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Common Market for Eastern  
and Southern Africa

Staff Paper No. 2018/12/RR/05

**Decision<sup>1</sup> of the Forty Ninth Committee Responsible for Initial Determination on the Application for Authorisation for the Joint Venture Agreement between Kenya Airways PLC, Koninklijke Luchtvaart Maatschappij N.V and Societe Air France S.A**

**ECONOMIC SECTOR: Aviation**

06 December 2018

<sup>1</sup> In the published version of this decision, some information may have been omitted pursuant to Rule 73 of the COMESA Competition Rules concerning non-disclosure of business secrets and other confidential information. Where possible, the information omitted has been replaced by ranges of figures or a general description.

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## Information and Relevant Background

1. On 14<sup>th</sup> June 2018, the Commission received an application pursuant to Article 20 of the Regulations from Kenya Airways PLC ("KQ"), Koninklijke Luchtvaart Maatschappij N.V. ("KLM") and Societe Air France S.A. ("Air France").
2. In terms of the application, the parties seek authorization for the Joint Venture Agreement ("JVA") dated 14 May 2012 entered into between KQ and KLM and the draft Amendment Agreement to be entered into between KQ, KLM and Air France ("Amendment Agreement"). The JVA and Amendment Agreement contain the terms of the scope of co-operation and co-ordination between the parties as far as their commercial activities are concerned.
3. Pursuant to Article 20 of the Regulations, the Commission is required to assess whether the proposed transaction between the parties would, or is likely to have the effect of substantially preventing or lessening competition or would be contrary to public interest in the Common Market. The purpose of the assessment was to determine the effects of the restraints in the market, if any, and consider whether they can be justified on efficiency or ~~public interest grounds.~~
4. The Committee Responsible for Initial Determination (hereinafter referred to as "the CID") established that the parties operate in more than one COMESA Member State. This therefore means that the regional dimension is satisfied and confirms the jurisdiction of the Commission to assess the transaction.

## The Parties

### KQ

5. KQ is the national flag carrier of Kenya, it is widely considered as one of the leading Sub-Saharan operators, embodied in its slogan "The Pride of Africa". Since June 2010, KQ has been a member of SkyTeam Alliance, an alliance of about 20 carriers whose membership includes KLM and Air France. KQ's hub is the Jomo Kenyatta International Airport ("JKIA"). KQ offers passenger, cargo and maintenance services

### KLM

6. KLM (KLM Royal Dutch Airlines) is a company incorporated under the laws of The Netherlands. KLM was founded in 1919 and is the national flag carrier airline of the Netherlands with its hub at Amsterdam Schiphol Airport. It is part of the Air-France-KLM Group, a company listed on the Euronext Paris and Amsterdam stock exchanges, and is a member of the SkyTeam Alliance, which it joined in 2004. KLM operates scheduled passenger, cargo and maintenance services.

### Air France

7. Air France is a corporation organized and existing under and by virtue of the laws of France. Air France was founded in 1933 as a result of the combination of five French Airlines: Air Union, Air Orient, Société Générale de Transport Aérien (SGTA), CIDNA and Aéropostale. It is the flag carrier of France and offers passenger, cargo and

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maintenance services. Air France is headquartered in Roissy Charles de Gaulle with its hub at Paris-Charles de Gaulle Airport. Air France, together with other airlines, launched the SkyTeam Alliance in 2000 and is part of the Air-France-KLM Group.

#### The Agreement

8. The Amendment Agreement incorporates Air France into the 2012 JVA which was concluded between KQ and KLM. The JVA refers to KQ's and KLM's membership of SkyTeam Alliance in terms of a Global Airline Alliance Agreement ("GAAA") concluded in June 2000. The JVA refers to the incorporation of a partnership or entity for purposes of operating the "Joint Venture Routes". The JVA regulates the corporate functioning of the "partnership"; notably ensuring the closest level of coordination and cooperation between its parties insofar as their commercial activities are concerned.

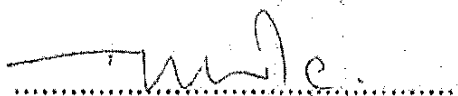
#### Competition Analysis

9. The CID defined the relevant market as the Paris-Nairobi route.
10. The CID noted that there are a significant number of airlines operating out of or through JKIA including Ethiopian, Emirates, Qatar, Fly540 among others indicating that the concentration levels are not high.

#### Determination

11. The CID noted that joint venture agreements and other collaborative arrangements are common place in the airline industry. Indeed, Ethiopian Airlines has reportedly concluded joint venture agreements and business partnerships with at least 14 countries on the continent as part of its growth plan.
12. The CID determined that the JV agreement is compatible with the Regulations, further that there will be resultant consumer benefits. Thus the CID resolved to authorise the agreements.
13. This decision is adopted in accordance with Article 20 of the Regulations.


Dated this 6<sup>th</sup> of December 2018



Commissioner Patrick Okilangole  
(Chairperson)



Commissioner Brian Lingela  
(Member)



Commissioner Thembelihle Dube  
(Member)