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# Contents

## Volume 1, Number 1, 2008

|  |    |
|--|----|
| Editorial.....   | v  |
| Guidelines to Authors .....  | vi |
| Gender-Sensitivity in the Extension Activities of Edo State<br>Agricultural Development Programme .....                    | 1  |
| Charles Uchenna Onugu  |    |
| Real Sector Response to Interest Rate Adjustments in<br>the Nigerian Economy, 1986-2006 .....                              | 11 |
| A.A. Onaolapo  |    |
| Determinants of Capital Structure of Small and Medium Scale<br>Enterprises (SMEs) in Osun State, Nigeria (2000-2004).....  | 29 |
| Dauda O. Yinusa, Taiwo O. Asaolu & Morenike C. Yinusa  |    |
| Liberalization and the Evolution of Business and Operating<br>Practices in the Air Transport Industry in Africa .....      | 41 |
| B. B. Ayantoyinbo, V. A. Dosunmu, & A. O. Ajiboye  |    |
| Appraisal of Omo Forest Reserve for Sustainable<br>Wood Production .....   | 51 |
| L.O. Alamu   |    |
| Gender and Leadership Styles: A Critical Appraisal .....   | 57 |
| T.A. Ajayi   |    |
| Effect of Exchange Rate Volatility<br>on Nigeria's Manufactured Exports .....  | 65 |
| Godwin Akpokodje   |    |
| Impacts of Bush Burning on Agricultural Lands: A Case Study<br>of Ivo Local Government Area of Ebonyi State, Nigeria ..... | 77 |
| S.N. Okereke   |    |

|   |     |
|---|-----|
| Using Marketing Performance Appraisal to Develop Bank<br>Marketing Strategy .....                             | 83  |
| Adegbuyi Omotayo Adeniyi & Adebola Oladimeji Akande   |     |
| The Plight of Crime Victims in Nigeria:<br>A Study of Public Perception in Enugu State, Nigeria .....         | 95  |
| Christopher Uche Ugwuoke  |     |
| Recapitalisation as a Tool for Increased Contribution<br>of the Insurance Industry .....                      | 105 |
| F.F. Olowokudejo  |     |
| Impacts of Government Policies on the Development<br>of Small Scale Industries in Rivers State, Nigeria ..... | 123 |
| Austin O. Oparanma  |     |
| Deficit Financing and the Nigerian Economic Growth:<br>An Empirical Investigation (1975-2005) .....           | 137 |
| O.S. Aiyegbusi, A.G. Ibraheem & Omolade Adeleke   |     |
| Waste Energy: An Overview of Municipal Solid Waste<br>Management Practices in Nigeria .....                   | 145 |
| B. M. Ryal-Net  |     |

# Liberalization and the Evolution of Business and Operating Practices in the Air Transport Industry in Africa

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## Abstract

This paper examines the fundamental changes in air transportation in the last two decades brought about by globalization, liberalization and privatization, some of which have implications for safety and security regulations. The areas identified to have safety and security implications were grouped into two: air transportation activity occurring within a single country, and those that involve multiple parties in different countries. The methodology adopted in this study was a descriptive analysis of existing literature on air service liberalization, safety and security, and airline operations before and after air service liberalization. The findings revealed that economic liberalization, as well as the evolution of business and operating practices, have implications for safety and security regulation, which need to be addressed properly. The paper recommends that due regard should be paid to its impact on safety and security so that a more coherent policy may be developed.

**Key words:** Airline Safety and Security, Liberalization of Air Transport Services, Airline Operations.

## Introduction

The liberalization of the air service industry, which replaced a set of strict and arcane rules with the primacy of the market, has repeatedly proven to be a decisive influence in expanding and determining the benefits of air service. InterVISTAS-ga2, the Washington-based transportation and tourism consultants, in their study titled "The Economic Impact of Air Service Liberalization", stated that "liberalization of air services between countries generates significant additional opportunities for consumers, shippers, and the numerous direct and indirect entities and individuals affected by such liberalization". Conversely, it is also evident that restrictive bilateral air services agreements between countries stifles air travel, tourism, and business and consequently, economic growth and job creation.

Antom, R. and Chris, L. (2005) noted air traffic within South Africa surged in the ten years since the liberalization of the domestic market. Their report also revealed that Egypt had spectacular results through adopting more liberal air transport policies in the 1980s. They stated that growth in international air passenger traffic and tourist arrivals, over the past twenty years, has averaged 8% a year (11% a year over the past ten years), despite political uncertainty in the region and some major setbacks due to terrorism.

From the available evidence, InterVISTAS-ga2 concluded that liberalization promotes traffic growth, with an accompanying growth in non-aviation sectors. The sheer scale of the largest airports, the global reach of the industry, and its technological innovation, supports the often cited statistic that the travel and tourism industry drives between 12 and 15 per cent of the world output of goods and services.

The International Civil Aviation Organization (ICAO) Conference of 2003 produced a consensus in favour of liberalization, describing it as a desirable goal. Yet, there was also concern expressed over liberalization's potential impact on safety and security. Conference delegates agreed that aviation safety and security must remain of paramount importance and liberalization should be accompanied by appropriate safeguards. The challenge for states, in brief, is to capture the benefits of economic liberalization without compromising safety and security. Therefore, while liberalization per se is not an issue, it is essential to ensure the maintenance of safety and security as liberalization spreads.

Many economic benefits are associated with liberalized policies, for example, allowing more open market access and multiple airline designations, lifting restrictions on capacity, pricing, and commercial opportunities may all bring about growth in passenger and cargo traffic as well as increased aircraft movements. They could also result in more air carriers entering the market, with increased service options and pricing

competition, as well as the development of travel and tourism sectors and job creation.

But with all the tremendous benefits of liberalization, the resultant growth in air travel, and the rapid expansion of the airline industry, how well is the global aviation safety regulatory system functioning? Can states adequately ensure safety and security in an industry being transformed by globalization, liberalization and privatization?

The Chicago Convention of 1944 on International Civil Aviation Organization (ICAO) required each member state to provide safety and security oversight, meeting this obligation both for its own aircraft operations and for foreign aircrafts operating in its airspace. A state (especially in the Africa Flight Information region) would not be able to cope generally with the consequences of market growth and liberalization, without sufficient legal, regulatory, and organizational infrastructure, as well as the human and financial resources needed to perform these regulatory functions.

Due regard must be given not only to the expected economic benefits of liberalization but to its potential impact on the capacity to meet the corresponding safety and security requirements. Clearly, coherent policies are necessary to ensure the continued safe, secure and orderly development of civil aviation. The purpose of this paper, then, is to identify areas with potential implications for safety and security, and examine the existing ICAO safety and security challenges in the constantly changing environment.

### **Review of Literature and Conceptual Understanding**

Oxford Economic Forecasting, in a survey published in October 2003, carried out on behalf of the Air Transport Group (ATAG), analyzed the economic and social background of the state of air service on the Africa continent, and the contribution of aviation to economic growth and poverty alleviation. The report made some policy recommendations for air services in Africa, with emphasis on safety and security, infrastructure improvements, liberalization of air services, transport of goods, and sustainable tourism and development. ATAG summarized its report as follows:

"The aviation industry has a vital role to play in achieving sustainable development in Africa. The expansion of air services is a necessary condition for the development of a more diversified export base across the continent and for the expansion to the region. Improvement in the air transport infrastructure would help to raise living standards and alleviate poverty in Africa by lowering transport costs, supporting more rapid economic growth and increasing personal mobility."

Christie, L. in a working paper entitled "Tourism in Africa" and published in February, 2001, analyzed current constraints to the development of tourism in Africa. The paper observed that among many constraints, the air distribution channels that deliver tourists to and from the region, constituted the main restriction on the flow of tourists to Africa with the major issues being:

- Weak bargaining power of governments to open routes for national airlines because of the small size of their fleets and reluctance to enter into an open skies policy;
- The power of tourism distributors to control the direction of tourism demand, airline seat availability and, to an extent that varies by destination, the price of the airline seats and hotel rooms, and frequently, the cost of the total end product price.

Furthermore, the paper stated that the high cost of air fares to Africa will limit the pool of middle and lower income tourists able to afford a holiday in Africa, at least until there is greater competition between airlines and more flexibility in the types of air packages offered.

The above mentioned reports attempted to establish the importance of air transport in the African economy. As correctly observed above by Christie, African air transport industry has not been able to adequately support tourism development on the continent. One of the reasons for the low performance of the industry is the slow pace of liberalization of the regulatory framework within the continent. That issue has been the subject matter of reports written by industry experts such as Abeyratne of ICAO and Doganis,

In a discussion paper on ownership & control liberalization, CAA (2006) stated that it was essential to ensure that ownership and control liberalization have no negative impact on safety; i.e. that changes do not allow airlines to circumvent national safety standards through arrangements akin to the maritime sector's experience of "flags of convenience" where companies seek out - or are under-cut - by operators based in countries with lower regulatory standards.

Safety standards in the airline industry are justifiably strict and the question needs to be posed whether it would be possible to gain a cost advantage from artificially switching an airline's base to a country where rules are lax, or simply less rigorously enforced, whilst operating the same commercial services. In liberalized markets such as Europe, there has been an attempt to retain a close association between an airline's principal place of business and regulatory responsibility. EC regulation 2407/92 requires that no license can be issued by a member state, unless its principal place of business and, if any, its registered offices, are located in that member state. This requirement is further underscored by

a power of the member state granting the Air Operating Certificate (AOC), to insist either on the aircraft being registered on its own national register or on another community register in another state in the European single aviation area. In practice, all member states are thought to have exercised the option of requiring that the licensed airlines place their aircraft on their national registers. However, this does not guarantee that an airline will have a significant operational presence in its licensing country.

Abeyratne, (2003), while reviewing the state of civil aviation in Africa, observed that African air transport, when considered sub-regionally, showed distinct characteristics in each geographical area. He noted that East Africa was surging ahead with Ethiopian Airlines, which had developed a substantial route network and was transforming Addis Ababa into a busy hub. He also observed that regional competition had "impelled Kenya Airways to aggressively buttress its presence in the region and the government of Kenya to strengthen its already powerful tourism base. Recent efforts of Kenya Airways to modernize its fleet with Boeing 737-700 and 777-200ER aircrafts portend well for competition in the region."

After a detailed analysis of the provisions of the Yamoussoukro Decision, Abeyratne noted that the critical factor in making the Yamoussoukro Decision sustainable within African aviation, was the harmonious balance between regulatory control and economic strategy. He also concluded that: "Autonomy in civil aviation authorities, the aggressive development of infrastructure, and personnel training is the key that could open the door to strategic African airline management within the Yamoussoukro Decision."

### Liberalization of Regulatory Framework

The liberalization of air transport was initiated in October 1988 by the Yamoussoukro Declaration on a New African Air Transport Policy, which covered the entire African continent and provided, *inter alia*, flexibility in granting traffic rights and creation of bigger airlines. As little progress had been made until the mid-1990s, however, implementation of the Declaration was tested mainly at the sub-regional or economic group level. In 1995, the ECOWAS states launched the Ecoair project, a creation of a multinational airline. In April 1997, six West African States (Cape Verde, Gambia, Ghana, Guinea Bissau, Nigeria and Sierra Leone) concluded the Banjul Accord to speed up the implementation process. In March 1999, CEMAC States also adopted an agreement on liberalization and cooperation which included a two-year programme toward full liberalization of market access.

The impetus to liberalization was added through a decision relating to the implementation of the Yamoussoukro Declaration, the

Yamoussoukro II Ministerial Decision, adopted by 53 African States in November 1999. The Decision entered into force in August 2000, and provided for the gradual liberalization of intra-African air transport services. In order to commit to implementing the Decision, Member States of CEMAC and ECOWAS adopted in March 2001, an action plan to move forward in the two sub-regions. In June 2002, WAEMU States also adopted a liberalization package of the common air transport programme. In 2004, the formal Banjul Accord Group Agreement was signed amongst seven States (Cape Verde, Gambia, Ghana, Guinea, Liberia, Nigeria and Sierra Leone).

### Effects and Developments

Since the liberalization process has passed initial stages but the course of industry development remains unclear, particularly in Africa, a significant event then was the April 2002 liquidation of Air Afrique, backed by Air France, after the failure of a bailout package agreement. Behind the scenes were various deep-rooted financial, political and managerial reasons, and liberalization was reportedly not regarded as a major cause of Air Afrique's demise. However, the emergence of regional airlines, and the revival of domestic airlines through privatization and liberalization, have spurred competition in Air Afrique's home market. The intra-regional vacuum was quickly filled by such smaller airlines as Benin Air, Air Senegal, and Air Burkina.

Other state owned airlines have also been forced to reduce the size of operations and/or ceased operations due to financial, political, and safety reasons. Nigeria Airways, for example, ceased operations in December 2002. The airline had been under strong competitive pressure in the deregulated domestic market since the mid-1980s with many private airlines expanding their businesses in the Nigerian market. In September 2004, the Nigerian government and Virgin Atlantic Airways signed an agreement to establish Virgin Nigeria Airways to replace Nigeria Airways. Nigerian institutional investors own 51 per cent of the airline and Virgin Atlantic Airways owns 49 per cent. Ghana and Gabon followed suit by establishing new national airlines, which replaced debt-ridden, state owned incumbents with new partnership with foreign investors, i.e. Ghana International Airlines, a 2004 replacement for Ghana Airways, (with a consortium led by US investors holding 30 percent) and Air Gabon International, a 2006 replacement for Air Gabon (with Royal Air Maroc holding of 51 per cent).

### Analysis and Discussion

#### *Implications of Liberalized System on Safety and Security*

Past studies have revealed that safety standards have been maintained in many liberalized markets. The ICAO study revealed that economic

liberalization and the evolution of airline business practices have had two major impacts on safety and security regulations.

Firstly, it was discovered that a significant increase in the level of air transport activity can place a strain on a state's capacity to perform its regulatory role. Secondly, it was observed that some complex commercial arrangements involve a cascade of entities blurring accountability and making it more difficult for States to identify the line of responsibility.

*Some Situations that Could Have Implications for Safety and/or Security*

Yuanzheng (2006), in his review of the ICAO report concluded that the regulating oversight capacity of some states cannot keep pace with the growth in air transport activity, unless measures are taken to ensure that oversight responsibilities are not neglected. He added that states must be adequately equipped to handle a significant increase in activity, whether this takes the form of a rapidly expanding fleet, growing number of air carriers and operating personnel, new service providers or greater traffic volume.

In the ICAO review of the work of the fifth Worldwide Air Transport Conference, the following areas were considered as having certain implications on safety and security: ground handling, aircraft leasing, airline code sharing, franchising, air carrier ownership and control, market access, outsourcing and the commercialization of airports and air navigation services providers. The review showed some concerns over non-traditional service providers, and new entrant operations, especially those without previous experience in the field; questions were raised to whether they could have the desired safety culture or qualified and properly trained personnel.

Another area of safety concern identified as part of the activities that take place within a single state is the way industries may respond to difficult times. Airlines facing financial exigencies often resort to various cost-saving measures, and where these impinge on aircraft operations, or related personnel (i.e. staff lay offs, outsourcing, etc.) they have a potentially negative effect on maintaining safety and security.

Furthermore, commercialization or privatization of airports and air navigation service providers in some states has led to the transfer of government operations to autonomous entities or the private sector. With this change in ownership and control, such entities can place more emphasis on commercial results and may implement cost cuts to achieve their goals. Where this occurs, the state is ultimately responsible, notwithstanding the change in ownership or management of these entities, for the safety, security and economic oversight of their operations.

Yuanzheng (2006), in his own review of the ICAO report noted that the situation of safety and security becomes more complicated when it

involves multiple parties in different countries, because this may raise questions about the delineation of responsibility for safety and security oversight. Among areas he highlighted were:

- Operations involving foreign registered aircrafts

A major safety concern is the problem of 'flags of convenience', a term derived from the maritime industry in which commercial vessels owned by nationals of one state but registered in another state, are allowed to operate freely between and among other states – associated with foreign registered aircraft. When such an aircraft rarely, if ever, returns to its state of registry, its airworthiness becomes an issue in the absence of safety oversight arrangements between the state of registry and the state of the operator. Flags of convenience can present problems from a safety viewpoint because of this bifurcation of the registry state from the operating states.

- Operations involving foreign flight crews

Split oversight problems can also occur in respect to foreign licensed flight crews. Article 32(a) of the Convention requires that the pilot and the other members of the operating crew of every aircraft engaged in international navigation, shall be provided with certificates of competency and licenses issued or rendered valid by the State in which the aircraft is registered. As a result, where an aircraft is operated by a state other than the state of registry, such as in the case of "dry" leases (i.e. the lease of an aircraft without crew), the problem of validation of foreign crew licenses by the state of registry could arise (ICAO 2006).

The issue becomes complicated when the rules and requirements for crew licenses in the state of registry are at variance with the corresponding rules in the country that initially issued the licenses. Differences between the laws and regulations of the state of registry and those of the operator may also exist in the case of a "wet" lease (i.e. a lease of aircraft with crew). While the latter usually remains the official operator in such cases, the former may already operate aircrafts of a similar type under its AOC. It may then happen that the wet-leased aircraft are operated under the former's AOC and the state of the registry may, consequently, become the state of the operator.

In such circumstances, proper surveillance of the operating crew may become difficult. The situation could become more complex if the operation involves a mixed crew: e.g. cabin crew from the state of registry and a cockpit crew from a foreign operating state.

- Off-Shore Operations

An off-shore operation involves flights conducted entirely away from the states of registry and of operation. In a situation where the designated airlines of a bilateral agreement are granted the so-called '7th freedom right' (namely the right to carry traffic between states without

the need for the service to connect through the home state), airlines may set up an operational base in a second country for services to/from third countries. Where right of establishment is permitted, air carriers may operate in the territory of the granting state. Such a situation raises the question as to how the required safety oversight should be handled between the state of the operator and the state in which the operation is based.

- **Multiple Parties and Shared Brand**

These include operations involving multiple parties and the use of other's brand such as code sharing and franchising. Code sharing is an agreement between two carriers whereby one carrier (the operating carrier) allows another carrier (its code share partner) to market and sell seats on some of the operating carrier's flights (Ito & Lee). Code sharing has been the most prevalent element in transnational airline alliance arrangement and can take a variety of forms. The impact of cooperative marketing agreements – in particular alliances and code sharing – has been a dominant theme of international aviation over the past decade (Brueckner, 2003a; Brueckner, 2001b; Brueckner and Whalen, 2000; Park and Zhang, 2000).

Although, it is usually treated as a commercial arrangement, the complexity of some code sharing arrangements make safety and security difficult for authorities. In these circumstances, the question of responsibility and accountability for safety and security can produce uncertainty. Additionally, since such arrangements frequently allow an operator to use the name or assume the public face of another carrier (e.g. in the case of franchising), the need to safeguard reputations has led to some regulatory action. Some states, for instance, require foreign airlines with code sharing arrangements with their national airlines, to demonstrate a comparable level of safety. This raises still more questions: should all states whose airlines are involved in a code sharing operation be involved in such safety oversights and, if so, to what extent?

## **Recommendations and Conclusion**

Economic liberalization as well as the evolution of business and operating practices has implications for safety and security regulation, which need to be addressed properly. In this constantly evolving environment, due regard should be paid to safety and security, so that more coherent policies may be developed.

States must increase their efforts to ensure that new entrance companies and their personnel meet the required safety and security requirements for certification or licensing. Similarly, there is a need to maintain continuous regulatory surveillance over their performance and safe op-

eration after licenses have been awarded. States must ensure that aviation safety and security are not compromised by economic or commercial consideration. Regular audits should be conducted to ensure compliance with SARPs.

While the existing ICAO provisions and guidance material on overseeing aviation safety and security are generally adequate in addressing the various situations resulting from liberalization, more work needs to be done to improve the existing SARPs and/or guidance material as it adapts to evolving business practices. In particular, states should be strongly encouraged to use Article 83 bis, which provides a useful means of avoiding complex situations involving aircrafts transferred abroad. More attention should also be given to improving the enforcement and implementation of relevant SARPs and guidance material. The problems identified by this study need to be taken into account in addressing the identified safety and security oversight shortfalls worldwide.

Safety and security must remain of paramount importance in the operation and development of international air transport, and should at no time be compromised by economic considerations. All parties – government, air operators and service providers – must have a clear understanding of their respective responsibilities for safety and security compliance and oversight.

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