



COOPERATION FRAMEWORK AGREEMENT

BETWEEN

THE AFRICAN CIVIL AVIATION COMMISSION

AND

THE COMESA COMPETITION COMMISSION

**REGARDING COOPERATION, COLLABORATION AND COORDINATION IN
COMPETITION AND CONSUMER PROTECTION MATTERS IN THE AIR
TRANSPORT SECTOR**

MAY 2023




COOPERATION FRAMEWORK AGREEMENT BETWEEN THE AFRICAN CIVIL AVIATION COMMISSION AND THE COMESA COMPETITION COMMISSION REGARDING COOPERATION, COLLABORATION AND COORDINATION IN COMPETITION AND CONSUMER PROTECTION MATTERS IN THE FIELD OF CIVIL AVIATION

- I. **The African Civil Aviation Commission**, the Executing Agency of the Decision Relating to the Implementation of the Yamoussoukro Declaration Concerning the Liberalization of Access to Air Transport Market in Africa ("Yamoussoukro Decision") and the Single African Air Transport Market ("SAATM") established under Article 9 of Yamoussoukro Decision and whose address of service for purposes of this agreement is Route de l'Aéroport Militaire Leopold Sedar Senghor, BP: 8898Dakar, Senegal, on the other hand. (hereinafter referred to as "AFCAC")

AND

- II. **The COMESA Competition Commission**, a Regional Competition Agency established by the COMESA Competition Regulations adopted under Article 55 of the Treaty establishing the Common Market for Eastern and Southern Africa ("COMESA") which were issued in the *COMESA Official Gazette Vol. 9 No. 2 as Decision No. 43 of Notice No 2 of 2004* and whose address of service is care of Kang'ombe House, 5th Floor, P.O Box 30742 Lilongwe 3, Malawi, on one hand; (hereinafter referred to as "the CCC")

The AFCAC and the CCC, hereinafter collectively referred to as "the Parties".

CONSIDERING the provisions of Article 3 (1) of the Constitutive Act of the African Union adopted in Durban, South Africa on 10th July 2002 on coordinating and harmonizing the policies between the Regional Economic Communities ("RECs") for the gradual attainment of the overall objectives of the Union;

CONSIDERING the objectives of the Treaty Establishing the African Economic Community adopted in Abuja, Nigeria on 3 June 1991 and entered into force on 12 May 1994 ("Abuja Treaty"), to coordinate and harmonize policies among existing and future economic communities in order to foster gradual establishment of the Community and integration of African economies; and with the aim of inter alia deriving mutual benefit, coordination and integration of policies for the social and economic development of Africa more particularly in civil aviation;

CONSIDERING the provisions of Article 55 of the Treaty establishing the Common Market for Eastern and Southern Africa dated 5 November 1993 ("COMESA Treaty") wherein the Member States agreed to prohibit any practice which negates the objective



of free and liberalized trade and under which the COMESA Competition Regulations ("the Regulations") were promulgated in 2004;

CONSIDERING the provisions of the Regulations in promoting and protecting competition, and consumer protection in the COMESA Common Market and which in Article 6 have established the CCC with the functions of; monitoring, investigating, detecting, making determinations or taking action to prevent, prohibit and/or penalise undertakings whose businesses appreciably restrain competition within the COMESA Common Market with respect to trade between COMESA Member States;

RECALLING the Decision Relating to the Implementation of the Yamoussoukro Declaration Concerning the Liberalisation of Access to Air Transport Markets in Africa signed in Yamoussoukro on 14 November 1999 ("Yamoussoukro Decision") and its Annexes, which Decision vests AFCAC with the responsibility of supervising and managing Africa's liberalized air transport industry; formulating and enforcing appropriate rules and regulations that give fair and equal opportunities to all players and promoting healthy competition; and ensuring that consumer rights are protected;

RECALLING Decision EX.CI/Dec.369 (XI) of the Assembly Heads of State and Government of the African Union establishing the Executing Agency of the Yamoussoukro Decision and vesting AFCAC with the responsibility of implementing Annex 5 of the Yamoussoukro Decision ("Regulations on Competition in Air Transport Services within Africa") and Annex 6 of the Yamoussoukro Decision ("African Union Regulations on the Protection of Consumers of Air Transport Services");

RECALLING the recommendations of the Meeting of the Ministerial Working Group on the Implementation of the Yamoussoukro Decision and Establishment of a Single Air Transport Market in Africa held in Addis Ababa, Ethiopia on 7 April, 2015;

CONSIDERING the Decision of the African Ministers in 2007 entrusting AFCAC with responsibility of being the Executing Agency for the implementation of the Yamoussoukro Decision and the endorsement of the Assembly of Heads of State in Accra Ghana on 29 June 2007;

CONVINCED of the importance of the Common Civil Aviation Policy ("AFCAP, 2011") for promoting the development of African Aviation and enhancing African participation in international air transport;

RECOGNIZING the provisions of Article 2 of the COMESA Competition Regulations regarding the purpose of the Regulations which is to promote and encourage competition by preventing restrictive business practices and other restrictions that deter efficient operation of markets, thereby enhancing the welfare of the consumers in the Common Market and to protect consumers against offensive conduct by market actors;



RECOGNIZING the role of the COMESA Competition Commission acting under the Treaty Establishing the Common Market for Eastern and Southern Africa dated November 5, 1993 and the COMESA Competition Regulations 2004 in promoting and protecting competition in the COMESA Common Market; in monitoring, investigating, detecting, making determinations or taking action to prevent, prohibit and/or penalise undertakings whose businesses appreciably restrains competition within the COMESA Common Market with respect to trade between COMESA Member States,

CONSCIOUS OF:

Article 2 of the Yamoussoukro Decision which provides that the purpose of the Regulations is to promote and guarantee free and fair competition in air transport services within Africa in order to develop the air transport industry; and Article 2 of the COMESA Competition Regulations regarding the purpose of the Regulations which is to promote and encourage competition by preventing restrictive business practices and other restrictions that deter efficient operation of markets, thereby enhancing the welfare of the consumers in the Common Market and to protect consumers against offensive conduct by market actors;

EXPRESSING the intention to promote cooperation in the field of competition and consumer protection and assisting State Parties to ensure fair opportunity on non-discriminatory basis for the designated African airlines, to effectively compete in providing air transport services within their respective territories.

HIGHLIGHTING the role of competition and consumer protection in promoting effective development of the economy,

AIMING at creation of favorable conditions for development of relationship between the Parties,

RELYING on the principles of equality and mutually beneficial cooperation of the Parties,

THE PARTIES HAVE REACHED THE FOLLOWING UNDERSTANDINGS:

ARTICLE 1
OBJECTIVE

1. The objective of this Memorandum of Understanding (MOU) is to promote cooperation, collaboration and coordination between the Parties in the areas of competition and consumer protection regulations in the field of civil aviation including intra African trade expansion, air transport liberalization and protection of the consumer.



2. To cooperate, collaborate and coordinate in furtherance of:
 - a) Article 14 of the Yamoussoukro Decision which vests AFCAC with the power to execute its powers and procedures in collaboration with the RECs and competent authorities of the Member States.
 - b) Article 15 of the Annex 5 of the Yamoussoukro Decision that determine that AFCAC should cooperate and exchange information with Regional Competition Authorities and competent authorities of State Parties in relation to the application of the Decision.
 - c) Article 7(2) (d) of the COMESA Competition Regulations which mandates the Commission to cooperate with competition and consumer protection authorities of Member States in order to accomplish the mandate of promoting competition in the Common Market.

ARTICLE 2
SCOPE OF COOPERATION

1. The Parties agreed to strengthen their relationship and establish closer cooperation, within their respective mandate, including but not limited, the above-mentioned areas by means of:
 - a) Reviewing, developing, harmonizing, strengthening and/or reforming of the COMESA regional competition and consumer protection law and applicable rules and Procedures of AFCAC.
 - b) Exchanging information on laws, regulations, rules, and other documents in the field of competition and consumer protection regulation, which do not contain confidential information
 - c) Creation of awareness on competition and consumer protection law in the field of civil aviation including sharing of specialized trainings, whenever possible;
 - d) Participating by a party's representatives in events devoted to competition and consumer protection regulations issues held by the other Party;
 - e) Holding joint regional and national meetings, consultations, workshops and conferences on issues of mutual interest in competition and consumer protection regulation;
 - f) Conduct joint investigation subject to the provisions of the relevant laws.



- g) Coordinate programme planning with regard to regional events, exchange of statistical information and ensure cooperation in achieving the objectives, purpose and goals of the MoU;
- h) Undertake joint market studies, investigations and market inquiries, where necessary.
- i) Any other areas believed to be relevant by the Parties.

Article 3
IMPLEMENTATION

1. The Parties shall identify and agree from time to time on work programs and projects that they shall jointly undertake.
2. Specifics cooperations in areas mentioned in Article 2 shall be delineated in Annexes or Appendices to this Agreement, in support to this Agreement, and when signed by both parties, such Annexes or Appendices will become part of this Agreement.

Article 4
EXCHANGE OF INFORMATION

1. The Parties will engage in regular dialogue and exchange of information and best practices in the areas of competition and consumer protection.
2. The Parties agree to ensure the confidentiality and safeguarding of information exchanged under the provisions of the relevant laws on confidentiality of information shared.
3. Information, received by the Parties within the frameworks of this MOU, may be transferred to third persons only upon written consent of the providing Party.

Article 5
LIASION

1. The designated points of contact between AFCAC and CCC (hereinafter referred to as Secretariats) for the coordination and management of this MOU are as follows:
 - a) For AFCAC
Secretariat
African Civil Aviation Commission
Leopold Sedar Senghor Military Airport Road B.P: 8898 Dakar, Senegal
Tel: (221)33-839-93-73, E-mail: secretariat@afcac.org



- b) For CCC
Director and Chief Executive Officer
COMESA Competition Commission
Kang'ombe House, 5th Floor
P.O Box 30742
Lilongwe 3, Malawi
Tel: +265 (0)1 772466, Email: compcom@comesa.int

2. The Secretariats shall establish and maintain consultations through:

- a) The Exchange of letters and documents.
- b) Mutual visits.
- c) Invitations to attend meetings.
- d) Consultations and co-ordination, when necessary.

Article 6

FINANCIAL PROVISIONS

1. Each Party shall bear its own costs incurred when implementing the provisions of the present MOU unless otherwise jointly decided.
2. For certain activities, Parties may jointly contribute resources to the cooperation, collaboration and coordination effort and may also agree to share resources.
3. Should an exchange of funds become necessary, as mutually agreed by the Parties, the Parties shall specify in writing the manner in which the activity shall be funded, the total cost ceiling of the activity, any applicable cost sharing arrangements, currency arrangements and the estimated value of any kind of non-financial contributions to the activity.
4. All the activities under this MOU, are subject to the availability of appropriate funds, necessary resources and personnel of each Party.

Article 7

CHANNELS OF COMMUNICATION

Communications between AFCAC and CCC for all matters relating to this MOU shall be channeled through their respective Secretariats.

Article 8

MONITORING AND EVALUATION

Each Party agrees to monitor and evaluate the implementation of this MOU and its Annexes and Appendices, and to provide a progress status report on December of each year. To this end, AFCAC and CCC should develop an evaluation program and disseminate relevant information on the execution of the Program.

Article 9
PRIVILEGES AND IMMUNITIES

Nothing in or relating to this MOU or in its Annexes or Appendices, shall be deemed a waiver, express or implied, of any of the privileges and immunities which the parties enjoy by virtue of the International Agreement/Convention and Laws applicable to the respective Parties.

Article 10
AMENDMENTS

1. This MOU may be amended or modified, as the case may be, by mutual consent of both Parties hereto. Each Party shall give full and sympathetic consideration to any proposal put forward by the other Party under this paragraph.
2. Any such amendment or modification shall be made and notified in writing and duly signed by both Parties, and the instruments expressing these amendments shall be appended to and shall become an integral part of this MOU.
3. AFCAC and CCC shall meet every (3) three years to review the progress of activities jointly carried out. Such meetings shall be held either at AFCAC headquarters, Leopold Sedar Senghor Military Airport Road, Dakar, Senegal, or at CCC Headquarters, Kang'ombe House, 5th Floor, P.O Box 30742, Lilongwe 3, Malawi, on a rotation basis, or in another jointly decided location.

Article 11
RESOLUTION OF DISAGREEMENTS

1. Any disagreement regarding the interpretation or application of this MOU or in its Annexes or Appendices shall be resolved by consultations between the two Parties and shall not be referred to a third Party or tribunal for settlement.
2. This document is not an international agreement, does not create rights and obligations regulated by international law and does not impose any financial and legal obligations on the Parties.

Article 12
TERMINATION

This MOU has been concluded for an indefinite period. Each Party shall, however, have the right to terminate it by giving Three (3) months advance written notice to the other Party.

In the event of termination by one of the Party, necessary steps shall be taken by the two organizations to ensure that such termination is not detrimental to on-going projects implemented within the framework of this MOU.

Article 13
ENTRY INTO FORCE

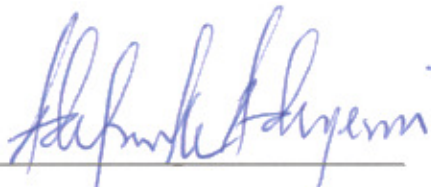
This MOU shall enter into force on the date of the last signature and immediately become enforceable among the Parties.

IN WITNESS WHERE OF, the Secretary General of AFCAC and the Director & Chief Executive Officer of CCC have duly signed this MOU drawn up in two original copies in English and French both of which are equally authentic.

The depositary of the original MOU will be AFCAC.

Done in LILONGWE.....[City] this on 5TH.....[Month] MAY.. [Date] 2023 [year].

For AFCAC



Adefunke ADEYEMI
Secretary General
African Civil Aviation Commission

For CCC



Dr Willard MWEMBA
Director and Chief Executive Officer
COMESA Competition Commission

Witnessed by:



Vasco VIEIRA
Legal Advisor



Mary GURURE
Manager Legal and Compliance Services