

Department of Infrastructure and Energy

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**Guidelines for the AU negotiations of air
services agreement with third countries or
regional blocks**

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Context and methodology of the guidelines on negotiations

- ❑ With the establishment of the Single Market, AU's will be able to negotiate external ASA as a block
- ❑ Such an approach is feasible if the following conditions are met:
 - Completion of the Africa air transport single market
 - Definition of an external policy/ guidelines for the negotiations
 - AU must be empowered to conduct such negotiations
 - AU must hold a clear negotiating mandate given by member States
- ❑ Although the negotiations can be conducted from block to block, in terms of drafting, **guidelines on negotiations are addressed to all Member States.**

Context and methodology of the guidelines on negotiations

- ❑ For the development of the guidelines, the following set of data was taken into account:
 - ❑ The ICAO framework
 - ❑ The AU acquis in this domain (Guidelines on negotiating ASA with the EU)
 - ❑ The African civil aviation policy
 - ❑ The need to safeguard the interests of African States
 - ❑ The policy of third States/regional blocks in the field of external air services agreements or vis-à-vis their operators.

Context and methodology of the guidelines on negotiations

- ❑ The guidelines focus on negotiations with third countries and block of States that constitute major markets for the development of African air carriers and the connectivity of Africa with these regions:
 - the United States
 - the European Commission/European Union States
 - the ASEAN member States
 - China
 - the Arab States

Context and methodology of the guidelines on negotiations

- ❑ In terms of methodology, it appeared that a number of guidelines were close or even common to several third countries
- Therefore, the first part of the guidelines covers common provisions accompanied by footnotes to comment on specific differences by third country or block of states
- The second part (annexes) provides specific guideline clauses for each of the third country/region
- This structure enables flexibility to add-on other regions as required like the Caribbean States, Latin America, etc.

Main issues in drafting the guidelines on negotiations

- ❑ The control criteria of designated airlines (AU designation clause):
 - In fact, within the AU, two legal regimes are likely to apply to the control of designated air carriers:
 - a designated airline effectively controlled by a Member State and/or its nationals
 - a designated airline effectively controlled by Member States and/or nationals of Member States
 - It was therefore necessary to propose legal solutions so that the airlines effectively controlled by Member States and/or nationals of Member States could be included in the negotiations on air services

Main issues in drafting the guidelines on negotiations

- This possibility obviously depends on the position of third States/group of States on the criterion of effective control
- For example, the US policy in terms of designation and authorization provides that the designated airline must be substantially owned and effectively controlled by the designating country. Such standards can be waived with respect to foreign airlines when countries involved accept to move towards a more liberalized agreement
- On the other hand, the ASEAN member States apply an alternative criterion which provides that a designated airline “is and remains substantially owned and effectively controlled by one or more ASEAN Member States and/or its nationals”. This could facilitate acceptance of the African designation clause

❑ Competition rules

- The AU has adopted competition rules that may apply to air carriers of third countries
- The question is therefore what competition rules are applied by those countries
- Some of them may have reliable competition rules (US, EU)
- ✓ Member States and these States could then agree to apply their respective competition rules
- ✓ Nevertheless, as differences may arise from their implementation, it is recommended to establish cooperation between the respective competition authorities.
- When third countries/block of countries do not have competition rules or reliable competition rules, it is recommended to incorporate safeguard measures in the ASA

Main issues in drafting the guidelines on negotiations

- ❑ **Safety** / The guidelines had to reflect the ICAOs requirements while reflecting the AU designation mechanism:
- Mutual recognition of certificates of airworthiness, certificates of competency, and licenses (based on minimum standards established pursuant to the Convention)
 - Application of the consultation procedure concerning the safety standards maintained by the other Party relating to aeronautical facilities, aircrews...
 - Capacity to take immediate action, prior to consultations
 - Mutual acceptance of ramp inspection
 - Responsibility of the licensing State for the regulatory control...

□ Tariffs

- The YD on market access provide that air carriers freely set air tariffs
- This is consistent with what most third countries provide in their ASA
- In the event the law applicable of the third country requires filing or prior approval of a tariff, the tariff filing or application should be dealt with accordingly
- In such cases, the principle of reciprocity may be applied by the Member States concerned at their discretion

□ Safeguards

- For certain air services agreements, it is proposed to introduce a safeguard provision related to possible unfair competitive practices
- In that case, Member States are invited to consider airline practices which may be regarded as possible unfair competitive practices and then submit to closer examination
- This provision could be used where two States or groups of States have agreed to move toward a less controlled regime but either one or both parties do not have competition laws or “reliable” competition laws
- In that case, they may need to have a mutually-agreed set of descriptions of what would constitute unfair competitive practices as a safeguard measure

□ Ground handling

- In a liberalized environment, airlines have certain rights in terms of ground handling (self-handling, choice of operators that deliver ground handling services)
- Nevertheless, the physical and/or operational constraints that may affect some African airports have the consequence of limiting the rights of airlines of the other Party
- It was necessary for the guidelines to recall the ICAO policy in this domain and provide for some flexibility

❑ Environmental Protection

- Given that environmental protection is essentially regulated by States, it was difficult to establish a common position
- The guidelines propose a compromise between support to ICAO standards and policy and safeguard measures

❑ Settlement of Disputes

- Arbitration is a costly and time-consuming process and, in most of the cases
- Therefore, the guidelines suggest that the dispute settlement mechanism should provide for a mediation mechanism to be used optionally by States
- Such a mediation mechanism is relevant for commercial disputes

Thank you
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