CHAPTER 2

AN OVERVIEW OF REGULATION AND DEREGULATION IN THE GLOBAL AVIATION INDUSTRY

2.1 INTRODUCTION

The air transport industry has remained for many years one of the most restrictive and regulated industries in international trade. Deregulation and liberalisation have been progressing at an uneven pace across countries and liberalisation of the international markets has yet to overcome numerous obstacles (Ssamula, 2008:9).

A national regulatory framework is fundamental to the formulation of a country's civil aviation policy, which can be divided into two distinct areas, domestic and international. As domestic civil aviation policy deals with travel inside the country's borders, it will not form part of further discussion, given the study's research objectives.

The focus of this research falls on the relationship between South African aviation policy in Africa and the respective air passenger traffic flows. The said policy is guided by its *international* civil aviation policy. By definition, the international civil aviation policy of a country deals with air travel outside the country to foreign destinations (Department of Transport, 2006:31).

The regulatory bilateral framework[1] governing international air transport was established after World War II. The goal was typically the conclusion, implementation or continuance of some kind of intergovernmental agreement concerning air services between the territories of the two countries (ICAO, 2004). The building blocks of this framework were, and

[1]Bilateral regulation is regulation undertaken jointly by two parties, most typically by two states, although one or both parties might also be a group of states, a supra-state (a community or other union of states acting as a single body under authority granted to it by its member states), a regional governmental body or even two airlines (ICAO, 2004:2.0-1).

currently are, bilateral air services agreements or bilaterals negotiated between the two countries.

The BASAs constitute a very important facet of a broader aviation regime and reflect every aspect of the aviation policies of each member in the country-pair (Inter*VISTAS*-ga[2] Consulting, Inc., 2006:62). The bilaterals generally have in common numerous types of essential provisions, most of which are similar but not identical (ICAO, 2004:2.2-2). The focus of this study is placed on seven quantifiable market access features or provisions of the BASAs, which are briefly defined in this chapter and are comprehensively discussed in Chapter 6. These are: 1) **grant of rights**, which defines the right to carry out services between the two countries; 2) **designation**, which is the right to designate one (*single designation*) or more than one (*multiple designation*) airline to operate a service between two countries; 3) **tariffs**, which refers to the regime which governs the approval of the pricing of services between two countries; 4) **capacity**, which identifies the regime that determines the capacity (in terms of volume of traffic, frequency or regularity of service and/or aircraft type(s)) that may be carried out on the agreed services; 5) **withholding/ownership** defines the conditions required for the designated airline of the other party to have the right to operate; 6) **cooperative arrangements** define the right for the designated airline to enter into cooperative marketing agreements, such as code-sharing[2] and alliances; while 7) **statistics** typically provides rules on exchange of statistics between countries or their airlines (ICAO, 2004).

Given the restrictive nature of the bilaterals, the development of international air services has been much more a function of a government's policy, rather than a function based on commercial considerations (Inter*VISTAS*-ga[2] Consulting, Inc., 2006).

Since its establishment, the bilateral regulation of international air transport has not evolved without challenges and persistent issues. This chapter sets forth key milestones of the bilateral regulation of international air services and provides an overview of the regulatory environment governing the global aviation industry. It aims to illustrate the

[2] Code-sharing is an inter-airline commercial agreement where two or more airlines use their own flight codes or share a common code on flights operated by one of them (Doganis, 2006:295).

origins of the regulatory framework, the challenges facing its participants in the path towards industry liberalisation and normalisation as well as the progress that has been achieved in these respects.

2.2 INTERNATIONAL FRAMEWORK FOR AVIATION REGULATION

The bilateral regulation of international air services evolved over many decades. Although the foundation for the regulation of international air transport services was first laid in the 1920s, few bilaterals were concluded in those early decades, due initially to the small volume of international air transport activities and thereafter to the virtual cessation of many commercial flights during the World War II period (ICAO, 2004:2.0-1). The important milestones in the development of the bilateral regulations of international air transport services are described next.

2.2.1 Paris Convention

The Convention for the Regulation of Aerial Navigation ("Paris Convention"), which was signed on 13 October 1919 to provide the foundation for regulation of the international airline industry, is the pre-eminent multilateral agreement for the international aviation regime, evolving from the Paris Peace Conference of 1919. This Convention recognised the need for every nation to exercise "sovereignty" over airspace above its territory, setting forth the fundamental policy which underlines all aviation negotiations today (Ssamula, 2008:9).

2.2.2 Convention on International Civil Aviation (Chicago Convention)

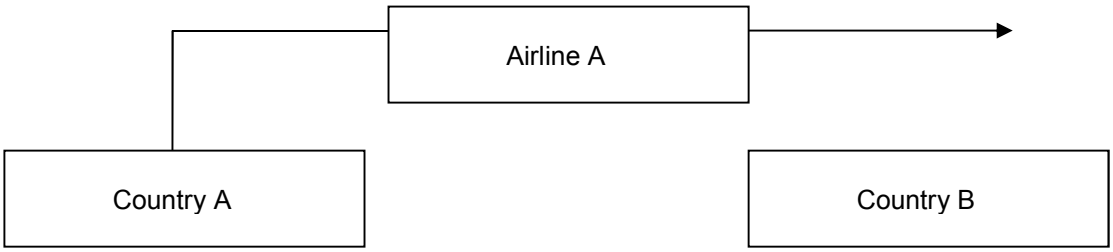
The modern structure of international air transportation controls can be traced back to the failure in 1944 of the Allied powers at the Chicago Convention to reach an agreement on how the post-Second World War air transportation system should operate (Button & Taylor, 2000:210). While representatives from 52 governments managed to agree on the legal and technical framework for the operation of international air services, their inability to reach a consensus on economic regulation meant that it fell to pairs of governments to negotiate the precise terms of air services provision between their countries (Doganis, 2006:27). The hope was that those signing would grant freedom of access, to airports and

to airspace above their territory, to all other signatories (Button & Taylor, 2000:210). Some of the main outcomes of the Chicago Convention involved standardising different types of scheduled operations, categorised according to the various “freedoms of the skies” to be described below. The result was a myriad of BASAs between countries that, in general, stipulated which airlines could fly between them, the capacity of each airline, the fares to be charged and, often, how the revenues generated were to be shared between the carriers (Button, 2009:60).

The concept of “freedoms of the skies” or “the degrees of freedom" was initiated at the Chicago Convention and essentially denotes air traffic rights, in other words a set of commercial aviation rights granting a country’s airline(s) the privilege to enter and land in another country’s airspace (Doganis, 2006:28). The degrees of freedom have since been the basis of the amount of freedom a country enjoys in operating over another country’s airspace, encompassing eight different freedoms which may be negotiated (Button & Taylor, 2000; Doganis, 2006; Ssamula 2008).

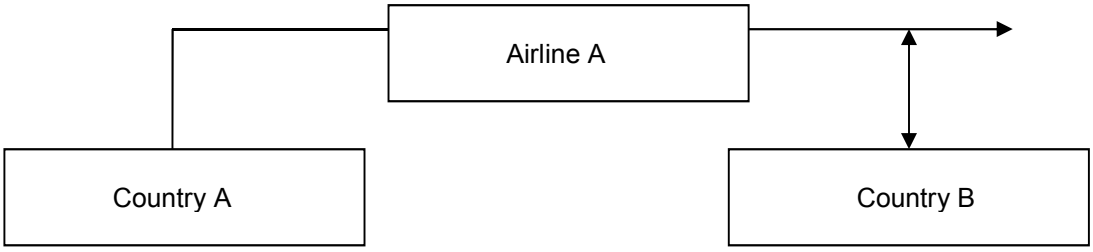
The **first freedom** is the right of an airline A of country A to fly and carry traffic over the territory of country B without landing, as illustrated in figure 2.1

Figure 2.1: First Freedom



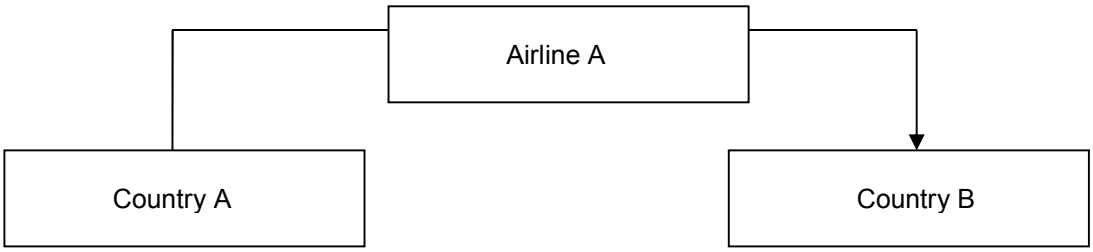
The **second freedom** is the right of an airline A of country A to land in country B for non-traffic reasons, such as maintenance or refuelling while en route to another country, as illustrated in figure 2.2. For example, before the development of long range aircraft this would apply to transatlantic traffic that needed to make a refuelling stop in country B.

Figure 2.2: Second Freedom



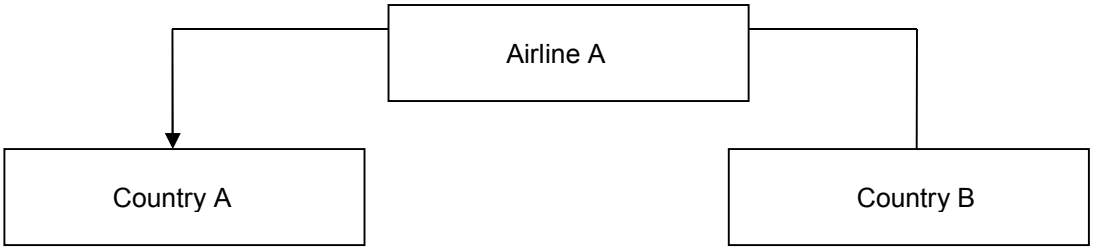
The **third freedom** is the right of an airline A of country A to carry traffic to country B. This is shown in figure 2.3.

Figure 2.3: Third Freedom



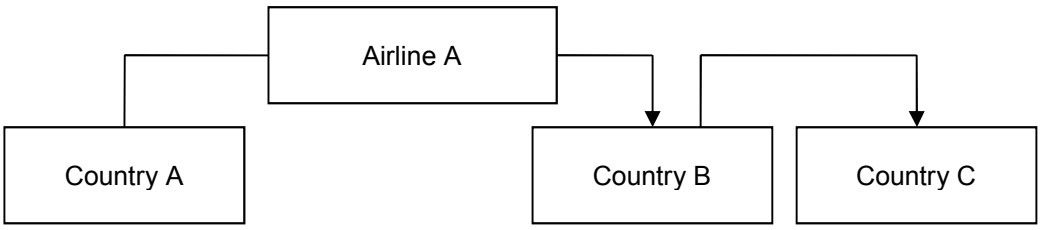
The **fourth freedom** is the right of an airline A of country A to carry traffic from country B to country A. The third and fourth freedoms are usually granted on a bilateral basis.

Figure 2.4: Fourth Freedom



The **fifth freedom** is the right of an airline A from country A to carry traffic between two countries (country B and country C) outside of its own country of registry, as long as the flight originates or terminates in its own country of registry, as illustrated in figure 2.5. For example, Emirates Airlines flies from Dubai to Brisbane, Australia, then picks up passengers and continues to Auckland, New Zealand. This freedom cannot be used unless country C also agrees.

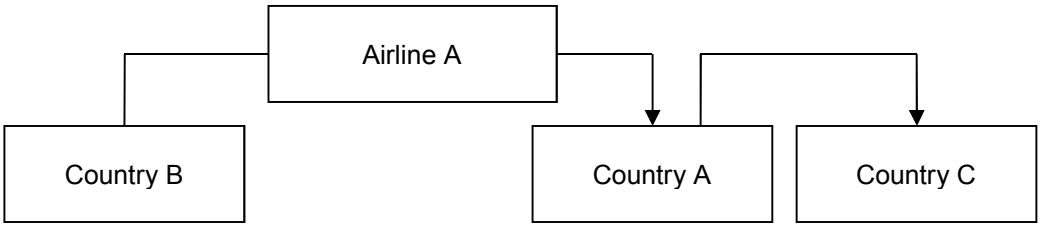
Figure 2.5: Fifth Freedom



The **sixth freedom** is the right of an airline A of country A to carry traffic between two foreign countries (country B and country C) via its own country of registry (country A). This is a combination of the third and fourth freedoms and was not specified as such at the 1944 Chicago Convention. Sixth freedom rights are rarely dealt with explicitly in air services agreements but may be referred to implicitly in a MOU attached to the agreement. In the application of many bilaterals there is also *de facto* acceptance of such rights (Doganis, 2006:293).

Sixth freedom flights from country B to country C are illustrated in figure 2.6 below. Qatar Airways, for example, carries sixth freedom traffic between Johannesburg, South Africa and Moscow, the Russian Federation, which means passengers travel from Johannesburg to Doha for a connecting flight from Doha to Moscow.

Figure 2.6: Sixth Freedom



Two further freedoms are granted in very rare cases, one example of which can be seen in the 1991 US-UK bilateral, whereby the USA granted UK airlines seventh freedom rights from several European countries to the USA. They have never been used nor were they included in the 1944 Chicago agreement (Doganis, 2006:293).

The **seventh freedom** is the right of an airline to operate between points in two countries on services which lie entirely outside its own home country. The European Union-United States "Open Skies" agreement entails the unilateral granting by the United States to a number of non-EU countries of so-called "seventh freedom rights for passengers" to fly to the EU, which comprises the right for non-EU airlines to operate flights between a city in the US and a city in the EU.

The **eighth freedom**, which is also referred to as "domestic cabotage", is the right of an airline of one country to carry traffic between two points within the territory of a foreign country. Such rights have on occasion been granted when a country experiences a shortage of aircraft capacity.

The Chicago Convention also established the United Nations' International Civil Aviation Organisation (ICAO) to oversee international air transport agreements (Button, 2009:59). However, ICAO is largely concerned with safety and technical standards and the collection of statistical data among other activities, rather than with detailed economic regulation, although it has become more involved in the latter during recent years (Button & Taylor, 2000:210).

2.2.3 Bermuda type agreements

The Chicago Convention of 1944 laid down a basis upon which the international bilateral air services agreements system was founded. This was a compromise arrangement that attempted to reconcile the very liberal, free market ideas of the United States on the one hand and the more restrictive ones of countries such as Australia that wanted a single global carrier on the other (Button, 2009:59).

In 1946 the United Kingdom and the United States concluded a model bilateral agreement commonly known as Bermuda I, whereby the United States agreed that international tariffs and fares would be set by the International Air Transport Association (IATA). In exchange, the United Kingdom allowed US carriers to determine their passenger capacities and frequency of service. Additionally, the agreement provided for liberal fifth freedom traffic rights for both parties which lasted for the next 40 years, but had to be renegotiated due to

disagreements between the two countries as the industry changed over the years (ICAO, 2004).

Until 1978 all bilateral air services agreements were more or less restrictive in terms of market access through traffic rights granted to carriers; capacity levels that carriers were allowed to offer; fares at which their services were priced as well as which carriers were designated to operate the services. The more liberal bilaterals, frequently referred to as the Bermuda type, differed from the more restrictive predetermination type of agreements in two respects: fifth freedom rights were more widely available and there was no control of frequency or capacity on the routes between two countries concerned. Bermuda type agreements were still restrictive as they often allowed only one airline from each country to operate a route. This also meant that fifth freedom operators could only fly on the routes involved if the authorities at both ends agreed (Button & Taylor, 2000:211).

2.2.4 Deregulation and liberalisation from 1978 to 1991

The initial impetus towards lifting restrictions on air transport developed in the United States. Strong public pressure for pro-consumer deregulation resulted in the 1978 Deregulation Act, which ended the existence of the Civil Aeronautics Board (CAB). This had a profound effect on the American air transport market as it allowed for more competition, the entry of new airlines and the creation of a new hub-and-spoke-system of air routes. Overall, since 1980 deregulation[3] has benefited American consumers by USD 25 billion a year (Myburgh *et al*., 2006:13).

This domestic deregulation pushed the US to liberalise its air transport in international markets through bilateral renegotiations. In a series of negotiations, the United States offered foreign countries an attractive deal: it would give foreign airlines traffic rights to a small number of additional gateway points in the USA in exchange for achieving all or most of the objectives recorded in the 1978 statement on “International Air Transport Negotiations”. It was the United States-Netherlands agreement, signed in March 1978, which became the trend-setter for subsequent US bilaterals. Both sides had set out to

[3] Deregulation is very much a US term, while in other parts of the world liberalisation is the more common terminology (Ssamula, 2008:13).

reduce the role of government in matters of capacity, frequency and tariffs and in setting market conditions, making their bilateral a particularly liberal one (Doganis, 2006:32).

From 1978 to 1980 the United States entered into liberal bilateral agreements with a number of European countries (the Netherlands, Germany, Belgium) and Asian countries (Singapore, Thailand, Korea) (Myburgh *et al.,* 2006:14). The key features of the pre-1978 and post-1978 US-type bilaterals are depicted in table 2.1; however it should be borne in mind that there is greater variation in detail amongst the newer bilaterals than in those they replaced (Doganis, 2006:33).

Table 2.1: Main features of US pre-1978 and post-1978 bilateral agreements

Pre-1978 bilateral air services agreements		**1978-1991 Open market bilaterals**	
		US airlines	**Foreign airlines**
Market Access	Only to specified points	From any point in the US to specified points in foreign countries	Access limited to a number of US points
	Limited 5th freedom rights granted to US carriers Charter rights not included	Extensive 5th freedom rights granted, but generally more to US carriers 7th freedom rights not granted Cabotage not allowed	Unlimited charter rights
Designation	Single – some multiple	Multiple	
	Airlines must be substantially and effectively controlled by nationals of designated country	Airlines must be substantially and effectively controlled by nationals of designated country	
Capacity	Capacity agreed or shared 50:50. No capacity/frequency controls in liberal bilaterals, but subject to review	No frequency or capacity controls Break of gauge[4] permitted in some agreements	
Tariffs	Approval by both governments (double approval) or as agreed by IATA	Double disapproval (filed tariffs become operative unless both governments disapprove) or country of origin rules (less frequent)	
Code-sharing	Not part of bilateral		

Sources: Doganis (2006:34); Button (2009:63)

[4] Break of gauge is used in air services agreements to allow an airline that has traffic rights from its own country (A) to country (B) and also 5th freedom rights on to country (C), to operate one type aircraft from A to B and then a different type (usually smaller) from B to C and beyond. This normally involves basing aircraft and crew in country B (Doganis, 2006:294).

These open market agreements lifted restrictions on prices, the number of flights, the number of seats offered and also allowed airlines to enter additional markets. Airlines were obliged to compete for passengers because the competition determined prices as well as the number of passengers carried (Myburgh *et al.,* 2006:14).

In Europe, the United Kingdom-Netherlands agreement set the pattern for the renegotiation of several other European bilaterals by the United Kingdom. They varied in detail, but all of them allowed for multiple designation of airlines of each country. While the United Kingdom set the pace, other European countries also began renegotiating their European bilaterals in this period. Two agreements serve as good examples of the most open of the new style bilaterals, namely the UK-Netherlands and the UK-Ireland. These developments were paralleled by the two European Community liberalisation packages, which came into force in 1987 and 1990. The key features of post-1985 open market bilaterals are compared in table 2.2 to those of more traditional European bilaterals (Doganis, 2006:35).

Table 2.2: Traditional and post-1985 open market European bilaterals

Traditional (pre-1984)		**New open market bilaterals**
Market Access	Only to points specified	Open route access – airlines can fly on any route between two countries
	Very limited fifth freedom sometimes granted	
Designation	Generally single, but double/multiple in some bilaterals	Multiple
	Airlines must be under substantial ownership and effective control of nationals of designating country	
Capacity	Shared 50:50	No capacity control
Tariffs	Double disapproval	Double disapproval

Source: Doganis (2006:36)

Despite the progress achieved, the new open market bilaterals, whether of the United States or European type, failed to fully liberalise aviation markets in several respects. The first was in relation to market access in each country's territory. In most bilaterals, the points to be served by the designated airlines were still listed and limited in number. Second, while fifth freedom rights were granted fairly liberally, in many cases they could not be used because third countries involved were not prepared to give away such rights.

Third, domestic cabotage was excluded from the new bilateral, though some limited domestic cabotage rights had been granted within the European Union. None of the new bilaterals granted the so-called seventh freedom. Finally, the requirement to designate only airlines that were "substantially owned and effectively controlled by nationals of the designated country" remained an essential feature of the new bilaterals. In all these respects, the international air transport industry continued to be treated, and to operate, under severe restrictions, quite unlike most other international industries (Doganis, 2006:36-37).

2.2.5 Movement towards "Open Skies" – from 1992 onwards

By the early 1990s it was clear that international liberalisation, and the open market bilaterals that characterised it, had not gone far enough. The need for further liberalisation became increasingly apparent as a result of several developments. First, there was a growing body of expert opinion that the airline industry should be normalised: it should be allowed to operate like any other major international industry. The second, much stronger argument against bilateralism was that the system, though worldwide, was restrictive. The third factor motivating further liberalisation was that the airline industry had matured during the previous decade. It had undergone structural changes which made it progressively more difficult for airlines to operate within the confines of the bilateral system. Structural changes had been brought about by the following trends (Doganis, 2006:38-39):

- Growing concentration within the US airline industry and the emergence of the US domestic majors as big players in the international markets;

- The search by many international airlines for the marketing benefits of very large-scale operations through mergers with other airlines in their own country and through minority share purchase or strong marketing alliances with airlines in other countries;

- A loosening of government ties with and support for national airlines as a result of partial or full privatisation; the UK Government set the trend here with the successful privatisation of British Airways in 1987; and

- Increased emphasis on reducing governmental direct and indirect support to airlines, and pressure for financial self-sufficiency among airlines, in turn meant less protectionism domestically and in international markets.

All these trends created a critical need for successful airlines, whether private or state-owned, to be able to operate more easily outside the narrow confines of their own national markets while being freed from the remaining constraints imposed by bilateralism (Doganis, 2006:39). The outcome from 1992 was a series of bilateral "open skies" agreements between the EU states and the US (Button, 2009:63). In September 1992 the Netherlands and the United States governments signed what was effectively the first "open skies" agreement and inaugurated a new phase of international deregulation. In brief, the key elements of this bilateral were (Doganis, 2006:40):

- Open route access – airlines from either country can fly to any point in the other country with full traffic rights;
- Unlimited fifth freedom rights;
- Open access for charters;
- No limit on the number of airlines that can be designated by each country (multiple designation);
- No frequency or capacity control;
- Break of gauge permitted;
- No tariff controls (unless tariffs are too high or too low); and
- Airlines are free to code-share or to make other commercial agreements.

Table 2.3 draws attention to the main United States' "open skies" agreements with countries that signed a standard offer of "open skies" agreement between 1992 and 1998.

Table 2.3: United States' "open skies" air services agreements

1992	1995	1996	1997	1998
Netherlands	Austria	Germany	Singapore	Japan
	Belgium	Jordan	Malaysia	France
	Denmark		Chinese Taipei	Korea
	Finland		Chile	
	Luxembourg		Costa Rica	
	Norway		Nicaragua	
	Sweden		Honduras	
	Switzerland		El Salvador	
	Czech Republic		Guatemala	
	Canada		Panama	
			Brunei	

Source: Button and Taylor (2000:211)

The "open skies" agreements, generally very similar to the US-Netherlands agreement, were a significant improvement on the open market agreements they replaced. They differed in several respects, most notably in relation to market access and tariff regulation as depicted in table 2.4.

Table 2.4: US open market and post-1991 "open skies" air services agreements

Open market bilaterals, 1978-1991		**"Open skies" bilaterals, post-1991**
Market Access	Named number of points in each country – more limited for non-US carrier	Unlimited
	Generally unlimited fifth freedom	Unlimited fifth freedom
	Domestic cabotage not allowed	
	Seventh freedom not granted	
	Open charter access	
Designation	Multiple	
	Substantial ownership and effective control by nationals of designated country	
Capacity	No frequency or capacity control	
Tariffs	Double disapproval or country-of-origin rules	Free pricing
Code-sharing	Not part of bilateral	Code-sharing permitted

Source: Doganis (2006:44)

The “open skies” agreements opened route access to any point in either country, whereas the earlier bilaterals had tended to limit the number of points that could be served by foreign carriers in the United States. Also, mutual fifth freedom rights were granted without restraint compared to the more limited fifth freedom in earlier bilaterals. With regards to tariffs, double disapproval or the country-of-origin rules were replaced by a clear decision that governments should not meddle in tariffs except to prevent discriminatory practices, in order to protect consumers from unreasonably high or restrictive prices or to protect airlines from artificially low fares due to government subsidies or support. A further innovation was the inclusion of an article dealing specifically with inter-airline commercial agreements such as code-sharing. The final innovation was the inclusion in the bilaterals of an annex laying down principles regarding the adoption of non-discrimination on the databases and visual displays of the global computer reservations systems, and ensuring open access and free competition among CRS (Central Reservation System) providers in each country (Doganis, 2006:44-45).

2.2.6 The single European market

In parallel to the United States, Europe was also moving towards “open skies”, but the approach was structurally different. The development of a single open aviation market in Europe was to be achieved through a comprehensive multilateral agreement by the member states of the European Union. This multilateral approach to opening up the skies enabled the Europeans to go further in pursuit of deregulation than was possible under the bilateralism in the US.

Within the European Union (previously known as the European Community) the thrust towards multilateral liberalisation of air transport was driven by two complementary lines of approach: the Directorate General for Transport and the Directorate General for Competition. While some liberalisation was taking place in Europe as a result of the revised air services agreements which followed the new UK-Netherlands agreement of 1984, it was not until December 1987 that the first important breakthrough came at a Community level. This was the “December 1987 Package” of measures agreed by the Council of Ministers. It introduced a more liberal fares regime and forced the abandonment of the equal sharing of capacity on routes served by airlines of two countries at either end

of such routes; it also facilitated the entry of new airlines by opening up market access (Doganis, 2006:45-46).

In June 1990 a "Second Package" of liberalisation measures was agreed by the Community ministers. These further loosened constraints on pricing, on capacity restrictions and on market access. They allowed multiple designation of airlines on routes above a certain traffic density as well as opening up third and fourth freedom rights on most inter-Community routes (Doganis, 2006:46).

The "Third Package" of aviation measures came into force on 1 January 1993. This was the inception of a single European Common Aviation Area. The "Third Package" consisted of three interlinked regulations, which have effectively created an "open skies" regime for air services within the European Union. The first is open market access: airlines from member countries can operate with full traffic rights on any routes within the EU and without capacity restrictions, even if these routes are outside their own country. Governments may only impose restrictions on environmental and infrastructure capacity, regional development or public service grounds; however any restrictions have to be justified. The second regulation is that there is no price control: airlines are accorded the freedom to determine their fares and cargo tariffs though there are some limited safeguards to prevent predatory or excessive pricing. The final regulation harmonises the criteria for granting operating licences and air operators' certificates to be used by the EU member countries. Apart from technical and financial criteria which have to be met, the airline must be majority owned and controlled by any of the member countries or their nationals or companies, but not necessarily nationals or companies of the state in which the airline is registered (Doganis, 2006:46-47).

The "Third Package" went further than the US-style "open skies" bilaterals in two important aspects. First, it was a multilateral agreement to open up the skies covering not just pairs of countries but a whole region, the 15 eventual member countries of the European Union, plus Norway and Iceland which adopted the package measures without joining the EU. Second, the "Third Package" for the first time explicitly allowed cross-border majority ownership.

In parallel with the liberalisation of air transport regulations, the European Commission felt that greater freedom for airlines had to be accompanied by the effective application and implementation of the European Union's competition rules. They were designed to prevent monopolistic practices or behaviour which was anti-competitive or which distorted competition to the detriment of consumers (Doganis, 2006:47). Initially the Common Aviation Area prevailed in 15 member countries plus Norway and Iceland. In 2003 Switzerland joined the European Common Aviation Area by adoption of a draft of the EU measures on aviation without becoming a member country of the EU.

More recently, the ten new countries that joined the EU in May 2004 had all previously adopted the "Third Package" and the competition rules, but with varying transitional arrangements to allow for a gradual opening up of their markets to the full force of competition. As a result a European Common Aviation Area (ECAA) now exists with an "open skies" regime (Doganis, 2006:50).

During the 1990s, the nationality and ownership rules were increasingly regarded by many governments, by airline management and by consumers as imposing unacceptable restrictions on the development of the industry. On the other hand, some governments and a large number of smaller airlines continued to perceive these rules as essential safeguards against the threat of being swamped by mega-carriers. As a result of these pressures the rules began to be relaxed in a series of decisions taken in different parts of the world (Doganis, 2006:59).

In summary, the 1990s witnessed rapid changes in both the regulatory and operating environments of international air transport as well as structural changes to the airline industry. Liberalisation became widespread. To adapt to the changes many countries made regulatory adjustments and adopted more liberal policies, typically by relaxing regulation to varying degrees. Several countries concluded new liberal BASAs which essentially removed all restrictions on market access, capacity and pricing. There was also growing regionalism in international air transport regulation, converting some bilateral regulations to regional and sub-regional multilateral regulations (ICAO, 2004).

2.2.7 Association of South-East Asian Nations (ASEAN)

The above sections have covered important milestones in the development and liberalisation of bilateral regulation that took place in the US and Europe, resulting in the "open skies" bilaterals and the creation of the European Common Aviation Area. These developments were the main pillars that supported the move to liberalisation worldwide. Several liberalisation examples of other regions in the world, namely the ASEAN and the Trans-Tasman markets are considered below. The most significant African air transport reform policy initiative will be discussed in detail in Chapter 3.

The ASEAN was formed in 1967 by Thailand, Indonesia, Malaysia, Singapore and the Philippines. ASEAN serves as a regional bloc, similar to the European Union. It works to harmonise policy and encourages cooperation on trade, tourism and economic growth. ASEAN now includes Brunei, Vietnam, Laos, Myanmar and Cambodia and has established the end goal of full economic integration by 2020. One of the trade areas closely analysed by the ASEAN countries is air transport. In November 2004 all ten ASEAN member countries signed the ASEAN Framework Agreement for Integration of Priority Schedules. This agreement allows for a phased approach to ASEAN Open Skies. The agreement includes unlimited point-to-point operations between ASEAN capital cities from 2008 and unlimited fifth freedom operations from those same cities in 2010 (Inter*VISTAS*-ga^2 Consulting, Inc., 2006).

2.2.8 Australia – New Zealand (Trans – Tasman) market

The first step towards economic liberalisation between Australia and New Zealand can be traced to 1966 when the New Zealand and Australia Free Trade Agreement was signed. This agreement was in place for 17 years until 28 March 1983 when the Australia-New Zealand Closer Economic Relations Free Trade Agreement (ANZCERTA) was concluded. This has laid a foundation as an innovative agreement which not only created a liberal business and economic regime for goods and services, but also created a collaborative umbrella to deal with customs, transport, regulatory, product standards and business law issues. The ANZCERTA established a market that maintains one of the most open economic trade relationships between any two countries in the world.

Australia and New Zealand have been closely linked through British Commonwealth colonial ties, and due to their comparative geographic isolation have consistently worked to liberalise government aviation policies. On 1 November 1996, they concluded a Single Aviation Market (SAM) agreement. Its goal was to bring the two countries closer together within the elements of ANZCERTA. The main components included the opening of ownership and control regulations in the bilateral market, the introduction of unlimited frequencies for Trans-Tasman services and a provision which allowed airlines of either country to operate domestic flights within the other countries. While the agreement opened up many new opportunities within the Trans-Tasman market, it did not address areas beyond, such as markets to third countries. The Single Aviation Market agreement broke down barriers in the carriage of cabotage traffic, created ownership and control flexibilities and deregulated capacity, designation and frequencies. More importantly, the SAM agreement laid the foundation for a more liberal agreement that would open markets beyond the Trans-Tasman.

The Australia-New Zealand Open Skies agreement entered into force on 8 August, 2002. This agreement removed the last substantive restrictions within the bilateral air services market and served as the culmination of a truly open air services market. There were no longer restrictions on flights to, within and beyond the territory of the other country. New beyond markets brought about greater capacity on the Trans-Tasman as new international connections were created between major cities (Inter*VISTAS*-ga^2 Consulting, Inc., 2006:45-46).

2.3 DEVELOPMENT OF THE MULTILATERAL AGREEMENTS

It is evident from the above examples that many regions have engaged in initiatives to partially or wholly liberalise their respective air transport markets. According to Lyle (2006) only the EU-related agreements, the CLMV agreement, the MALIAT and intra-ASEAN agreements[5] are “substantive”, with the remainder being “partly functional[6]”. The list is summarised in table 2.5.

[5] CLMV - involving Cambodia, Laos, Myanmar, Vietnam; MALIAT – involving Brunei, Chile, New Zealand, Samoa, Singapore, Tonga and the US.

Table 2.5: Multilateral air services agreements and arrangements

Name of agreement	Started	Current participants
Decision in Integration of Air Transport	1991	Five Andean Pact countries
European Union "Third Package"	1993	29 member countries of the EU plus Iceland, Liechtenstein, Norway and Switzerland
Caribbean Community (Caricom) Air Services Agreement	1996	Entry into force for 9/15 countries in 1998
Fortaleza Agreement	1997	Six MERCOSUR[7] countries
Banjul Accord	1997	Six countries in West Africa
CLMV Agreement	1997	Cambodia, Laos, Myanmar and Vietnam
ACAC Arab Multilateral Liberalisation Agreement	1999	16 countries in the Middle East and northern Africa, 13/16 signatories, 6/16 ratified
CEMAC Agreement	1999	Six countries of the Common Market and Monetary Community of Central Africa
COMESA Air Transport Liberalisation Programme	1999	20 countries of the Common Market for Eastern and Southern Africa
Yamoussoukro Decision	1999	53 African Union countries
IMT Growth Triangle	1999	Indonesia, Malaysia and Thailand
BIMP East ASEAN Growth Area	1999	Brunei, Indonesia, Malaysia and the Philippines
Multilateral Agreement on the Liberalisation of International Air Transportation (MALIAT)	2001	Brunei, Chile, New Zealand, Samoa, Singapore, Tonga and the US (members of the Asia Pacific Economic Cooperation forum, APEC)
EU "Horizontal Agreements"	2003	27 states, each with bilateral agreements with EU
Liberalisation of Passenger Air Services	2004	Brunei, Singapore and Thailand
Multilateral Air Services Agreement for the Banjul Accord Group (BAG)	2004	Cape Verde, Gambia, Ghana, Guinea, Liberia, Nigeria and Sierra Leone
Agreement on the Liberalisation of Air Transport between the Arab States (Arab League)	2004	Algeria, Bahrain, Egypt, Comoros, Djibouti, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, UAE and Yemen
Euro-Mediterranean Agreement	2005	European Union and Morocco
Multilateral Agreement on the Establishment of a European Common Aviation Area (ECAA)	2005	All member states of European Union, European Community, Albania, Bosnia and Herzegovina, Bulgaria, Croatia, the former Yugoslav Republic of Macedonia, Iceland, Montenegro, Norway, Romania, Serbia and United Nations Interim Administration Mission in Kosovo
Air Transport Agreement between EU and the United States	2005	All member states of European Union, European Community and United States
EU-Western Balkans	2006	European Union and six countries
ASEAN Multilateral Agreement on Air Services	2008	Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and

[6] The Decision in Integration of Air Transport between five Andean Pact countries, detailed in the table below, is also substantive, having been in force and existence since 1991.
[7] South and Central American regional trade agreement with four full members (Brazil, Argentina, Paraguay and Uruguay) and five associate members (Bolivia, Chile, Columbia, Ecuador and Peru).

Name of agreement	Started	Current participants
		Vietnam
Air Transport Agreement between Canada and EU	2008	All member states of European Union, European Community and Canada

Sources: Lyle (2006) and ICAO (2009)

Of the above agreements and arrangements, fewer than half contain provisions which attempt to revise nationality-based ownership clauses, these being the EU-related agreements, the ACAC agreement, the Caricom agreement, the COMESA programme and the MALIAT. Only the MALIAT and the "Liberalisation of Passenger Air Services" agreement displayed in table 2.5 adopt a plurilateral[8] basis, whereby the agreement is open to other countries, with the remainder being inter-regional in nature, underlying the growing complexity of the liberalisation process (Abuel-Ealeh, 2007:28).

Liberalisation is expected to continue and grow, both under new or revised bilaterals, including collective regulation by groups of States, for example on a regional or sub-regional multilateral basis. It could also include the use of new types of agreements such as a plurilateral agreement among like-minded States (ICAO, 2004:2.0-2).

2.4 CONCLUSION

Over a number of decades the global aviation industry has moved from a highly regulated environment to a more progressive liberalisation by incrementally removing regulatory restrictions as well as entering into new liberal trading agreements (Department of Transport, 2008:1-3). Following the dynamics of the structure of the world economy, fundamental air transport policy changes occurred in major air markets of the world. These include extensive deregulation in the United States, and liberalisation in the European Union as well as the EU – US "Open Skies" (Muinde, 2006:2). Other regions such as South America, the Caribbean Community, the South-East Asian region, the Trans-Tasman market, the Middle East and Africa, also followed the trend towards multilateral intra-regional liberalisation.

[8] A plurilateral agreement is an agreement that could initially be bilateral but is also capable of being expanded to involve additional parties or could, from the start, involve three or more parties; in both cases parties that share similar regulatory objectives which are not so widely held as to make feasible a typical multilateral negotiation (ICAO, 2004:2.4-1).

Deregulation and liberalisation of the air transport sector has undoubtedly progressed, with certain regions of the world enjoying economic and social benefits, while some regions such as Africa are still lagging behind. Not every stakeholder has gained from liberalisation: certainly some communities have lost airline services, a number of airlines have gone bankrupt and some classes of passengers are now paying higher fares, but for those few that have been negatively affected there are many more that can now fly more cheaply, are offered a greater variety of services to choose from and have found jobs in the extended air transportation value chain (Button, 2009:70).

International framework for aviation regulation has undoubtedly seen many changes over the last 90 years. The humble beginnings of international aviation regulation were marked by the signing of the Paris Convention; over a number of decades numerous factors and events compelled deregulation and liberalisation so as to gradually transform the very restrictive aviation market. Many milestones have been achieved with the creation of “open skies” markets in several regions of the world. BASAs to date remain the building blocks of bilateral regulation in international transport; nonetheless the degree of liberalisation of their design remains uneven throughout the world, with regions such as Africa dominated by very restrictive air policy regimes.

Following on the overview of the move towards deregulation in the global aviation industry, the next section will focus on Africa’s liberalisation progress, highlighting the importance of the Yamoussoukro Decision. The researcher discusses the conditions and requirements for the implementation of the Decision on a regional basis, the progress achieved so far as well as hindrances impeding the progress of complex intra-African liberalisation process. The chapter provides a summary overview of the various regional and sub-regional organisations and institutions that have been instrumental in moving the Yamoussoukro Decision forward.