for the SADC airlines” (SADC, 1996:55). While the majority of the other regional economic groupings, as discussed above, have agreed upon or issued legislation aimed at implementing the YD, the SADC did not further define liberalisation in relation to implementation of the YD. Even though the SADC never formally agreed on intra-regional liberalisation of its air services, it has worked continuously to implement the YD, to which all SADC member states are bound, with the exceptions of Madagascar, South Africa and Swaziland (see Appendix A). As discussed previously, the South African government reconfirmed its dedication to the implementation of the YD at numerous meetings and conferences and has, to date, implemented certain YD principles on a bilateral level with willing states. The Airlift Strategy of 2006 outlined a five-year liberalisation target pertaining to the implementation of the YD principles.

Figure 3.6: SADC member states

Source: Department of Trade and Industry (2011)

The SADC Protocol's sub-regional initiatives on the liberalisation of intra-Africa air transport are aligned with the principles of the YD (Department of Transport, 2006:5). The actions undertaken by the SADC through the Southern African Transport and Telecommunication Commission (SATCC-TU) and COMESA have so far helped to create awareness and facilitated the formulation of the necessary regulatory instruments for the implementation of the Decision. Some of the actions were: a) establishment of COMESA as a follow-up mechanism; b) harmonisation of air transport policies, including the rules governing civil aviation; c) running a number of workshops with the objective of enhancing the understanding of the Decision, as well as effective ways of speeding up its implementation; and d) the establishment of a joint COMESA-SADC unit to monitor the implementation of the YD (ECA, 2003:2-5).

Thus far, COMESA has been very active in creating guidelines for Member States on the implementation of the liberalisation policies in the air transport sector. It has also established a follow-up and monitory mechanism and has conducted and participated in numerous joint workshops with the SADC and EAC (ECA, 2003:4-6).

The EAC together with COMESA and SADC has been actively involved in various initiatives directed at speeding up the progress of the Decision. The SADC air transport subcommittee and the EAC transport subcommittee have been working very closely and collaboratively towards the implementation and monitoring of the air transport competition rules in accordance with the terms of the YD (ECA, 2003:5). In 2005, it was decided, by the African Ministers responsible for Air Transport, that the African Union, in collaboration with AFCAC and AFRAA, would assist with the dissemination of competition rules for Africa (African Union, 2005:6).

The only regional aspect of the implementation of the YD is the joint COMESA, SADC and EAC approach toward preparing regulations for competition in air transport services. Even though the three RECs designed a defined road map for implementation on several occasions, the adoption of the joint competition regulations and the establishment of a joint competition authority are still pending (Schlumberger, 2010:103).

In summary, the SADC has not taken any steps towards implementing the YD that can be considered binding for its member states; however it has acknowledged the Decision and its objectives in liberalising air transportation across the Continent. The SADC member states therefore cannot be considered to have liberalised air transport in the spirit of the YD.

3.4.4 North Africa's progress in implementing the Decision

Over the last few decades, two regional organisations have played a role in trying to regulate and liberalise air transport in North Africa, namely the Arab Maghreb Union (AMU) and the League of Arab States.

3.4.4.1 The AMU

The AMU was created on 17 February 1989 by a treaty that was signed in Morocco by the leaders of Algeria, Libya, Mauritania, Morocco and Tunisia and was modelled after the European Community. Its main objectives included integration of the member states and their people with the goals of achieving prosperity and progress, preserving peace, developing a common policy in certain domains and gradually achieving free movement of people and transfer of services, goods and capital (MEDEA Institute, 2011). Since then, the AMU states have not implemented the liberalisation of air services within the Union, even though all of them, with the exception of Morocco, were signatory states of the YD. The initiative to liberalise came from European countries that wanted to harmonize and gradually liberalise their air transport system in the Mediterranean region (Schlumberger, 2010:63). Only later, in 2007, did the AMU Transport Ministers recognise the need for liberalisation in their region and set up a committee at a meeting in Morocco to examine Morocco's proposal for an "open skies" agreement. Despite this, no consideration of the YD and the liberalisation of air traffic to Sub-Saharan Africa are currently in evidence (Schlumberger, 2010:65).

3.4.4.2 The League of Arab States

The League of Arab States or the Arab League was founded in Cairo on 22 March 1945 by a treaty that was signed by the heads of state of seven Arab nations: Egypt, Iraq, Jordan, Lebanon, Saudi Arabia, the Syrian Arab Republic and the Republic of Yemen; the purpose of which was to strengthen relations between the member states, coordinate their policies, safeguard their independence and sovereignty and deal with issues of general concern that were in the interests of the Arab countries (League of Arab States, 2011). Several decades later, the Arab Civil Aviation Commission was created, based on an agreement of the Council of Arab Transport Ministers reached in 1999, which had as its aim the liberalising of intra-Arab air services over a period of five years by gradually reducing restrictions for carriers of member states of the Commission. This resulted in the signing of 17 "open skies" agreements among member states that included Bahrain, Jordan, Lebanon, Morocco, Oman, Qatar, Syria and the United Arab Emirates (Kotaite, 2006). In 2004, under the leadership of the Commission, several Arab League members, namely Bahrain, Egypt, Iraq, Jordan, Lebanon, Oman, Palestine, Somalia, Sudan, Syria, Tunisia and the Republic of Yemen signed a multilateral agreement on the liberalisation of air transport between the Arab states known as the Arab League Open Skies Agreement (Arab Civil Aviation Commission, 2004). In essence, the Agreement provides the same, or as in the case of seventh freedom rights, even greater liberalisation of air services than the YD. It goes further and defines the competition rules and the conflict resolution procedure. The provisions of the Agreement do not conflict with the Decision however, the Agreement has been ratified only by six Arab states to date, namely Syria, Jordan, Palestine, the Republic of Yemen, UAE and Lebanon (Schlumberger, 2010:70).

In summary, of the six Arab states on the African Continent (Algeria, Egypt, Libya, Mauritania, Morocco and Tunisia) only four are bound by the Decision. Morocco never signed the YD, but has nevertheless since then pursued an "open skies" policy and has called for liberalisation within the AMU. Mauritania, on the other hand, deposited its ratification instruments too late. Nevertheless, the development dynamics of the Arab League towards liberalisation of air services and the Arab League Open Skies Agreement are strong foundations on which the liberalisation of air services among African states can grow (Schlumberger, 2010:71).

3.4.5 **Summary overview of the regional progress achieved in the implementation of the YD**

The importance of regional and sub-regional organisations in speeding up the process of the YD implementation towards intra-African liberalisation, as well as the progress achieved thus far, was comprehensively covered in sections 3.3 and 3.4. Numerous organisations and regional groupings have been instrumental in moving the Decision forward despite many hindrances and challenges. Nevertheless, the Continent still remains highly fragmented and progress achieved in various regional groupings paints a very heterogeneous picture. Of vital importance is the African Union's involvement in ensuring that the liberalisation of air services that had been achieved within each regional grouping should eventually stimulate such liberalisation between these groupings with the main goal of complete continent-wide implementation.

In West Africa, no significant progress has been achieved by the umbrella organisation, ECOWAS, in the implementation of the Decision, despite numerous ministerial meetings, studies and reports prepared, as well as financial assistance from international donors. Small regional organisations within West Africa, on the other hand, have established an air services regime that is in line with key provisions of the Decision. BAG has agreed to the implementation of MASA, which in essence, can be seen as the acknowledgement and reaffirmation of the YD.

WAEMU went beyond the underlying principles of the YD in the liberalisation of the air services regime; in particular, to market access, by granting its members all freedoms including cabotage; however the scope is limited to the WAEMU region. This could be regarded as a possible obstacle towards continent-wide implementation of the YD, but on the other hand, WAEMU's full liberalisation of air services within its territory must be considered a successful step towards the ultimate implementation of the YD. A future regulation by the statutory Council of Ministers of Transport of the WAEMU which clarifies access by non-WAEMU carriers would finalise this step.

In Central Africa, three main measures have been instrumental in the regions' pursuit of air services liberalisation: a) the Agreement on Air Transport; b) the CEMAC Civil Aviation Code; and c) the Joint Competition Regulation. The first element in the form of the Agreement of Air Transport encompasses provisions similar, and in some cases identical, to the ones of the YD. The Agreement promotes intra-African liberalisation by permitting non-member states to join the framework and to participate in CEMAC's air transport market. The second important element, with respect to liberalisation, was the establishment of a coordinated and harmonised framework, namely the CEMAC Civil Aviation Code in which all vital elements of the YD have been incorporated. The third element, the Joint Competition Regulation, was created to prevent any form of interference in free and efficient competition. It is clear that CEMAC has implemented a regulatory framework that is compliant with the YD provisions.

In Southern and East Africa, COMESA, during 2000, achieved progress by creating a framework that introduced free movement of air transport services within the region and liberalised air services beyond the scope of the YD, in particular with reference to market access that allowed COMESA carriers to operate between any destinations in the region. Currently however, the main stumbling block in the implementation of such liberalisation in the region, which would go further than that of the YD, remains the lack of the establishment of a joint competition authority.

EAC has chosen a strategy of revising bilaterals with its partner states to conform to the YD. The implementation of this strategy is still pending and the current bilateral regime among the EAC partner states is much more restrictive than that which has been established by the YD framework.

Of the three regional groupings, SADC has achieved the least progress and has taken no steps towards implementing the YD that can be considered as binding for its member states. It has however acknowledged the YD and its objectives in liberalising air transportation across the Continent. The SADC member states therefore cannot be considered to have liberalised air transport in the spirit of the YD.

Lastly, no progress in the implementation of the Decision has been made in North Africa. Almost a decade after the adoption of the YD, the Arab states of North Africa have not begun liberalising air services among themselves, even after the conclusion of the Arab League Open Skies Agreement. Morocco, to date, has been the most active country in the pursuit of air services liberalisation.

In his study, Schlumberger (2010) rated the regional economic communities or groupings in terms of their progress towards implementation of the YD, as well as the extent of liberalisation achieved; the results are summarised in table 3.4 below. This indicates that

CEMAC and WAEMU received the highest liberalisation implementation score, followed by BAG.

Table 3.4: Grading of RECs on their liberalisation of air services[21]

Community	*General status of Yamoussoukro Decision implementation*	*Status of air services liberalization*	*Overall implementation score[a]*
AMU	No implementation has occurred.	No liberalization within the AMU has been initiated, but the need for liberalization is recognized.	1
BAG	The principles of the Yamoussoukro Decision have been agreed upon in the MASA.	Up to fifth freedom rights have been granted, tariffs are free, and capacity and frequency are open.	4
CEMAC	The principles of the Yamoussoukro Decision have been agreed upon in an air transport program. Some minor restrictions remain.	Up to fifth freedom rights have been granted, tariffs are free, and capacity and frequency are open. A maximum of two carriers per state may participate.	5
COMESA	Full liberalization has been agreed on (Legal Notice No. 2), but application and implementation remain pending until a joint competition authority has been established.	Liberalization is pending. Once applied, operators may be able to serve any destination (all freedoms) and tariffs, capacity, and frequency will be free.	3
EAC	The EAC Council issued a directive to amend bilaterals among EAC states to conform to the Yamoussoukro Decision.	Air services are not liberalized because the amendments to bilaterals remain pending.	3
SADC	No steps toward implementation have been taken, even though SADC's civil aviation policy includes the gradual liberalization of air services within SADC.	No liberalization has been initiated within SADC.	2
WAEMU	The Yamoussoukro Decision has been fully implemented.	All freedoms, including cabotage, have been granted. Tariffs have been liberalized.	5

Source: Schlumberger (2010:120)

In November 2011 the Draft African Common Civil Aviation Policy was presented in Angola at the Second Session of the African Union Conference of Ministers Responsible for Transport. This step could be interpreted as another important milestone in the pursuit of intra-African air liberalisation on the Continent. However, it must be noted that little success has been achieved in the past regarding efforts to improve civil aviation in Africa due to lack of political will, as well as numerous institutional and procedural constraints (African Union, 2011b:10).

[21] The rating scale ranges from no progress towards liberalisation (1) to full implementation of liberalisation (5).

3.5 IMPACT OF LIBERALISATION

The liberalisation of air services, or as it is referred to in the United States, airline deregulation, has had a significant impact on the growth of air transport markets in the developed world. The African Continent started to liberalise its markets 20 years later with different progress in various regions. Despite slow progress, there are indications that liberalisation has already had an impact on African air transport services (Schlumberger, 2010:115).

3.5.1 <u>General traffic analysis</u>

In his research, Schlumberger (2010:119-121) analyses air traffic to measure the impact of liberalisation, focusing on two main markets for each regional economic community: international traffic in terms of seat capacity within a REC and international traffic between REC countries and countries in Africa that do not belong to the given REC. The traffic data provides an estimated seat capacity for 2001, 2004 and 2007; the change in seat capacity has been measured for two periods: between 2001 and 2004 and between 2004 and 2007. However, it is important to note that most measures to implement the YD were only achieved in recent years and, given the worldwide drop in air traffic after 11 September 2001, the latter dataset provides more evidence on the impact of liberalisation. The change in seat capacity over two periods is indicated in table 3.5.

Table 3.5: Estimated number of seats on international flights within and between the RECs

	Number of seats			Growth 2001–07	Growth 2004–07
REC	2001	2004	2007	(percent)	(percent)
International flights within RECS					
AMU	799,719	943,345	1,294,189	8.4	11.1
BAG	549,105	425,427	568,306	0.6	10.1
CEMAC	498,708	495,158	152,984	−17.9	−32.4
COMESA	2,952,372	2,745,938	4,484,675	7.2	17.8
EAC	1,384,894	1,458,539	1,751,811	4.0	6.3
SADC	4,033,387	4,465,842	5,663,632	5.8	8.2
WAEMU	983,167	849,818	763,472	−4.1	−3.5
International flights between RECS					
AMU	617,747	879,595	1,641,705	17.7	23.1
BAG	1,911,861	1,573,379	2,130,360	1.8	10.6
CEMAC	1,206,595	1,044,355	1,266,196	0.8	6.6
COMESA	1,675,538	2,075,502	2,961,023	10.0	12.6
EAC	623,131	815,557	1,069,575	9.4	9.5
SADC	1,660,856	1,980,463	2,296,398	5.6	5.1
WAEMU	1,877,875	1,907,297	2,352,456	3.8	7.2

Source: Schlumberger (2010:121). Data was procured from the Airline Data Group and calculated by Schlumberger.

At the first glance, the changes in offered seats could lead to the erroneous conclusion that liberalisation has had a negative effect on traffic. Air traffic within two of the most liberalised regions (CEMAC and WAEMU) dropped significantly between 2004 and 2007, while traffic between the RECs dropped slightly between 2001 and 2004 though it experienced positive growth in the period between 2004 and 2007. However, the second most liberalised region, BAG, saw a healthy growth in traffic, especially during the years when liberalisation took effect (2004 to 2007). The drop in traffic in West and Central Africa was not a direct effect of the YD, but can be attributed to other factors as discussed in sections below (Schlumberger, 2010).

3.5.2 Development in West Africa

As comprehensively discussed above, West Africa has done well in implementing the principles of the YD: WAEMU has fully liberalised its internal market and BAG has applied most of the principles in the MASA. Schlumberger (2010:130-133) examined the regional development of West African countries by grouping small players and reviewing dominant countries separately.

The first group of small countries comprises Benin, Burkina Faso, Guinea, Guinea-Bissau, Mali, Mauritania, Niger and Togo, most of which are members of WAEMU. The development of air transport in these countries has been unstable, consisting only of the entrance of several carriers with low capacities as indicated in table 3.6. In Mali and Togo for example, the air transport industry has completely disappeared after several unsuccessful attempts to develop new operators.

Table 3.6: West Africa fleet analysis, 1997 to 2007

	1997			2001			2004			2007		
Country	Carriers	Aircraft	Available seats	Carriers	Aircraft	Available seats	Carriers	Aircraft	Available seats	Carriers	Aircraft	Available seats
Benin	0	0	0	1	1	118	1	1	108	1	3	324
Burkina Faso	1	1	85	1	1	85	1	4	369	1	1	189
Cape Verde	1	5	367	2	5	353	1	5	508	1	6	554
Gambia, The	2	12	1,370	3	7	1,040	5	9	1,433	2	7	789
Ghana	1	5	748	1	6	1,312	3	12	1,600	4	8	670
Guinea	3	5	318	2	4	274	3	3	220	2	2	172
Guinea Bissau	1	1	44	0	0	0	0	0	0	1	1	48
Côte d'Ivoire	2	16	2,613	1	11	2,395	1	4	385	3	7	546
Liberia	1	1	40	3	4	409	2	2	100	1	2	96
Mali	1	2	168	1	1	65	1	2	180	0	0	0
Mauritania	1	4	254	1	2	158	1	5	566	1	5	545
Niger	0	0	0	1	0	0	0	0	0	1	0	0
Nigeria	12	83	10,431	15	64	7,316	20	78	10,285	20	98	11,789
Senegal	1	1	37	1	1	50	2	5	452	2	5	452
Sierra Leone	0	0	0	0	0	0	8	24	5,596	4	13	3,731
Togo	1	3	225	1	1	281	1	1	46	0	0	0
Total	28	139	16,700	34	108	13,856	50	155	21,848	44	158	19,905

Source: Schlumberger (2010:131)

The second group comprises Cape Verde and Senegal, where the flag carriers have been able to develop their markets and have performed relatively well. An example is Cape Verde's national carrier, Transportes Aereos de Cabo Verde, which has reduced its focus on the regional market in West Africa to concentrate on long-haul routes to Europe and the United States (Sterling Merchant Finance Ltd in Schlumberger, 2010).

The third group of countries is composed of Gambia, Liberia and Sierra Leone. The flag of convenience[22] phenomenon has become particularly important to these countries. In the Gambia, the fleet size and seat capacity has remained at a high level, in excess of the country's market potential from 1997 to 2004. However, it had dropped significantly by 2007 due to authorities efforts to remove the flag of convenience registration from the country's registry.

Three countries, Ivory Coast, Ghana and Nigeria are examples of countries where specific circumstances have influenced market and fleet development. A clear example is Ghana, whose fleet size and seat capacity increased steadily from 1997 to 2004 as seen in table 3.6. Thereafter, fleet size and seat capacity fell significantly, leaving only eight aircraft and 670 seats in 2007. This was followed by the collapse of legacy carrier, Ghana Airways, which suffered a freeze as regards traffic rights with the United States because of safety concerns.

Overall, the region underwent a fundamental change, from a few major national air carriers to various small operators. There is no evidence that liberalisation contributed to the disappearance of unstable flag carriers. However, the YD provided both the political and regulatory basis for several carriers, such as Air Senegal International, to be able to expand into abandoned markets. In addition, several carriers, both from within the West African RECs, as well as from other RECs, have expanded their air services with fifth freedom operations (Schlumberger, 2010:133).

3.5.3 Development in Central Africa

Schlumberger (2010:134-137) categorised the Central African region into two main groups: the CEMAC countries and the Democratic Republic of the Congo, and the small island states of São Tome and Principe. The DRC is the largest and most populated

[22] All carriers whose head offices are located outside the country of registration and that do not operate listed air services to and from their country of registration (Schlumberger, 2010:125).

country of the region and accounts for approximately half the region's fleet and seat capacity, although the numbers fluctuate erratically. This is mainly attributed to periods of relative peace alternating with internal fighting.

An example of a CEMAC country is Gabon, where initially Air Gabon was a successful operator, but experienced serious financial and operational problems, which later led to its collapse. The disappearance of the national carrier has resulted in the progressive phasing out of wide-body aircraft in the region. The remaining seat capacity is reflected by the few niche carriers operating local routes using smaller aircraft, as depicted in table 3.7.

Table 3.7: Central Africa fleet analysis, 1997 to 2007

	1997			2001			2004			2007		
Country	Carriers	Aircraft	Available seats	Carriers	Aircraft	Available seats	Carriers	Aircraft	Available seats	Carriers	Aircraft	Available seats
Cameroon	2	5	551	2	7	751	2	6	1,162	2	5	730
Central African Republic	0	0	0	1	3	90	0	0	0	0	0	0
Chad	1	1	44	1	1	44	1	1	87	1	1	72
Congo, Rep. of,	3	9	455	2	7	590	4	10	669	4	13	803
Congo, Dem. Rep. of,	9	22	1,777	2	9	965	12	25	2,871	9	27	2,984
Equatorial Guinea	2	2	64	3	4	212	4	9	447	3	7	301
Gabon	2	8	944	4	11	1,113	7	20	1,692	5	17	1,022
São Tomé and Principe	1	1	118	0	0	0	2	3	315	0	0	0
Total	20	48	3,953	15	42	3,765	32	74	7,243	24	70	5,912

Source: Schlumberger (2010:135)

Even though the CEMAC countries are fully liberalised, there is little evidence that the YD has facilitated the establishment of new carriers in the region. However, the Decision has clearly facilitated the ability of carriers from other RECs to operate in Central Africa. An example is the Cameroon-Gabon route operated by Ethiopian Airlines, a carrier registered in Ethiopia (Schlumberger, 2010:136).

3.5.4 Development in East Africa

East Africa's air transport has experienced remarkable growth, as indicated in table 3.8, both in terms of number of carriers and markets. This growth is unevenly distributed as only two countries, Kenya and Ethiopia, represent about two-thirds of the region's seat capacity. Both countries operate strong national carriers. In terms of RECs, Kenya is within the EAC, where Burundi, Rwanda, Tanzania and Uganda are relatively small players in the regional air transport market. COMESA, which includes most East African states, is dominated by Ethiopia.

Table 3.8: East Africa fleet analysis, 1997 to 2007

	1997			2001			2004			2007		
Country	Carriers	Aircraft	Available seats	Carriers	Aircraft	Available seats	Carriers	Aircraft	Available seats	Carriers	Aircraft	Available seats
Djibouti	1	2	222	3	8	735	1	1	48	3	12	1,443
Eritrea	0	0	0	0	0	0	1	2	412	1	2	403
Ethiopia	1	17	1,668	1	17	1,920	1	25	3,558	2	25	3,547
Kenya	5	17	1,914	7	28	3,894	10	40	4,219	10	56	6,045
Rwanda	0	0	0	1	1	79	1	1	142	1	1	37
Somalia	0	0	0	1	1	164	0	0	0	1	1	48
Sudan	3	12	1,478	3	121	2,213	3	15	1,359	5	21	2,169
Tanzania	2	6	390	2	7	516	4	14	916	4	10	674
Uganda	1	3	249	0	0	0	1	1	103	1	1	103
Total	13	57	5,921	18	73	9,521	22	99	10,757	28	1,29	14,469

Source: Schlumberger (2010:138)

Ethiopian Airlines' fleet experienced steady growth with a 50% increase in the number of aircraft from 1997 to 2007, while the seat capacity doubled over this period. This illustrates Ethiopian's strategic priorities in favour of fostering the development of long-haul routes. At the same time, Ethiopian Airlines continues to establish its intra-African network which, in the past, aimed at playing a feeder role for its intercontinental services (Schlumberger, 2010:139).

Another important example in this region is Uganda, which opened up its air transport market completely after its national carrier was liquidated in 2002. While its own fleet remained stagnant, traffic by other carriers, which have been allowed to operate quite freely, has risen steadily. Uganda is a clear instance of a country where liberalised air transport policy has led to substantial growth in tourism traffic and receipts, with traffic increasing by 82% to 350 000 tourists between 2000 and 2004 (Myburgh *et al*., 2006:10).

East Africa has experienced a strong upward growth in its air transport services since 2001. Air services liberalisation has in particular helped two main carriers, Ethiopian Airlines and Kenya Airways, to expand their regional operations. As a consequence, fifth freedom operations from carriers outside of either COMESA or EAC have lost importance in the region, suggesting a lesser influence of the continent-wide YD. On a positive note, the strong growth of intra-regional traffic, including fifth freedom operations, confirms that regional liberalisation of air services is taking place in East Africa (Schlumberger, 2010:140).

3.5.5 Development in Southern Africa

Southern Africa's air transport industry is predominantly located in SADC countries, which have made relatively little progress in implementing the YD on a regional basis. Several SADC states, which are also members of COMESA (Angola, Malawi, Swaziland, Zambia and Zimbabwe), have made far more progress in liberalising their air services. In his research, Schlumberger (2010:140-144) found that one of the prime factors underlying the SADC's progress is the South African carriers' domination of the air transport market, which represented 68% of the region's aircraft in 1997 and more than 80% in 2007.

As stated previously, the South African Airlift Strategy is aimed at accelerating the implementation of the YD. In pursuit of this objective, South Africa has bilaterally liberalised air transport services with a number of African states, where existing bilateral air services agreements have been revised, based on key elements of the Decision. These countries include Benin, Botswana, Burkina Faso, Cameroon, Congo, Egypt, Ethiopia, Gabon, Gambia, Ghana, Kenya, Lesotho, Liberia, Libya, Rwanda, Senegal, Sierra Leone, Togo and Uganda (Sithole, 2012).

At a regional level, as indicated in table 3.9, the number of carriers, aircraft and seats has grown steadily, resulting in a 60% increase in carriers, a 112% increase in aircraft and a 72% increase in seat capacity. These figures reflect stronger growth on regional and domestic routes.

Table 3.9: Southern Africa fleet analysis, 1997 to 2007

	1997			2001			2004			2007		
Country	Carriers	Aircraft	Available seats	Carriers	Aircraft	Available seats	Carriers	Aircraft	Available seats	Carriers	Aircraft	Available seats
Angola	4	21	2,136	4	20	2,238	4	15	1,976	8	33	2,818
Botswana	1	2	84	1	3	138	1	4	211	1	5	281
Lesotho	1	1	44	0	0	0	0	0	0	0	0	0
Malawi	1	2	177	1	2	177	1	2	177	1	3	287
Mozambique	1	4	654	1	5	613	1	5	520	3	9	886
Namibia	2	6	1,435	2	6	680	2	5	679	2	7	1,044
South Africa	8	85	13,960	16	161	21,853	20	206	27,364	19	220	28,039
Swaziland	1	2	156	2	3	660	2	8	2,275	1	4	503
Zambia	2	4	360	0	0	0	1	1	48	1	2	236
Zimbabwe	2	11	1,374	1	6	836	1	6	836	1	9	968
Total	23	138	20,380	28	206	27,195	33	252	34,086	37	292	35,062

Source: Schlumberger (2010:141)

Botswana's fleet experienced steady growth, with just one carrier operating, but displaying growth in the number of aircraft and its overall seat capacity. In the case of Botswana, the government has legislation in place which gives a monopoly to Air Botswana to operate air services to or from and within the country. The Air Botswana Act of 1988 precludes licensing of any other local airline in the country to operate commercial air services. This is considered a major impediment to the liberalisation process (Ndhlovu & Ricover, 2009:22).

Schlumberger's research (2010:143) indicates that the Southern African region provides little evidence of any impact stemming from the liberalisation of air services. The SADC countries remain dominated by the South African national carrier and as a consequence, fifth freedom operations from both the SADC and other RECs have declined steeply.

3.5.6 Development in North Africa

As pointed out earlier, North Africa has made little progress towards liberalisation and no liberalisation of air services took place within the AMU. Nonetheless, some countries have, achieved a degree of domestic liberalisation by allowing more than one carrier, some of which have begun to serve international destinations (Schlumberger, 2010:127).

In Algeria, the national carrier, Air Algerie, benefited for several decades from a monopoly both in the domestic and international markets. Domestic liberalisation in 2000 resulted in the entry of new carriers with more than a 70% increase in aircraft and seat capacity. By 2004 only two carriers remained in the domestic market while by 2007, Algeria's air transport industry had reverted to a *de facto* monopoly as seen in table 3.10 below.

Table 3.10: North Africa fleet analysis, 1997 to 2007

	1997			2001			2004			2007		
Country	Carriers	Aircraft	Available seats	Carriers	Aircraft	Available seats	Carriers	Aircraft	Available seats	Carriers	Aircraft	Available seats
Algeria	1	40	5,035	5	68	8,885	2	55	6,692	1	58	7,854
Egypt, Arab Rep. of	9	56	10,289	15	71	12,445	8	63	11,418	12	72	12,229
Libya	1	27	2,346	2	21	2,673	7	58	4,969	9	51	5,369
Morocco	1	28	4,176	1	41	5,617	3	49	7,364	4	73	11,303
Tunisia	3	31	4,533	3	49	7,317	5	59	9,552	4	49	7,692
Total	15	182	26,379	26	250	36,937	25	284	39,995	30	303	44,447

Source: Schlumberger (2010:129)

Libya experienced steady progress towards liberalisation that resulted in the number of carriers increasing from one in 1997 to nine in 2007 with a doubling of the capacity. Libya seems to have focused on a policy of developing the air transport sector that is competing with sixth freedom flights between West Africa and Europe (Schlumberger, 2010:128).

Morocco appears to adopt a more restrictive policy controlling liberalisation by allowing the introduction of only a few new operators. The number of carriers increased from one in 1997 to four in 2007. The policy seems to have succeeded as the fleet size more than doubled during this period with only a slight increase in capacity.

Tunisia's air carrier development, in terms of fleet size and seat capacity, has fluctuated. This seems to be primarily due to the changing relative competitiveness between Tunisian charter operators and their European counterparts in the international market with regard to Europe (Schlumberger, 2010:130).

The Arab Republic of Egypt is not a member of the AMU but of COMESA. As mentioned earlier, COMESA has made some progress towards liberalisation; however several obstacles prevent it from fully implementing the YD. The number of carriers fluctuated between 1997 and 2007, whereas in contrast, seat capacity remained more or less stable. A variety of factors appeared to account for this fluctuation, such as, *inter alia*, the volatility of the international tourist market due to recurrent security problems (Schlumberger, 2010:130).

In summary, Schlumberger (2010:146-147) highlights three different sets of causes that have influenced the general move towards liberalisation of air services in Africa:

- Worldwide trends towards liberalisation, which had a marked impact on African carriers' long-haul operations, especially through increased competition resulting in lower fares;

- Domestic liberalisation policies that caused the end of domestic monopolies and in some cases, the disappearance of state ownership of flag carriers and the arrival of new, mostly privately owned, entrants on domestic markets, who began competing with legacy carriers for international routes. For example, liberalisation of the South African domestic market in the early 1990s allowed for the entry of two low-cost airlines: Kulula in 2001 and 1time in 2004; on the Lusaka-

Johannesburg route, with respect to Kulula's operations, passenger volumes increased by 38% from April to June 2006 in comparison to the same period in the previous year (Myburgh *et al.,* 2006:8);

- Continent-wide liberalisation of intra-African air services, promoted by the YD and already implemented by some regional economic groupings.

3.6 CONCLUSION

This chapter focused on the main principles of the YD, its overall challenges and hindrances, as well as the progress made towards the implementation of the Decision on a regional basis, with the main objective being to realise continent-wide liberalisation.

The incentive for liberalisation on the Continent has been mainly due to world-wide liberalisation initiatives and their success stories, domestic liberalisation in numerous African states and the adoption of the Decision, already supported and implemented in several economic groupings.

As discussed above, the YD to date remains the most liberal intra-African policy regime initiated by the African Ministers in charge of Civil Aviation, with the main objectives of liberalising the very restrictive intra-African air transport market, dominated by rigid and highly regulated BASAs, as well as consolidating the fragmented African air transport industry. Since the adoption of the Decision, liberalisation initiatives to accelerate the continent-wide integration have thus far been driven by the combined efforts of the AU, ECA, AFCAC, AFRAA and the regional groupings. It must be noted that not all the regional groupings have been instrumental in applying the key principles of the YD or moving it forward, which has resulted in different levels of liberalisation being achieved, ranging from non-implementation in the AMU to, in several instances, such as in the WAEMU and CEMAC, implementation that exceeds the key principles of the YD.

Best practices of several RECs' success stories should serve as an impetus for further integration among the RECs to achieve continent-wide implementation of the YD. There is still a great deal of work to be done as the liberalisation achieved within certain RECs is limited to that particular region. The YD explicitly encourages sub-regional and regional organisations to pursue and intensify their efforts towards full implementation of the Decision. This is necessary, given the current fragmented and heterogeneous state of Africa's air transport market, dominated by restrictive BASAs with varying rules and regulations resulting in poor intra-African connectivity, the insignificant impact of air transport on socio-economic development in the majority of African countries, the high cost of air travel and the substandard quality of air services. The consumer in particular is thus negatively affected, where no alternative mode of transport exists.

It is well known that aside from some parts of Northern and Southern Africa, transport infrastructure on the Continent is frequently characterised by being inadequate, inefficient and expensive as well as of low quality. In many instances, limited or non-existent air access to countries has resulted in the necessity of accessing cities between the South and the North of Africa via points outside of the Continent, which makes no economic or business sense. The solution to the operational problems of the fragmented and poorly connected air transport market would have been the full implementation of the YD, which would remove all restrictions on traffic rights (including fifth freedom), capacity and frequency, designation and tariffs.

Although different levels of liberalisation progress have been achieved within the regional groupings, continent-wide implementation of the Decision has been hampered by numerous obstacles in different regions, ranging from lack of political commitment, protection of the national carrier to incomplete institutional, legal and regulatory frameworks. Positive outcomes can be seen in various regions through increased cooperation among airlines, such as: various codeshares, increases in granting fifth freedom traffic rights, better choices for passengers and a gradual decrease in fares due to fair competition as well as the emergence of new national carriers, such as RwandAir and Gabon Airlines.

In the future, it is important for all the RECs to work together on the speedy finalisation of the continental competition rules and dispute settlement mechanism. This step would eradicate one of the major hindrances to the continent-wide implementation of the YD. In 2008, COMESA, EAC and SADC jointly adopted the Guidelines, Provisions and Procedures for the Implementation of the Regulations for Competition in Air Transport Services for their regions. In November 2011, the Draft African Common Aviation Policy was presented, the adoption and implementation of which would serve as a significant stimulus towards continent-wide implementation of the YD.

Many African governments have been resisting and inhibiting the YD implementation in their countries due to lack of evidence of the potential impact of the Decision. At the same time, international and national secondary research confirms the overall positive impact of the liberalisation on air transport markets. To fill the current knowledge gap of the actual and expected benefits, as well as of the negative impact of liberalisation, information should be disseminated through the relevant workshops and channels. The creation of an “open skies” market in Africa would mean better intra-African connectivity through cost-effective management of airspace, as well as infrastructure development by strengthening air transport’s operations, safety, security and protection of the environment.

In the following chapter, the concepts of a civil aviation system and policy, with particular reference to South Africa are discussed and the South African civil aviation policy development since deregulation in the South African domestic air transport market in 1990 to date is examined. The chapter specifically highlights the main aspects of the Airlift Strategy and the Airlift Implementation Plan which have been instrumental in driving air services liberalisation between South Africa and its like-minded bilateral air counterparts. The relationship between the South African aviation policy in Africa and air passenger traffic flows will also be analysed. The aim of the research is to acquire a clear understanding of the trends pertaining to air passenger traffic flows between South Africa and its bilateral air services counterparts in Africa with regard to the overall and the regional basis. As mentioned previously, the study will focus on four key regions, namely the SADC and West, East and North African regions in line with the DOT’s grouping methodology. The relationship between the South African aviation policy in Africa and air passenger traffic flows will be statistically tested and the results comprehensively discussed in Chapter 7.