Kenya Civil Aviation Authority

Separation of Functions between Regulator and Service Provider

21st May 2015

KCAA

efficiently managing air safety

Background

- Most CAAs, ANSP's and Airports initially were established as Government Departments in mainstream Civil Service

- With time many have been established as autonomous Government institutions with their own governance and financing structures

- In most cases airports were the first to be established as autonomous institutions because of their ability to finance themselves

Background

- Most CAA's and ANSP's were combined under one Government Department

- Delinked from mainstream Civil Service as one institution.

- KCAA delinked from mainstream civil service in 2002

- Combines both the regulatory and service provision functions

- Focus is on separation of CAAs and ANSPs

Roles

- Regulatory Function
  - Setting an appropriate and sustainable regulatory framework for the industry
  - Ensures that all service providers comply with regulation and maintain high safety and security levels

- Service Provider Function
  - Focus on responding to customer needs
  - Balances level of service and costs
  - Ensures safety and security of operations

State's Responsibility

- Universal desire to promote and conduct safe regular aircraft operations

- Partner states have obligations that must be carried out in the most effective manner

- Each obligation requires consideration of the critical elements of a safety oversight system to ensure that the state's system is appropriate to the complexity of the aviation industry in the country

Key Requirements

- Most CAA's on the continent still combine regulatory and service provision functions

- A general trend towards separation is emerging

- Need to establish a system that guarantees independence of the decisions by the regulator

- Need to establish a system that meets ICAO requirements and the needs of the industry

Push Factors

- Potential conflict of interest
  - Independence of decisions of the oversight function

- Ineffectiveness
  - Being constrained to achieve oversight objectives due to multiplicity of roles

- National Strategy
  - General direction to separate regulatory function from service provision functions in all sectors

Separation Options

- Functional Delinking
  - Regulatory and service provision functions are retained in the same organization
  - Internal firewalls are created to avoid interference between functions

- Organisational Delinking
  - Regulatory and service provision functions are totally separated and different institutions established to handle each function.

Functional Delinking

- Effectiveness depends on:
    - Financial firewalls – budgeting, accounting mechanisms, investment
    - Institutional firewalls – Authority levels and ability of regulator to make safety related decisions including imposition of sanctions
    - Corporate support services to the regulatory and service provision functions
    - Culture and work practices in the institution

Organisational Delinking

CAA	ANSPS	TRAINING	OPTIONS
			Current
			1
			2
			3

One Organization- CAA+ANSP+TRAINING

Option 1: Two Organizations- CAA +ANSP and Training
Option 2: Two Organizations – CAA and ANSP +Training
Option 3: Three organizations – CAA, ANSP, Training

Option Analysis

- Strategic Issues
  - Ability of the delinked organizations to achieve their vision and mandate to enhance functional focus
  - Opportunity for the regulatory entity to comply with ICAO requirements
  - The extent of degree of fit with national goals
  - Model adaption to the user's expectations in terms of improving service level and reducing costs

Option Analysis

- Legal and Institutional Framework
  - The possibilities of the de-linked entity to solve the potential conflicts of interest between the Regulator and the Service Provider
  - The need to introduce amendments (firewalls) to the current regulation to support functional separation

Option Analysis

- Organisation and HR
  - The internal re-organisation of the de-linked entity to align with its vision and strategy
  - The extent to which non-core / non-value adding functions can be outsourced
  - The degree to which manual work can be ICT-enabled to minimise increase in headcount
  - The likely recruitment needs due to the replication of support functions

Option Analysis

- Finance
  - The expected revenues from each function and cross-funding incomes
  - The cost of implementing each of the de-linking options
  - The financial sustainability under each option
  - Is the industry able to support the cost of delinked functions

Weighing the Options

- Conflict of interest - Organisational de-linking automatically eliminates potential conflicts of interest while the functional de-linking does not necessarily guarantee the total avoidance of conflicts

- Ineffectiveness – Both options do not provide guarantee that ineffectiveness will be eliminated

Weighing the Options

- National Strategy – The national direction and the extent of commitment for independence in regulation in all sectors

- Competitiveness – Balancing between the likely increased costs of delinked functions against the competitiveness of the country for airspace users and as an investment destination

Our Experience

- KCAA is autonomous
- Financially independent
- Challenging Situation
  - Most of the funds are generated by ANS which is a regulated function
  - Regulatory function revenues cannot cover its costs
  - Creates a feeling of inadequacy and dependency by the regulatory function
  - Safety decisions made mainly by the regulator but final authority rests with the DG

Delinking Study

- KCAA has undertaken a delinking study to advise on the best way to separate regulatory and service functions

- Main challenge is financing the regulator

- KCAA to receive part of the Air Passenger Service Charge

- The Government is studying the report before a decision on the best way forward

Selection of the best Option

- Ability to finance and sustain
- National strategy
- Extent of possible conflict of interest
- Ability to achieve compliance requirements
- Meets the needs of the industry
- Meets the needs of the socio-political environment

Thank You