

	<b>ADVANTAGES:</b>	<b>DISADVANTAGES:</b>
	<p>Africa which could lead to an increase of tourists to South Africa and the creation of new business opportunities. Trade could also benefit through the availability of new airfreight links.</p>	<p>by the YD. Through the indiscriminate exchange of 5<sup>th</sup> freedom traffic rights, African carriers could face direct and aggressive competition from 3<sup>rd</sup> country airlines on routes <i>within</i> Africa. Whilst this could assist in providing competition, the ability of Africa's airlines to compete on equal terms with 3<sup>rd</sup> country airlines must be considered.</p>
2.	<p><b>Expansion of network / Enhance Competition:</b></p> <ul style="list-style-type: none"> <li>▪ <b>Stimulation of markets:</b> Services conducted on a 5<sup>th</sup> freedom basis will stimulate the market which could ultimately lead to the introduction of air services on a 3/4 freedom basis.</li> <li>▪ <b>Increased access, consumer choice and encouraging of competition:</b> Introducing a 5<sup>th</sup> freedom airline in competition with existing 3/4 freedom airlines will increase consumer choice and convenience of travel due to a higher number of flights available per week. The enhanced airline competition should lead to lower airfares.</li> </ul>	<p><b>Unfair competition:</b> A 5<sup>th</sup> freedom airline operating services at intermediate and beyond points may subsidise the 5<sup>th</sup> freedom sectors to attract more traffic.</p> <p>The 5<sup>th</sup> freedom airlines are in a strong position to sell seats at lower fares on the 5<sup>th</sup> freedom sectors as the long haul passengers have to be conveyed to the point(s) of final destination. This enables the airlines to sell empty seats on 5<sup>th</sup> freedom sectors at reduced fares. Third/fourth freedom airlines may suffer serious losses as a result hereof which may lead to their ultimate withdrawal of such direct air services.</p>
3.	<p><b>Additional opportunities for South African airlines:</b> Reciprocal exchange and exercise of 5<sup>th</sup> freedom traffic rights will benefit South African airlines through the creation of additional opportunities to convey traffic, provided 5 freedom rights can be obtained from the relevant 3<sup>rd</sup> countries.</p>	<ul style="list-style-type: none"> <li>▪ <b>Lack of reciprocity:</b> Reciprocal exchange of 5<sup>th</sup> freedom traffic rights between two states does not imply the automatic right to exercise such rights as 5<sup>th</sup> freedom must also be obtained from the applicable 3<sup>rd</sup> state, which is often denied. This may lead to the unilateral exercise of 5<sup>th</sup> freedom rights by a foreign airline.</li> <li>▪ <b>Stifling of South African Aviation Industry:</b> Granting of 5<sup>th</sup> freedom rights may frustrate the implementation of the South African Aviation policy in respect of the designation of more than one South African airline per route. Available traffic will have to be shared with the 5<sup>th</sup> freedom carrier(s) which may result in services becoming unprofitable due to low aircraft seat occupation and diluted yields.</li> </ul>

	<b>ADVANTAGES:</b>	<b>DISADVANTAGES:</b>
		<ul style="list-style-type: none"> <li>▪ <b>National interest:</b> It is not advisable for States to become too dependent on 5<sup>th</sup> freedom services to serve their needs. National interest is best served by airlines over which the relevant state has direct control.</li> </ul>
4.	<p><b>Development of Hubs:</b> The free exchange of 5<sup>th</sup> freedom traffic rights will increase the attractiveness of major airports and may assist in developing such airports into significant regional hubs.</p>	<p><b>Cost of Development of Hubs:</b> Fifth freedom carriers may erode the home base of local airlines to the extent that the local airline industry may collapse.</p>

### **Conclusion:**

In the light of the abovementioned advantages and disadvantages of 5<sup>th</sup> freedom traffic rights, it would appear as if every advantage obtained through the granting of such rights is accompanied by a corresponding disadvantage of a similar magnitude. The exchange of 5<sup>th</sup> freedom traffic rights should therefore be considered according to the following *Tactical Approach*:

#### **Tactical Approach – 5<sup>th</sup> Freedom traffic rights:**

- ***YAMOUSSOUKRO DECISION (YD) - Free exchange of 5<sup>th</sup> freedom traffic rights, with due consideration of reciprocity concerns during the period leading up to full implementation of the Yamoussoukro Decision across Africa<sup>1</sup>.***
- ***OTHER THAN IN TERMS OF YD - Strategy Planning Committee to critically assess implications of exchange of 5<sup>th</sup> freedom rights in respect of the potential impact on the:***
  - ***Implementation of the Yamoussoukro Decision; and***
  - ***Total air service network.***

#### ***Granting of such rights should be considered:***

- ***on reciprocal or comparable benefit basis;***
- ***only in circumstances where scheduled third and fourth freedom<sup>1</sup> services are not available and only on condition that these services should be phased out over a period of six (6) months if a third or fourth freedom service is introduced; and/or***
- ***Only in exceptional cases after the potential consequences and benefits to the South African economy have been evaluated and reciprocal or comparable rights or benefits have been obtained for South Africa.***

## 5. Cabotage rights<sup>18</sup>:

Cabotage rights are governed by Article 7 of the Convention on International Civil Aviation, 1944, (Chicago Convention). In essence, this Article requires States to either grant cabotage rights to all Contracting States, or to refuse such rights to all States. The Yamoussoukro Decision does not provide for cabotage rights.

The following tactical approach to be adopted:

### **Tactical Approach – Cabotage rights:**

*Cabotage rights should not be granted, based on the following considerations:*

- *Aviation safety and security are of cardinal importance – efforts should be focussed on harmonisation of aviation regulations and standards within the SADC-Region (Africa, in the case of the YD).*
- *Granting of blanket cabotage rights at this early stage of Africa's unification is considered premature and will create additional concerns regarding Africa's ability to ensure acceptable levels of aviation safety and security.*

## 6. Ownership and control of airlines:

The EU currently requires the amendment of the traditional ownership clause contained in the various air services agreements negotiated with the individual member states. This would allow all EU-owned airlines to access traffic rights contained in all such air services agreements.

During the Meeting of African Ministers responsible for Air Transport, it was agreed that this issue should be addressed at Continental level, through an African External Policy.

In the SA context, ownership of airlines could represent a barrier to entry into the market, impeding on Governments policy of broad-based black economic empowerment (BEE).

The following tactical approach to be adopted:

### **Tactical Approach – Ownership / control of airlines:**

- *African Union Common External Air Transport Policy in respect of EU-Ownership requirements to be applied once approved. In the interim, South Africa not to agree to the EU ownership clause.*
- *DOT to complete its work in respect of the Aviation Sector BEE Charter and to actively monitor the achievement of set targets in respect of ownership.*
- *Barriers to entry into the aviation market should be eliminated, subject to the requirements of aviation safety, security and reliability of air services.*

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<sup>18</sup> Definitions contained in Annexure H

## ANNEXURE F

### TACTICAL APPROACH TO ENSURING THE STABILITY AND SUSTAINABILITY OF NETWORK OF AIR SERVICES SERVING SOUTH AFRICA

The following tactical approaches to be adopted in respect to the Strategic Approach as reflected in paragraph 5.3.5 of the Airlift Strategy 2006:

#### 1. Anti-competitive behaviour / market dominance:

Extensive liberalisation of the air services framework may lead to anti-competitive behaviour of competing airlines, both foreign and South African.

The following tactical approach to be adopted:

##### **Tactical Approach – Anti-competitive behaviour / market dominance:**

- *Threat of capacity “dumping” and predatory pricing to be managed in collaboration with the Competition Commission.*
- *DOT to actively participate in the development of regional and AU-based competition rules and arbitration procedures in terms of the Yamoussoukro Decision.*
- *Regional (SADC) and AU based competition rules and arbitration procedures to be applied once approved.*

#### 2. Reciprocity and Market Share Issues:

The bilateral approach to air services negotiations is based on reciprocity<sup>19</sup>. Reciprocity in terms of air services agreements may not always be based on the exchange of exactly the same rights. It would for instance be possible to exchange different traffic rights, based on the principle of “balance of benefits”.

In terms of the Chicago Convention, states are entitled to fair and equal participation in air services. This could lead to capacity constrained routes when an airline cannot retain its market share through normal competition and insist on protection.

The following tactical approach to be adopted:

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<sup>19</sup> In terms of the Chicago Convention, reciprocity means one State grants a specific right or benefit to another State, provided that the recipient State grants a similar right or benefit to the State which first granted (or is willing to grant) such right or benefit.

**Tactical Approach – Reciprocity / market share:**

- *DOT to consider trends and reasons for shift in SA airlines' market share;*
- *Plan of action to be crafted and appropriate action taken based on reasons for shift (anti-competitive behaviour of foreign airline, government subsidies, etc).*
- *Should competitive environment be considered "normal", as assessed by the Competition Commission, capacity should be granted to allow the foreign airline(s) to increase capacity in the interest of trade and tourism.*

**3. Airline alliances / Code-sharing activities**

Many airlines have adopted code-sharing<sup>20</sup> and other forms of co-operative arrangements to extend their global reach and to enhance their competitive position. SAA has recently joined the Star Alliance, opening up services to 842 destinations in over 152 countries. A number of international airlines are also connecting their Cape Town-bound passengers (as well as other domestic points) on the services of domestic airlines through code-share arrangements.

The Yamoussoukro Decision also supports the concept of airline cooperation as a means towards maximising economic benefits for participating airlines. Some of the potentially negative implications of code-sharing and airline alliances have been identified and should be addressed as follows:

**Tactical Approach – Airline Alliances / code-share:**

- *Consumer interests (i.e., prevention of consumer deception regarding the identity of airlines actually providing air services) and the implications for effective airline competition must be addressed;*
- *Impact of Global Alliances competing for market-share and potential impact on anti-competitive / restrictive behaviour of airlines participating in such Alliances to be monitored.*
- *All code-share arrangements to be critically assessed as it should not constrain the growth of services actually operated or new services to be introduced, as code-shared services as marketing airline do not add physical capacity to routes.*

<sup>20</sup> "Code-share" means the use of the flight designator code of one air carrier on a service performed by a second air carrier, which service is usually also identified as a service of and being performed by the second air carrier.

#### 4. Seasonality and capacity demands due to special events:

Need for provision of adequate capacity to meet seasonal demand through the bilateral framework and interface with current SA airlines on the particular route(s) are acknowledged. The following tactical approach to be adopted in this regard:

##### **Tactical Approach – Seasonality / Special Events:**

- *Temporary capacity needs due to seasonal demands to be met through the granting of supplementary flights in terms of the relevant air services agreement(s) on request. Reciprocal opportunities for SA airlines to be ensured*
- *Non-scheduled (charter) air services to compliment scheduled air services during these periods and should be allowed, subject to the meeting of safety and security standards.*
- *Specific Strategy to address capacity needs of World Cup 2010 and similar events as well as serving the expected sustained demand following such events to be developed.*

## ANNEXURE G

### SUMMARY OF POSITIVE AND NEGATIVE IMPLICATIONS OF OPEN SKIES AGREEMENTS FOR SOUTH AFRICA AND THE AFRICAN CONTINENT

	<b>POSITIVE IMPLICATIONS:</b>	<b>NEGATIVE IMPLICATIONS:</b>
1.	<p><b>Creates flexibility + free competition</b></p> <ul style="list-style-type: none"> <li>• No barriers to entry as any number of airlines may participate through the principle of multiple designation; and</li> <li>• No operating restrictions through unrestricted access to entry points, capacity and flight frequencies (first to sixth freedom traffic rights, seventh freedom for all-cargo services and open route schedules).</li> </ul>	<p><b>Potential unfair competition</b></p> <ul style="list-style-type: none"> <li>○ Due to the different level of development of the airlines participating in an open skies agreement, competition can become unfair (actual or perceived) due to activities of dominant carriers.</li> <li>○ Due to delays normally experienced in the adjudication of complaints filed with the relevant competition authorities, the weaker airline(s) may suffer irreparable damage.</li> <li>○ AU / SADC/COMESA/ EAC: Regional Competition Authority still to be created.</li> <li>○ Shift in market share between foreign and SA airlines due to 5<sup>th</sup> and 6<sup>th</sup> freedom activity with no ability to intervene, should such action be deemed necessary</li> <li>○ Potential job losses due to: <ul style="list-style-type: none"> <li>○ SA industry not able to compete with stronger foreign airlines;</li> <li>○ Due to shift in shareholding as a result of open skies agreements (current 49% foreign vs 100% foreign into open skies agreements) and subsequent changes to employment policies; and</li> <li>○ Consolidation of airlines to face competition (mergers, reduction of job opportunities).</li> </ul> </li> <li>○ US Chapter 11 insolvency protection is often abused by US airlines, leading to unfair competitive advantages for such airlines, as (private) SA airlines under these circumstances will be liquidated.</li> </ul>
2.	<p><b>Market efficiencies: True open skies</b></p> <ul style="list-style-type: none"> <li>• Creates competition leading to efficient services; and</li> <li>• Potential benefits for consumers: More choice, better connections and lower fares.</li> </ul>	<p><b>Market efficiencies: US open skies proposal not totally “open”</b></p> <ul style="list-style-type: none"> <li>○ “Fly America policy” requires all US government officials, whose flights are paid for by the US government, to only fly on US airlines.</li> <li>○ Ownership and control of US airlines are restricted (US only allows foreign investment of up to 25% in US airlines.</li> <li>○ Open skies concept does not include cabotage rights (conveyance of passengers on the domestic network by foreign airlines).</li> </ul>

	<b>POSITIVE IMPLICATIONS:</b>	<b>NEGATIVE IMPLICATIONS:</b>
		<ul style="list-style-type: none"> <li>○ The US has a restrictive, discriminatory wet leasing policy in terms of which US carriers can wet lease their aircraft out to foreign carriers but cannot wet lease in foreign aircraft.</li> </ul>
3.	<p><b>Potential for US- anti-trust immunity</b> Establishment of an open skies agreement with the US is a precondition before the US would consider the merits of an application from a South African airline that wished to pursue close alliance cooperation with antitrust immunity.</p>	<p><b>Exemption by the SA Competition Commission:</b> A SA airline will have to request and obtain exemption in terms of the Competition Act prior to engaging in close alliance cooperation with an American airline, notwithstanding the granting of US antitrust immunity.</p>
4.	<p><b>Multilateral environment: Potential to obtain other economic benefits -</b></p> <ul style="list-style-type: none"> <li>• E.g. trade agreement, promotion of products, and low interest rates on loans, grants and donations for social development programs.</li> <li>• Sends positive message – “open for business”.</li> </ul>	<p><b>Multilateral environment: Threat to the implementation of the Yamoussoukro Decision and NEPAD Initiatives</b></p> <p>Open skies agreement will allow the US (and other foreign countries) access to 5<sup>th</sup> freedom traffic rights in Africa that will enable foreign airlines to convey passengers and cargo <i>between</i> African destinations.</p> <p>Should African countries allow open skies agreements to proliferate across the continent, the majority of African airlines may not be able to effectively compete with the stronger foreign airlines, resulting in bankruptcy and withdrawal from the market.</p>
5.		<p><b>Creation of a precedent</b></p> <ul style="list-style-type: none"> <li>○ Open skies liberalisation suits the aspirations of <i>developed</i> countries with sophisticated airlines that wish to expand their operations to countries with relatively smaller and weaker airlines.</li> <li>○ Adoption of the US open skies liberalisation agreement will create a precedent that will lead to EU States (UK in particular), Singapore and others, exerting further pressure on South Africa to adopt similar open skies agreements.</li> </ul>

### FREEDOMS OF THE AIR

- **“First freedom traffic right”** means the right or privilege to fly without landing across the territory of another State.
- **“Second freedom traffic right”** means the right or privilege to land for non-traffic purposes in the territory of another State.
- **“Third freedom traffic right”** means the right or privilege, in respect of scheduled international air services, granted by one State to another State to put down, in the territory of the first State, traffic coming from the home State of the carrier.
- **“Fourth freedom traffic right”** means the right or privilege, in respect of scheduled international air services, granted by one State to another State to take on, in the territory of the first State, traffic destined for the home State of the carrier.
- **“Fifth freedom traffic right”** means the right or privilege, in respect of scheduled international air services, granted by one State to another State to put down and to take on, in the territory of the first State, traffic coming from or destined to a third State.
- **“Sixth freedom traffic right”** means the right or privilege, in respect of scheduled international air services, of transporting, via the home State of the carrier, traffic moving between two other States.
- **“Seventh freedom traffic right”** means the right or privilege, in respect of scheduled international air services, granted by one State to another State, of transporting traffic between the territory of the granting State and any third State with no requirement to include on such operation any point in the territory of the recipient State.
- **“Eighth freedom traffic right”** (also referred to as *“cabotage rights”*) means the right or privilege, in respect of scheduled international air services, of transporting cabotage (domestic) traffic between two points in the territory of the granting State on a service which originates or terminates in the home territory of the foreign carrier or (in connection with the so-called Seventh Freedom of the Air) outside the territory of the granting State.