

African Union, African Regional Bodies

Decision relating to the implementation of the Yamoussoukro declaration concerning the liberalisation of access to air transport markets in Africa

Decision ECA-RCID-CM-CIV-AV-99-2 of 1999

Legislation as at 1 December 1999

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Decision relating to the implementation of the Yamoussoukro declaration concerning the liberalisation of access to air transport markets in Africa

Contents

Article 1 – Definitions 2

Article 2 – Scope of application 2

Article 3 – Granting of rights 3

 Paragraph 3.1 3

 Paragraph 3.2 3

 Subparagraph (a) 3

 Subparagraph (b) 3

Article 4 – Tariffs 3

 Paragraph 4.1 3

 Paragraph 4.2 3

Article 5 – Capacity and frequency 3

 Paragraph 5.1 3

 Paragraph 5.2 3

Article 6 – Designation and authorization 3

 Paragraph 6.1 3

 Paragraph 6.2 3

 Paragraph 6.3 3

 Paragraph 6.4 3

 Paragraph 6.5 4

 Paragraph 6.6 4

 Paragraph 6.7 4

 Paragraph 6.8 4

 Paragraph 6.9 – Eligibility criteria 4

 Subparagraph (a) 4

 Subparagraph (b) 4

 Subparagraph (c) 4

 Subparagraph (d) 4

 Subparagraph (e) 4

 Subparagraph (f) 4

 Subparagraph (g) 4

 Paragraph 6.10 – Revocation of authorization 4

 Paragraph 6.11 – Documents 4

 Paragraph 6.12 – Safety and security 4

Subparagraph (a)	4
Subparagraph (b)	4
Subparagraph (c)	5
Article 7 – Competition rules	5
Paragraph 7.1	5
Article 8 – Settlement of disputes	5
Paragraph 8.1	5
Paragraph 8.2	5
Article 9 – Monitoring body	5
Paragraph 9.1	5
Paragraph 9.2	5
Paragraph 9.3	5
Paragraph 9.4	5
Paragraph 9.5	5
Paragraph 9.6	5
Article 10 – Transitional measures	5
Paragraph 10.1	5
Paragraph 10.2	5
Paragraph 10.3	5
Paragraph 10.4	6
Paragraph 10.5	6
Paragraph 10.6	6
Article 11 – Miscellaneous provisions	6
Paragraph 11.1 – Commercial opportunities	6
Subparagraph 11.1.1	6
Subparagraph 11.1.2	6
Subparagraph 11.1.3	6
Subparagraph 11.1.4	6
Subparagraph 11.1.5	6
Paragraph 11.2 – Operational flexibility	6
Subparagraph (a)	6
Subparagraph (b)	6
Subparagraph (c)	6
Subparagraph (d)	6
Paragraph 11.3 – Cooperative arrangements	6

Paragraph 11.4 – Consultation	7
Paragraph 11.5 – Review	7
Paragraph 11.6 – Registration	7
Article 12 – Final provisions	7
Paragraph 12.1 – Entry into force	7
Subparagraph 12.1.1	7
Subparagraph 12.1.2	7
Subparagraph 12.1.3	7
Subparagraph (a)	7
Subparagraph (b)	7
Subparagraph (c)	7
Subparagraph (d)	7
Subparagraph (e)	7
Paragraph 12.2 – Role of subregional and regional organizations	7
Paragraph 12.3 – Withdrawal	7
Subparagraph 12.3.1	7
Subparagraph 12.3.2	7
Paragraph 12.4 – Annexes	7
Annex 1(a)	8
Annex 1(b)	8
Annex 1(c)	9
Annex 2	10

African Union

Decision relating to the implementation of the Yamoussoukro declaration concerning the liberalisation of access to air transport markets in Africa

Decision ECA-RCID-CM-CIV-AV-99-2 of 1999

Published on 14 November 1999

Commenced

[This is the version of this document at 1 December 1999.]

We, African Ministers in charge of civil aviation meeting in Yamoussoukro, Côte d'Ivoire on 13 and 14 November 1999

Considering the Treaty Establishing the African Economic Community, (hereinafter referred to as the Abuja Treaty), in particular Article 61 relating to the integration of air transport and Article 10 relating to the authority of the Assembly of Heads of State and Government to adopt decisions;

Considering also the general policy statement on civil aviation made by the Conference of Heads of State and Government of the Organization of African Unity under Resolution CM/Res.804 (XXXV) of June 1980;

Recognizing the relevance of the objective of the Yamoussoukro Declaration on a new African civil aviation policy adopted on 7 October 1988 whose primary purpose was to create a conducive environment for the development of intra-African and international air services;

Recalling the decisions of African Ministers Responsible for Civil Aviation adopted in Mauritius in September 1994 with a view to accelerating the implementation of the Yamoussoukro Declaration, especially those relating to the granting of traffic rights, regional cooperation in air transport and the role of Governments;

Considering the need to harmonize air transport policies in order to eliminate nonphysical barriers that hamper the sustainable development of air transport services in Africa;

Having regard to the recommendation of the 11th Conference of African Ministers responsible for Transport and Communications held in Cairo from 25 to 27 November 1997 calling for the organization of a regional meeting of African Ministers Responsible for Civil Aviation to review and find ways and means of implementing the Yamoussoukro Declaration;

Mindful of the guiding principles set by the International Civil Aviation Organization (ICAO) for the development of safe, regular and orderly air transport services on the basis of equality;

Further mindful of the globalization of the world economy and the need to create a conducive environment for the development and provision of safe, reliable and affordable air transport services necessary for the free movement of persons, goods and services in Africa;

Recognizing the necessity to adopt measures with the aim of progressively establishing a liberalized intra-African aviation market concerning, among other things, traffic rights, capacity, frequency and pricing;

Considering the importance of enhancing cooperation among African airlines in order to stimulate the development of inter-African air transport and the need to improve the quality of service to the consumers; and

Convinced that, given the different levels of air transport development in Africa it is necessary to adopt for special and transitional provisions in order to achieve full liberalization of air transport in Africa; and

Recognizing the efforts undertaken in the various sub-regions to merge, privatize and liberalize air transport services;

HEREBY ADOPT THIS DECISION:

Article 1 – Definitions

For the purposes of this Decision, the following expressions shall mean:

"Abuja Treaty" the Treaty Establishing the African Economic Community adopted at Abuja, Nigeria on the 3rd day of June, 1991 and which entered into force on 12 May 1994.

"Aeronautical Authority" any governmental authority, body corporate or organ duly authorised to perform any function to which this Decision relates.

"Air Services" and **"Airlines"** have the meaning respectively assigned to them in Article 96 of the Chicago Convention on International Civil Aviation dated 7th December 1944.

"Eligible Airline" any African air transport company fulfilling the requirements set forth in Article 6, subparagraph 6.9 below.

"Jointly-owned and jointly operated airline": any airline created by virtue of Article 77 of the Chicago Convention on International Civil Aviation;

"Effective control": a relationship constituted by rights, contracts or any other means which, either separately or jointly confer the possibility of a State Party or Group of State Parties or their nationals to directly or indirectly exercise a decisive influence on the running of the business of the airline or the right to use all or a substantive part of the assets of the air carriers.

"Designated airline": Eligible Airline designated by a State Party to exercise its traffic rights under this Decision.

"Capacity": as defined by ICAO

"Capacity share" the share of an Eligible Airline of a State Party expressed as a percentage of the total capacity in a bilateral relationship with another State Party.

"Country of Origin" the territory of a State Party where air transport starts.

"Decision" text of this Decision including the Appendices and amendments.

"Depository": the Organization of African Unity.

"State Party" each African State signatory to the Abuja Treaty and such other African country which, though not a party to the said Treaty, has declared in writing its intention to be bound by this Decision.

"Tariffs" the prices to be paid for the carriage of passengers, baggage or cargo (excluding mail) on scheduled air services and the conditions, under which these prices apply, including remuneration and conditions offered to travel agencies and other auxiliary services.

"Third freedom traffic right" the right of an Eligible Airline of one State Party to put down, in the territory of another State Party, passengers, freight and mail taken up in the State Party in which it is licensed.

"Fourth freedom traffic right": the right of an Eligible Airline of one State Party to take on, in the territory of another State Party, passengers, freight and mail for offloading in the State Party in which it is licensed.

"Fifth freedom traffic right": the right of an Eligible Airline of one State Party to carry passengers, freight and mail between two State Parties other than the State Party in which it is licensed.

"Scheduled and Unscheduled air services": as defined in Chicago Convention and ICAO Council resolutions.

Article 2 – Scope of application

This Decision establishes the arrangement among State Parties for the gradual liberalization of scheduled and non-scheduled intra-Africa air transport services. This Decision has precedence over any multilateral or bilateral agreements on air services between State Parties which are incompatible with this Decision. The provisions which are included in these agreements and which are not incompatible with this Decision remain valid and are supplementary to the Decision.

Article 3 – Granting of rights

- 3.1 State Parties grant to each other the free exercise of the rights of the first, second, third, fourth and fifth freedoms of the air on scheduled and non-scheduled passenger, cargo and/or mail flights performed by an Eligible Airline to/from their respective territories.
- 3.2 Notwithstanding the provisions of paragraph 3.1 of this Article, a State Party may in accordance with the provision of paragraph 10.1 of Article 10 below, limit its commitment in respect to fifth freedom rights for a period no longer than two (2) years to the following:
 - (a) grant and receive unrestricted fifth freedom on sectors where, for economic reasons, there are no third and fourth freedom operators; and
 - (b) grant and receive a minimum of 20 percent of the capacity offered on the route concerned during any given period of time in respect to any sector where third and fourth freedom operators exist.

Article 4 – Tariffs

- 4.1 In case of tariff increase, there shall be no approval required by the aeronautical authorities of State Parties concerned for tariff to be charged by the designated airlines of State Parties for the carriage of passenger, cargo and mail. The airlines shall in this case file such tariffs before competent authorities 30 working days before they enter into effect.
- 4.2 This provision is not applicable in the case of lowering tariff which takes immediate effect according to the will of the airline.

Article 5 – Capacity and frequency

- 5.1 Subject to the provisions of Article 3, there shall be no limit on the number of frequencies and capacity offered on air services linking any city pair combination between State Parties concerned. Each Designated Airline will be allowed to mount and operate such capacity and frequency as such airline deems appropriate. Consistent with this right, no State Party shall unilaterally limit the volume of traffic, the type of aircraft to be operated or the number of flights per week, except for environmental, safety, technical or other special consideration.
- 5.2 Without prejudice to the provisions of paragraph 5.1 above, a State Party concerned may refuse to authorize an increase in capacity if such additional capacity is not in compliance with the provisions of Article 7 relating to the rules of fair competition.

Article 6 – Designation and authorization

- 6.1 Each State Party shall have the right to designate in writing at least one airline to operate the intra-Africa air transport services in accordance with this Decision. Such designation shall be notified to the other State Party in writing through diplomatic channels.
- 6.2 A State Party may also designate an Eligible Airline from another State Party to operate air services on its behalf.
- 6.3 A State Party shall have the right to designate an eligible African multinational airline in which it is a stakeholder and this airline shall be accepted by the other State Parties.
- 6.4 On receipt of the notification of such designation, the other State Party shall, in accordance with its national laws, speed up the process of authorization and licensing of the airline designated by the other State Party to operate the services. While such authorization should be granted within 30 days, the proposed schedule of flights should be submitted to the appropriate authorities for approval.

- 6.5 Should a State Party be convinced that a designated airline does not meet the criteria in subparagraph 6.9 below, it may refuse the authorization. The State that has designated the airline may request consultations in accordance with Article 11 paragraph 4 of this Decision relating to Miscellaneous Provisions.
- 6.6 Each State Party has the right to withdraw the designation of an Eligible Airline and to designate another eligible airline or airlines in writing through diplomatic channels within 30 days except when prevented from doing so for security reasons.
- 6.7 Authorizations for the performance of non-scheduled air transport services by Eligible Airlines of the State Parties shall be granted by the respective competent authorities, provided that an application has been submitted for approval to the appropriate authority, accompanied by the operating certificates of the airline's country of nationality and the corresponding insurance policies.
- 6.8 In order to ensure continued scheduled air services on a particular route sector where scheduled airlines have an obligation to operate during low and high traffic seasons, the scheduled airlines will be given preference over the nonscheduled airlines on the same sector.

6.9 Eligibility criteria

To be eligible, an airline should:

- (a) be legally established in accordance with the regulations applicable in a State Party to this Decision;
- (b) have its headquarters, central administration and principal place of business physically located in the State concerned;
- (c) be duly licensed by a State Party as defined in Annex 6 of the Chicago Convention;
- (d) fully own or have a long-term lease exceeding six months on an aircraft and have its technical supervision;
- (e) be adequately insured with regard to passengers, cargo, mail, baggage and third parties in an amount at least equal to the provisions of the International Conventions in force;
- (f) be capable of demonstrating its ability to maintain standards at least equal to those set by ICAO and to respond to any query from any State to which it provides air services;
- (g) be effectively controlled by a State Party.

6.10 Revocation of authorization

A State Party may revoke, suspend or limit the operating authorization of a designated airline of the other State Party when the airline fails to meet the criteria of eligibility.

In case of revocation the State Party shall inform the airline at least thirty (30) days before the measure enters into force.

6.11 Documents

Each State Party shall recognize as valid the Air Operating Certificate, Certificate of Airworthiness, Certificate of Competency and the licenses issued or validated by the other State Party and still in force provided that the requirements for such certificate of license are at least equal to the minimum standards set by ICAO.

6.12 Safety and security

- (a) The State Parties re-affirm their obligations to each other to protect the security of civil aviation against acts of unlawful interference. The State Parties will conform to the provisions of the various conventions on air safety in accordance with ICAO provisions and especially with Annex 17 of the Chicago Convention on International Civil Aviation.
- (b) Each State Party shall give consideration to any request from the other State Party for special security measures to meet a particular threat.

- (c) The State Parties reaffirm their obligation to comply with the civil aviation safety standards and practices recommended by ICAO.

Article 7 – Competition rules

- 7.1 State Parties shall ensure fair opportunity on non-discriminatory basis for the designated African airline, to effectively compete in providing air transport services within their respective territory.

Article 8 – Settlement of disputes

- 8.1 If any dispute arises between States Parties relating to the interpretation or application of this Decision, the States Parties concerned shall in the first place endeavor to settle the dispute by negotiation.
- 8.2 If the State Parties concerned fail to reach a settlement of the dispute by negotiation within 21 days, either party may submit the dispute for arbitration in accordance with the arbitration procedures set forth in Appendix 2 hereof.

Article 9 – Monitoring body

- 9.1 Pursuant to paragraph 4 of Article 25 of the Abuja Treaty, a Sub-Committee on Air Transport of the Committee on Transport, Communications and Tourism is hereby established which shall be responsible, *inter alia*, for the overall supervision, follow-up and implementation of this Decision.
- 9.2 A Monitoring Body composed of representatives of the ECA, OAU, AFCAC and AFRAA which shall be assisted, as the case may be, by representatives of sub-regional organizations, is hereby established to assist the Sub-Committee on Air Transport composed of African Ministers Responsible for Civil Aviation in the follow-up of the implementation of this Decision
- 9.3 The duties and responsibilities of the Monitoring Body are set forth in Annex 3 hereof. Secretariat services required by the Monitoring Body shall be provided by the ECA.
- 9.4 To ensure successful implementation of the Decision, an African Air Transport Executing Agency will be established as soon as possible. The principal responsibility will include *inter alia* the supervision and management of Africa's liberalized air transport industry.
- 9.5 The Executing Agency shall have sufficient powers to formulate and enforce appropriate rules and regulations that give fair and equal opportunities to all players and promote healthy competition.
- 9.6 The Executing Agency will also ensure that consumer rights are protected.

Article 10 – Transitional measures

- 10.1 By a formal declaration made in writing to the Depository or the secretariat of the Monitoring Body, as the case may be, through diplomatic channel at the time of adoption of the Decision by the Assembly of Heads of State and Government or any time thereafter, a State Party shall have the option not to grant and receive the rights and obligations provided for in Articles 3 and 4 for a transitional period not exceeding two (2) years.
- 10.2 Each State Party may, on six (6) months prior notice given to the Depository or the Secretariat of the Decision Monitoring Body, assume or resume such rights and obligations.
- 10.3 The exemption of a State Party from the application of this Decision terminates on the date provided for in the Declaration made under paragraph 10.1 above. During the transitional period, no State Party shall be obliged to grant any rights hereunder to any State Party not bound thereby to the same extent.

- 10.4 With regard to any measures covered by the Decision, the State Parties shall not discriminate between designated airlines of State Parties that have assumed similar commitments.
- 10.5 State Parties undertake not to enter into any obligations that would be more restrictive than this Decision. However, State Parties shall not be precluded from maintaining or developing on a bilateral basis or amongst themselves, arrangements more flexible than those contained herein.
- 10.6 This Decision shall not be deemed to impose obligations on a State Party to grant cabotage privileges.

Article 11 – Miscellaneous provisions

11.1 Commercial opportunities

- 11.1.1 The designated airline of each State Party shall have the right to establish offices in the territory of the other State Party for the promotion and sale of air transport services.
- 11.1.2 Upon request and in accordance with applicable foreign exchange regulations, each designated airline will be granted the right to convert and remit to the country of its choice, all local revenues from the sale of air transport services and associated activities¹ directly linked to air transport in excess of sums locally disbursed, with conversion and remittance permitted promptly without restriction, discrimination taxation¹ in respect thereof in accordance with the applicable foreign exchange regulations.
- 11.1.3 The designated airline may be permitted to pay for its local expenses such as handling and purchases of fuel in local currency, as provided for in the exchange control regulations.
- 11.1.4 The designated airline of each State Party shall be entitled, in accordance with the laws and regulations of the other State Party relating to entry, residence and employment, to bring into the territories employees who perform managerial, commercial, technical, operational and other specialist duties which are required for the provision of air transport services.
- 11.1.5 The aforementioned measures are designed to facilitate the establishment and operation of airlines and the transfer of their excess earnings shall be taken by State Parties on the basis of reciprocity.

11.2 Operational flexibility

In operating scheduled and unscheduled services, each designated airline may, on any or all flights and at its option:

- (a) operate flights in either or both directions;
- (b) be permitted by the State Parties concerned to combine air services and use the same flight number.
- (c) serve intermediate, and beyond points and points in the territories of the State Parties in Africa on the routes in any combination and in any order, and
- (d) omit stops at any point or points, provided that the service commences at a point in the territory of the State Party designating the airline.

11.3 Cooperative arrangements

In operating the authorized services on the agreed routes, a designated airline of one State Party may enter into cooperative marketing arrangements such as blocked-space, code sharing, franchising or leasing arrangement, with an airline or airlines of the other State Party.

1

The term “without taxation” refers to taxation on the conversion and remittance, not to national income tax which is better dealt with on the basis of a double taxation treaty, or some other arrangement in which the income from the sale of air transportation by foreign airlines is exempted from national income tax on a reciprocal basis. However, the absence of a double taxation treaty or other arrangement. States could use this clause to exempt reciprocally air carriers from foreign income taxes, but should make their intention clear in this regard.

11.4 Consultation

A State Party may, at any time, request consultation with other State Party (ies) in respect to the interpretation or application of this Decision. Such consultation shall begin at the earliest possible date but not later than 30 days from the date the other Party receives the request.

11.5 Review

The Air Transport Sub-committee shall review this Decision every two years or earlier if requested by two-thirds of the State Parties. In such reviews, the Monitoring Body shall propose measures to eliminate existing restrictions gradually.

11.6 Registration

This Decision shall be registered by the Depository and/or Monitoring Body with the International Civil Aviation Organization (ICAO).

Article 12 – Final provisions

12.1 Entry into force

12.1.1 In accordance with Article 10 of the Abuja Treaty, this Decision shall automatically enter into force thirty (30) days after the date of its signature by the Chairman of the Assembly of Heads of State and Government at which this Decision was adopted.

12.1.2 In respect of African States that are not parties to the Abuja Treaty, this Decision shall enter into force 30 days after the date on which such State has communicated its declaration of intention to be bound by this Decision in the form of Appendix 1(a), 1(b) and 1(c) to the Monitoring Body which shall in turn transmit the declaration to the Depository.

12.1.3 The Depository shall inform all State Parties of:

- (a) each Declaration made in accordance with the Decision;
- (b) date of the deposit and the date of effectiveness of this Decision in respect to that State;
- (c) the withdrawal of any Declaration;
- (d) the withdrawal from this Decision and the date on which it takes effect, and
- (e) the accession by and admission of new States.

12.2 Role of subregional and regional organizations

Subregional and regional organizations are encouraged to pursue and to intensify their efforts in the implementation of this Decision.

12.3 Withdrawal

12.3.1 A State Party may withdraw from this Decision by a formal notification in writing addressed to the Depository of its intention to do so or in the circumstances contemplated under Article 104 of the Abuja Treaty. The Depository shall within 30 days of receipt of the notification of withdrawal notify the other State Parties.

12.3.2 Notwithstanding the notice of withdrawal, this Decision shall apply to the State concerned for one year after the date of receipt of the notification by the Depository.

12.4 Annexes

Relevant annexes adopted by the competent organs of the African Economic Community shall form an integral part of this Decision.

Annex 1(a)

Form of Declaration of Commitment² on the Decision relating to the implementation of the Yamoussoukro Declaration concerning the liberalization of access to air transport markets in Africa

I, [*name of the Minister in charge of civil aviation*] representing the Government of [*insert name of country*] and in reference to the Decision relating to the implementation of the Yamoussoukro Declaration concerning the liberalization of access to air transport market which was endorsed by the 36th ordinary Session of the Assembly of Heads of State and Government of the OAU as published in the *Official Journal No 6 of the African Economic Community covering Decision of the fourth ordinary session of the Assembly of heads of State and government.*

By this Declaration of commitment, I declare that my country is bound by the Decision to liberalize the access to air transport market in Africa in its entirety and will fully implement the said Decision as party thereto.

I hereby inform that my government has taken all the necessary administrative measures to give full effect to this Declaration.

Our rights and obligations under the said Decision shall be effective 30 days after the receipt by you of this Declaration.

Done at _____ on _____

For the Government of [*Insert name*]

By: [_____ *signature* _____]

Its: [_____ [*insert title of signatory* _____]

Annex 1(b)

Form of Declaration of Commitment³ on the Decision relating to the implementation of the Yamoussoukro Declaration concerning the liberalization of access to air transport markets in Africa

I, [*name of the Minister in charge of civil aviation*] representing the Government of [*insert name of country*] and in reference to the Decision relating to the implementation of the Yamoussoukro Declaration concerning the liberalization of access to air transport market which was endorsed by the 36th ordinary Session of the Assembly of Heads of State and Government of the OAU as published in the *Official Journal No 6 of the African Economic Community covering Decision of the fourth ordinary session of the Assembly of heads of State and government.*

By this Declaration of commitment, I declare that my country is bound by the Decision to liberalize the access to air transport market in Africa in its entirety and undertake to fully implement the said Decision as party thereto, except to the extent provided below for a maximum transitional period of [*insert period but not to exceed two years from date of declaration*]:

2

This form is to be used by State Parties that are not parties to the Abuja Treaty and wish to be parties to the Decision.

3

This form is to be filled by States that are not parties to the Abuja Treaty and wish to be parties to the Decision with limitation of their commitment.

1. Grant of traffic rights

- 1.1 In accordance with the provisions of paragraph 3.2 of Article 3 of the said Decision, I commit my country to grant during the transitional period fifth freedom traffic to the designated airlines of States Party on the following basis:
- (a) grant and receive unrestricted fifth freedom on sectors where, for economic reasons, there are no third and fourth freedom operators; and
 - (b) grant and receive a minimum of 20 percent [*or such other higher percentage*] of the capacity offered on the route concerned during any given period of time in respect to any sector where third and fourth freedom operators exist.

2. Other provisions

All other provisions of the Decision shall remain valid and be binding on us.

3. This Declaration shall terminate at the latest on [insert date] and thereafter we shall be bound to the fullest extent by the terms of the Decision.
4. With respect to matters covered by the foregoing paragraphs, my country confirms the understanding that during the transitional period the obligations of other States Party to grant any rights to us will be strictly equivalent to our commitment hereunder.

Done at _____ on _____

For the Government of [*Insert name*]

By: [_____ *signature* _____]

Its: [_____ [*insert title of signatory*] _____]

Annex 1(c)

Form of Declaration of Commitment⁴ on the Decision relating to the implementation of the Yamoussoukro Declaration concerning the liberalization of access to air transport markets in Africa

By this Declaration of commitment, I [*insert name of the minister*] representing the Government of the Republic of [*insert name*] declare that my country is bound by the Decision to liberalize the access to air transport market in Africa in its entirety and will fully implement the said Decision as party thereto, except to the extent provided below for a maximum transitional period of [*insert period but not to exceed two years from date of declaration*]:

1. Grant of traffic rights

- 1.1 In accordance with the provisions of paragraph 3.2 of Article 3 of the said Decision, we commit ourselves to grant during the transitional period fifth freedom traffic to the designated airline of State Parties on the following basis:
- (a) grant and receive unrestricted fifth freedom on sectors where, for economic reason reasons, there are no third and fourth freedom operators; and
 - (b) grant and receive a minimum of 20 percent [*or such other higher percentage*] of the capacity offered on the route concerned during any given period of time in respect to any sector where third and fourth freedom operators exist.

2. Other provisions

All other provisions of the Decision shall remain valid and be binding on us.

4

This form is to be filled by States that are parties to the Abuja Treaty who wish to limit the extent of their commitment.

3. This Declaration shall terminate at the latest on *[insert date]* and thereafter my Government shall be bound to the fullest extent by the terms of this Decision.
4. With respect to matters covered by the foregoing paragraphs, my country *[insert the name]* confirm the understanding that during the transitional period the obligations of other States Party to grant any rights to us will be strictly equivalent to our commitment hereunder.
5. I hereby inform that my Government has taken all the necessary administrative measures to give full effect to this Declaration.
6. Our rights and obligations under the said Decision shall be effective 30 days after the receipt by you of this Declaration.

Done at _____ on _____

For the Government of *[Insert name]*

By: *[_____ signature _____]*

Its: *[_____ [insert title of signatory _____]*

Annex 2

Duties and responsibilities of the monitoring body

1. Terms of reference

The Monitoring Body, as established under Article 9 of this Decision, shall have the following duties and responsibilities:

- a) Prepare, for adoption by the sub committee on Air Transport, the relevant annexes to the Decision;
- b) Formulate proposals on studies, seminars, workshops and other measures aimed at enhancing and updating air transport services in Africa;
- c) Use, if necessary, experts to undertake studies related to the implementation of the Decision;
- d) Provide, on request, to interested organization and members State, technical advises for the implementation of the Decision.
- e) Receive declarations made in accordance with the Decision, notification of withdrawals of any declaration of complaints and requests and shall inform the Depository accordingly;
- f) State its views on any disputes resulting from the application and/or interpretation of the Decision and recommend solution to the dispute;
- g) State, on request of States party, its views on predatory and unfair competition practices;
- h) Request the competent national and international bodies for the support required to carry out studies, seminars, work programs and other measures aimed at enhancing and updating air transport services in Africa;
- i) Assist the OAU to organize the meeting of the sub committee on Air Transport of the Committee on Transport, Communications and Tourism.
- j) Analyze and plan for the periodic review of the Decision;
- k) Develop and formulate a coordinated implementation programme of the Yamoussoukro Decision between and within sub-regions.

2. Seat of the Committee

The seat of the Monitoring Body will be within ECA, which is designated to serve its secretariat.

3. **Meeting**

The Monitoring Body will meet, on a rotational basis, twice a year for the first year and thereafter as required.

4. **Funding**

Participation in meetings of the Monitoring Body will be funded by each participating organization.

Other activities of the Monitoring Body could be financed from external sources.