

DECISION RELATING TO THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECLARATION CONCERNING THE LIBERALISATION OF ACCESS TO AIR TRANSPORT MARKETS IN AFRICA AND ANNEXES 2018







## FOREWORD

The launching of the Single African Air Transport Market on 28 January 2018, marked a momentous beginning for the aviation industry in Africa. The Single African Air Transport Market was designated as a flagship project of the African Union Agenda 2063 by the Assembly of Heads of State and Government during the 24th Ordinary Session held in January 2015 in Addis Ababa, Ethiopia [Assembly/AU/Dec 565(XXIV)], thus placing implementation of the 1999 Yamoussoukro Decision on the Liberalisation of Air Transport Market in Africa in the context of Agenda 2063. The Heads of State and Government also adopted the Declaration on the Establishment of a Single African Air Transport Market [Assembly/AU/Decl.1 (XXIV)].



As the Chairperson of the African Union Commission, I was privileged to invite and assist **President Paul Kagame**, Chairperson of the African Union and President of the Republic of Rwanda, in launching the Single African Air Transport Market on 28 January 2018, during the 30th Ordinary Session of the Assembly of the Union held in Addis Ababa. The Assembly Decision establishing the Single African Air Transport Market [Assembly/AU/Dec.665 (XXX)] provides for the single market to be operationalised through full implementation of the 1999 Yamoussoukro Decision.

Thirty years ago in 1988, African Aviation Ministers met in the city of Yamoussoukro, in Cote d'Ivoire, and crafted a vision for the African Aviation Industry, then known as the **Yamoussoukro Declaration on a New African Air Transport Policy**. Ten years later, the Ministers met again at the same venue and elaborated concrete measures for ensuring the liberalisation of air transport markets in Africa through the **Decision Relating to the Implementation of the Yamoussoukro Declaration concerning the Liberalisation of Access to Air Transport Markets in Africa, also known as the Yamoussoukro Decision (YD)**. The Decision was adopted by the Assembly of Heads of State and Government in July 2000, in Lomé, Togo [AHG/OUA/AEC/Dec.1 (IV)]. In this regard, I would like to commend the United Nations Economic Commission for Africa (UNECA), which played an instrumental role in facilitating the formulation of both the 1988 Yamoussoukro Declaration and the 1999 Yamoussoukro Decision.

I am pleased to have the opportunity to write this foreword to the current edition of the Yamoussoukro Decision, which includes a reprint of the initial decision with some updates. It includes a revision to Annex 2 on **Duties and Responsibilities of the Monitoring Body** of the Yamoussoukro Decision, as provided for in article 9.2 of the Decision, with the United Nations Economic Commission for Africa as the secretariat of the Monitoring Body. This edition also includes key Institutional and Regulatory Texts of the Yamoussoukro Decision, adopted at the 30th African Union Summit in January 2018, namely: **Annex 4** on Regulations on the Powers, Functions and Operations of the Executing Agency, **Annex 5** on Regulations on Competition in Air Transport Services within Africa, and **Annex 6** on Regulations on the Protection of Consumers of Air Transport Services. These instruments will be completed with **Annex 3** on Dispute Settlement Mechanism which is expected to be finalised and adopted in 2019.



These Institutional and Regulatory Texts are essential for the successful operation of the Single African Air Transport Market. Annex 4 on the Powers and Functions of the Executing Agency clearly defines the jurisdiction and regulations that would enable the Agency to effectively manage and supervise the Single African Air Transport Market. The Agency is also tasked with promoting healthy competition and ensuring that consumer rights are protected as guided by Annex 5 and Annex 6, which provide the necessary legal framework to that effect. More specifically, the full application of the competition regulations address issues such as abuse of dominant position, prohibition of discrimination in national regulations and regulations on other anti-competitive behaviours. Passengers within the Single African Air Transport Market can expect to be treated fairly. Consumers of air transport services are now protected against unfair treatment in the provision of services and can expect compensation for the breach of their rights by air transport service providers, including a mechanism for the consumers to seek redress.

Within the establishment of the Single African Air Transport Market, Africans and other travellers within the continent should expect their travel experience to change in many ways. We expect to see an increase in flight availability and greater inter-regional connectivity between various cities, commercial centres and other important destinations in Africa, not just capitals. Furthermore, there will be a massive reduction in air ticket prices and reduced journeys times, thanks to the elimination of unnecessary interchanges and overlay times at airports. The growth in intra-African traffic should enable African airlines to carry more passengers and freight, hence, improving their profitability. The Single African Air Transport Market has great potential for the integration of the Continent. It is critical for the successful operation of the African Continental Free Trade Area the African Passport.

This reprint of the initial Yamoussoukro Decision and its **new** annexes will assist the Regulators of the African Aviation industry to achieve the objective of having a fully-liberalised African air transport market. The African Aviation industry also needs to maintain high standards in safety and security in order to ensure a secure and efficient air transport market. On behalf of the African Union, I wish to express our profound gratitude to the United Nations Economic Commission for Africa, the African Civil Aviation Commission, the African Airlines Association, the International Civil Aviation Organisation, the International Airlines Association, staff at the African Union Commission, Regional Economic Communities and other partners of the African Aviation Industry, for the diligent work undertaken and continuous support towards the operationalisation of the Single African Air Transport Market. I also wish to commend the Member States that have subscribed to the Solemn Commitment to fully implement the Yamoussoukro Decision towards the establishment of the Single African Air Transport Market. Particular thanks go to the Airbus Africa & Middle East for sponsoring the publication and printing of this document and to the Boeing Company for supporting the launch activity. I believe that the full operationalisation of the Single African Air Transport Market will provide us with the essential impetus towards the **AFRICA WE WANT**: An integrated, prosperous and peaceful Africa.



**Moussa Faki Mahamat**  
Chairperson of the African Union Commission  
Addis Ababa, Ethiopia,

## PREFACE

The Economic Commission for Africa (ECA) has always recognized the importance of air transport to Africa's regional integration and the continent's economic development in general. It is in this context that it continues to play a leading role in the development of Africa's civil aviation policy. The Commission helped in shaping the content of the Yamoussoukro Declaration on the liberalization of access to air transport markets in Africa. It also spearheaded the process that led to the adoption of the Declaration in October 1988. The Declaration aimed at creating a conducive environment for the development of intra-African and international air services.



ECA was equally actively involved in formulating the Decision relating to the implementation of the Yamoussoukro Declaration in 1999. The Decision establishes the arrangement among State Parties for the gradual liberalization of scheduled and non-scheduled intra-African air transport services. The factors that underpinned the adoption of the Yamoussoukro Declaration and the Decision relating to its implementation are still relevant today. These factors include globalisation of the world economy; the imperative for regional integration in Africa, particularly the free movement of persons, goods and services; and the desire to stimulate the development of intra-African air transport. Specifically, the Yamoussoukro Decision aims at eliminating non-physical barriers that hamper the sustainable development of air transport services on the continent; creating a conducive environment for the development and provision of safe, reliable and affordable air transport services; establishing a liberalized intra-African aviation market in relation to, among others things, traffic rights, capacity, frequency and pricing; enhancing cooperation among African airlines; and improving the quality of service to the consumers.

The signing of the African Continental Free Trade Area (AfCFTA) agreement in Kigali in March 2018 by 44 African countries - and by 5 more countries in Nouakchott in July 2018 - was a major milestone in the continent's regional integration process. The fact that this momentous event was quickly followed by the ratification of the agreement by four countries - Ghana, Kenya, Rwanda and Niger - illustrates the determination of member States to operationalize the agreement. The potential benefits of the free trade area cannot be overestimated. ECA estimates that AfCFTA has the potential to boost intra-African trade by 52.3 per cent by eliminating import duties, and to double this trade if non-tariff barriers are also reduced.

However, inadequate intra-African air transport services could hamper the full realization of the benefits of AfCFTA. The urgent need to improve connectivity within Africa in the context of AfCFTA therefore provides impetus to the implementation of the Yamoussoukro Decision. It also underscores the importance of the Single African Air Transport Market (SAA TM), a flagship project of African Union's Agenda 2063, that seeks to address the challenge of connectivity and high air transport fares through the full implementation of the Yamoussoukro Decision. A study by the African Civil Aviation Commission (AFCAC) and the International Airlines Association (IATA) in 2015 indicated that full air transport liberalisation between 12 African countries (Algeria, Angola, Egypt, Ethiopia, Ghana, Kenya, Namibia, Nigeria, Senegal, South Africa, Tunisia and Uganda) would add USD 1.3 billion per annum to their GDP and create over 155,000 new jobs.

Consumers will also benefit from a 75 percent increase in direct services, and fare savings of 25-35 percent, worth US\$500 million.

It is therefore encouraging that 26 African countries, so far, have signed the solemn commitment to SAA TM. This is a step in the right direction, but it is desirable for all African countries to commit to SAA TM and to fully implement the Yamoussoukro Decision. It is envisaged that this document will contribute to that goal. The document is a reprint of the initial Decision and includes a revised version of the annex on the duties and responsibilities of the Monitoring Body of the Decision, of which ECA is the Secretariat. It also includes regulatory texts on the powers, functions and operations of the Executing Agency; competition in air transport services within Africa; and protection of consumers. The document will facilitate the implementation of the Yamoussoukro Decision as it is a tool to guide the functioning of its governance structures; raise awareness and enhance the knowledge of key stakeholders of the Decision, particularly on the benefits of its full implementation.

I am delighted that ECA is part of a partnership towards a fully operational single African air transport market led by the African Union Commission (AUC) and that includes, among others, AFCAC, African Airlines Association (AFRAA), International Civil Aviation Commission (ICAO), and IA TA. A fully operational single African air transport market would attract private sector investment, and increase competition as well as efficiency in the sector. This would contribute in deepening regional integration on the continent and help optimize the gains of the African Continental Free Trade Area.



**Vera Songwe**  
**Executive Secretary**  
**Economic Commission for Africa**





REPRINT  
**ECA/RCID/CM.CIVAV/99/RPT**  
**ANNEX I**

DECISION RELATING TO THE  
IMPLEMENTATION OF THE YAMOUSSOUKRO  
DECLARATION CONCERNING THE  
LIBERALISATION OF ACCESS TO AIR  
TRANSPORT MARKETS IN AFRICA  
[AHG/OUA/AEC/Dec.1(IV)]  
AND  
ANNEXES

**DECISION RELATING TO THE  
IMPLEMENTATION OF THE  
YAMOUSSOUKRO DECLARATION  
CONCERNING THE LIBERALISATION OF  
ACCESS TO AIR TRANSPORT MARKETS  
IN AFRICA - [AHG/OUA/AEC/Dec.1(IV)]**

**We, African Ministers in charge of civil aviation meeting in Yamoussoukro, Côte d'Ivoire on 13 and 14 November 1999**

**Considering** the Treaty Establishing the African Economic Community, (hereinafter referred to as the Abuja Treaty), in particular Article 61 relating to the integration of air transport and Article 10 relating to the authority of the Assembly of Heads of State and Government to adopt decisions;

**Considering also** the general policy statement on civil aviation made by the Conference of Heads of State and Government of the Organization of African Unity under Resolution CM/Res.804 (XXXV) of June 1980;

**Recognizing** the relevance of the objective of the Yamoussoukro Declaration on a new African civil aviation policy adopted on 7 October 1988 whose primary purpose was to create a conducive environment for the development of intra- African and international air services;

**Recalling** the decisions of African Ministers Responsible for Civil Aviation adopted in Mauritius in September 1994 with a view to accelerating the implementation of the Yamoussoukro Declaration, especially those relating to the granting of traffic rights, regional cooperation in air transport and the role of Governments;

**Considering** the need to harmonize air transport policies in order to eliminate non-physical barriers that hamper the sustainable development of air transport services in Africa;

**Having regard to** the recommendation of the 11 th Conference of African Ministers responsible for Transport and Communications held in Cairo from 25 to 27 November 1997 calling for the organization of a regional meeting of African Ministers Responsible for Civil Aviation to review and find ways and means of implementing the Yamoussoukro Declaration;

**Mindful of** the guiding principles set by the International Civil Aviation Organization (ICAO) for the development of safe, regular and orderly air transport services on

the basis of equality;

**Further mindful of** the globalization of the world economy and the need to create a conducive environment for the development and provision of safe, reliable and affordable air transport services necessary for the free movement of persons, goods and services in Africa;

**Recognizing** the necessity to adopt measures with the aim of progressively establishing a liberalized intra-African aviation market concerning, among other things, traffic rights, capacity, frequency and pricing;

**Considering** the importance of enhancing cooperation among African airlines in order to stimulate the development of inter-African air transport and the need to improve the quality of service to the consumers; and

**Convinced that**, given the different levels of air transport development in Africa it is necessary to adopt for special and transitional provisions in order to achieve full liberalization of air transport in Africa; and

**Recognizing** the efforts undertaken in the various sub-regions to merge, privatize and liberalize air transport services;

**HEREBY ADOPT THIS DECISION:**

#### **Article 1 Definitions**

For the purposes of this Decision, the following expressions shall mean:

**“Abuja Treaty”** the Treaty Establishing the African Economic Community adopted at Abuja, Nigeria on the 3rd. day of June, 1991 and which entered into force on 12 May 1994

**“Aeronautical Authority”** any governmental authority, body corporate or organ duly authorised to perform any function to which this Decision relates.

**“Air Services”** and **“Airlines”** have the meaning respectively assigned to them in Article 96 of the Chicago Convention on International Civil Aviation dated 7th December 1944 Article 96 of the Chicago Convention: For the purpose of this Convention the expression- (a) Air Services means any scheduled air service performed by aircraft for the public transportation of passengers, mail or cargo. (b) International air service means and air service which passes through the air space over the territory of more than one State. (c) An international Airline means any air transport enterprise offering or operating an international air service.

**“Eligible Airline”** any African air transport company fulfilling the requirements set forth in Article 6, subparagraph 6.9 below.

**Jointly-owned and jointly operated airline:** any airline created by virtue of Article 77 of the Chicago Convention on International Civil Aviation;

**Effective control:** a relationship constituted by rights, contracts or any other means which, either separately or jointly confer the possibility of a State Party or Group of State Parties or their nationals to directly or indirectly exercise a decisive influence on the running of the business of the airline or the right to use all or a substantive part of the assets of the air carriers.

**Designated airline:** Eligible Airline designated by a State Party to exercise its traffic rights under this Decision.

**“Capacity”:** as defined by ICAO

**“Capacity share”** the share of an Eligible Airline of a State Party expressed as a percentage of the total capacity in a bilateral relationship with another State Party.

**“Country of Origin”** the territory of a State Party where air transport starts.

**“Decision”** text of this Decision including the Appendices and amendments.

**“Depository”:** the Organization of African Unity.

**“State Party”** each African State signatory to the Abuja Treaty and such other African country which, though not a party to the said Treaty, has declared in writing its intention to be bound by this Decision.

**“Tariffs”** the prices to be paid for the carriage of passengers, baggage or cargo (excluding mail) on scheduled air services and the conditions, under which these prices apply, including remuneration and conditions offered to travel agencies and other auxiliary services.

**“Third freedom traffic right”:** the right of an Eligible Airline of one State Party to put down, in the territory of another State Party, passengers, freight and mail taken up in the State Party in which it is licensed.

**“Fourth freedom traffic right”:** the right of an Eligible Airline of one State Party to take on, in the territory of another State Party, passengers, freight and mail for off- loading in the State Party in which it is licensed.

**“Fifth freedom traffic right”:** the right of an Eligible Airline of one State Party to carry passengers, freight and mail between two State Parties other than the State Party in which it is licensed.

**Scheduled and Unscheduled air services:** as defined in Chicago Convention and ICAO Council resolutions.

## **Article 2 Scope of Application**

This Decision establishes the arrangement among State Parties for the gradual liberalization of scheduled and non-scheduled **intra-Africa** air transport services. This Decision has precedence over any multilateral or bilateral agreements on air services between State Parties which are incompatible with this Decision. The provisions which are included in these agreements and which are not incompatible with this Decision remain valid and are supplementary to the Decision.

## **Article 3 Granting of Rights**

**3.1** State Parties grant to each other the free exercise of the rights of the first, second, third, fourth and fifth freedoms of the air on scheduled and non-scheduled passenger, cargo and/or mail flights performed by an Eligible Airline to/from their respective territories.

**3.2** Notwithstanding the provisions of paragraph 3.1 of this Article, a State Party may in accordance with the provision of paragraph 10.1 of Article 10 below, limit its commitment in respect to fifth freedom rights for a period no longer than two (2) years to the following:

- (a)** grant and receive unrestricted fifth freedom on sectors where, for economic reasons, there are no third and fourth freedom operators; and
- (b)** grant and receive a minimum of 20 percent of the capacity offered on the route concerned during any given period of time in respect to any sector where third and fourth freedom operators exist.

## **Article 4 Tariffs**

**4.1** In case of tariff increase, there shall be no approval required by the aeronautical authorities of State Parties concerned for tariff to be charged by the designated airlines of State Parties for the carriage of passenger, cargo and mail. The airlines shall in this case file such tariffs before competent authorities 30 working days before they enter into effect.

**4.2** This provision is not applicable in the case of lowering tariff which takes immediate effect according to the will of the airline.



## **Article 5 Capacity and Frequency**

**5.1** Subject to the provisions of Article 3, there shall be no limit on the number of frequencies and capacity offered on air services linking any city pair combination between State Parties concerned. Each Designated Airline will be allowed to mount and operate such capacity and frequency as such airline deems appropriate. Consistent with this right, no State Party shall unilaterally limit the volume of traffic, the type of aircraft to be operated or the number of flights per week, except for environmental, safety, technical or other special consideration.

**5.2** Without prejudice to the provisions of paragraph 5.1 above, a State Party concerned may refuse to authorise an increase in capacity if such additional capacity is not in compliance with the provisions of Article 7 relating to the rules of fair competition.

## **Article 6 Designation and Authorization**

**6.1** Each State Party shall have the right to designate in writing at least one airline to operate the intra-Africa air transport services in accordance with this Decision. Such designation shall be notified to the other State Party in writing through diplomatic channels.

**6.2** A State Party may also designate an Eligible Airline from another State Party to operate air services on its behalf.

**6.3** A State Party shall have the right to designate an eligible African multinational airline in which it is a stakeholder and this airline shall be accepted by the other State Parties.

**6.4** On receipt of the notification of such designation, the other State Party shall, in accordance with its national laws, speed up the process of authorization and licensing of the airline designated by the other State Party to operate the services. While such authorization should be granted within 30 days, the proposed schedule of flights should be submitted to the appropriate authorities for approval.

**6.5** Should a State Party be convinced that a designated airline does not meet the criteria in subparagraph 6.9 below, it may refuse the authorization. The State that has designated the airline may request consultations in accordance with Article 11 paragraph 4 of this Decision relating to Miscellaneous Provisions.

**6.6** Each State Party has the right to withdraw the designation of an Eligible Airline and to designate another eligible airline or airlines in writing through diplomatic channels within 30 days except when prevented from doing so for security reasons.

**6.7** Authorizations for the performance of non-scheduled air transport services

by Eligible Airlines of the State Parties shall be granted by the respective competent authorities, provided that an application has been submitted for approval to the appropriate authority, accompanied by the operating certificates of the airline's country of nationality and the corresponding insurance policies.

**6.8** In order to ensure continued scheduled air services on a particular route sector where scheduled airlines have an obligation to operate during low and high traffic seasons, the scheduled airlines will be given preference over the non-scheduled airlines on the same sector.

### **6.9 Eligibility criteria**

To be eligible, an airline should:

- (a)** be legally established in accordance with the regulations applicable in a State Party to this Decision;
- (b)** have its headquarters, central administration and principal place of business physically located in the State concerned;
- (c)** be duly licensed by a State Party as defined in Annex 6 of the Chicago Convention;
- (d)** fully own or have a long-term lease exceeding six months on an aircraft and have its technical supervision;
- (e)** be adequately insured with regard to passengers, cargo, mail, baggage and third parties in an amount at least equal to the provisions of the International Conventions in force;
- (f)** be capable of demonstrating its ability to maintain standards at least equal to those set by ICAO and to respond to any query from any State to which it provides air services;
- (g)** be effectively controlled by a State Party.

## **6.10 Revocation of authorization**

A State Party may revoke, suspend or limit the operating authorization of a designated airline of the other State Party when the airline fails to meet the criteria of eligibility.

In case of revocation the State Party shall inform the airline at least thirty (30) days before the measure enters into force.

## **6.11 Documents**

Each State Party shall recognize as valid the Air Operating Certificate, Certificate of Airworthiness, Certificate of Competency and the licenses issued or validated by the other State Party and still in force provided that the requirements for such certificate of license are at least equal to the minimum standards set by ICAO.

## **6.12 Safety and security**

(a) The State Parties re-affirm their obligations to each other to protect the security of civil aviation against acts of unlawful interference. The State Parties will conform to the provisions of the various conventions on air safety in accordance with ICAO provisions and especially with Annex 17 of the Chicago Convention on International Civil Aviation.

(b) Each State Party shall give consideration to any request from the other State Party for special security measures to meet a particular threat.

(c) The State Parties reaffirm their obligation to comply with the civil aviation safety standards and practices recommended by ICAO.

## **Article 7 Competition Rules**

7.1 State Parties shall ensure fair opportunity on non-discriminatory basis for the designated African airline, to effectively compete in providing air transport services within their respective territory.

## **Article 8 Settlement of Disputes**

8.1 If any dispute arises between States Parties relating to the interpretation or application of this Decision, the States Parties concerned shall in the first place endeavour to settle the dispute by negotiation.

**8.2** If the State Parties concerned fail to reach a settlement of the dispute by negotiation within 21 days, either party may submit the dispute for arbitration in accordance with the arbitration procedures set forth in Appendix 3 hereof.

### **Article 9 Monitoring Body**

**9.1** Pursuant to paragraph 4 of Article 25 of the Abuja Treaty, a Sub-Committee on Air Transport of the Committee on Transport, Communications and Tourism is hereby established which shall be responsible, inter alia, for the overall supervision, follow-up and implementation of this Decision.

**9.2** A Monitoring Body composed of representatives of the ECA, AU, AFCAC and AFRAA which shall be assisted, as the case may be, by representatives of sub-regional organizations, is hereby established to assist the Sub-Committee on Air Transport composed of African Ministers Responsible for Civil Aviation in the follow-up of the implementation of this Decision

**9.3** The duties and responsibilities of the Monitoring Body are set forth in Annex 2 hereof. Secretariat services required by the Monitoring Body shall be provided by the ECA.

**9.4** To ensure successful implementation of the Decision, an African Air Transport Executing Agency will be established as soon as possible. The principal responsibility will include inter alia the supervision and management of Africa's liberalized air transport industry.

**9.5** The Executing Agency shall have sufficient powers to formulate and enforce appropriate rules and regulations that give fair and equal opportunities to all players and promote healthy competition.

**9.6** The Executing Agency will also ensure that consumer rights are protected.

### **Article 10 Transitional measures**

**10.1** By a formal declaration made in writing to the Depository or the secretariat of the Monitoring Body, as the case may be, through diplomatic channel at the time of adoption of the Decision by the Assembly of Heads of State and Government or any time thereafter, a State Party shall have the option not to grant and receive the rights and obligations provided for in Articles 3 and 4 for a transitional period not exceeding two (2) years.

**10.2** Each State Party may, on six (6) months prior notice given to the Depository or the Secretariat of the Decision Monitoring Body, assume or resume such rights and obligations.

**10.3** The exemption of a State Party from the application of this Decision terminates on the date provided for in the Declaration made under paragraph 10.1 above. During the transitional period, no State Party shall be obliged to grant any rights hereunder to any State Party not bound thereby to the same extent.

**10.4** With regard to any measures covered by the Decision, the State Parties shall not discriminate between designated airlines of State Parties that have assumed similar commitments.

**10.5** State Parties undertake not to enter into any obligations that would be more restrictive than this Decision. However, State Parties shall not be precluded from maintaining or developing on a bilateral basis or amongst themselves, arrangements more flexible than those contained herein.

**10.6** This Decision shall not be deemed to impose obligations on a State Party to grant cabotage privileges.

## **Article 11 Miscellaneous Provisions**

### **11.1 Commercial Opportunities**

**11.1.1** The designated airline of each State Party shall have the right to establish offices in the territory of the other State Party for the promotion and sale of air transport services.

**11.1.2** Upon request and in accordance with applicable foreign exchange regulations, each designated airline will be granted the right to convert and remit to the country of its choice, all local revenues from the sale of air transport services and associated activities<sup>1</sup> directly linked to air transport in excess of sums locally disbursed, with conversion and remittance permitted promptly without restriction, discrimination taxation<sup>1</sup> in respect thereof in accordance with the applicable foreign exchange regulations.

<sup>1</sup> The term "without taxation" refers to taxation on the conversion and remittance, not to national income tax which is better dealt with on the basis of a double taxation treaty, or some other arrangement in which the income from the sale of air transportation by foreign airlines is exempted from national income tax on a reciprocal basis. However, the absence of a double taxation treaty or other arrangement. States could use this clause to exempt reciprocally air carriers from foreign income taxes but should make their intention clear in this regard.



**11.1.3** The designated airline may be permitted to pay for its local expenses such as handling and purchases of fuel in local currency, as provided for in the exchange control regulations.

**11.1.4** The designated airline of each State Party shall be entitled, in accordance with the laws and regulations of the other State Party relating to entry, residence and employment, to bring into the territories employees who perform managerial, commercial, technical, operational and other specialist duties which are required for the provision of air transport services.

**11.1.5** The aforementioned measures are designed to facilitate the establishment and operation of airlines and the transfer of their excess earnings shall be taken by State Parties on the basis of reciprocity.

## **11.2 Operational Flexibility**

In operating scheduled and unscheduled services, each designated airline may, on any or all flights and at its option:

- (a) operate flights in either or both directions;
- (b) be permitted by the State Parties concerned to combine air services and use the same flight number.
- (c) serve intermediate, and beyond points and points in the territories of the State Parties in Africa on the routes in any combination and in any order; and
- (d) omit stops at any point or points, provided that the service commences at a point in the territory of the State Party designating the airline.

## **11.3 Cooperative Arrangements**

In operating the authorized services on the agreed routes, a designated airline of one State Party may enter into cooperative marketing arrangements such as blocked-space, code sharing, franchising or leasing arrangement, with an airline or airlines of the other State Party.

## **11.4 Consultation**

A State Party may, at any time, request consultation with other State Party(ies) in respect to the interpretation or application of this Decision. Such consultation shall begin at the earliest possible date but not later than 30 days from the date the other Party receives the request.

### **11.5 Review**

The Air Transport Sub-committee shall review this Decision every two years or earlier if requested by two-thirds of the State Parties. In such reviews, the Monitoring Body shall propose measures to eliminate existing restrictions gradually.

### **11.6 Registration**

This Decision shall be registered by the Depository and/or Monitoring Body with the International Civil Aviation Organization (ICAO).

## **Article 12 Final Provisions**

### **12.1 Entry into Force**

**12.1.1** In accordance with Article 10 of the Abuja Treaty, this Decision shall automatically enter into force thirty (30) days after the date of its signature by the Chairman of the Assembly of Heads of State and Government at which this Decision was adopted.

**12.1.2** In respect of African States that are not parties to the Abuja Treaty, this Decision shall enter into force 30 days after the date on which such State has communicated its declaration of intention to be bound by this Decision in the form of Appendix 1(a), 1(b) and 1(c) to the Monitoring Body which shall in turn transmit the declaration to the Depository.

**12.1.3** The Depository shall inform all State Parties of:

- (a) each Declaration made in accordance with the Decision;
- (b) date of the deposit and the date of effectiveness of this Decision in respect to that State;
- (c) the withdrawal of any Declaration;
- (d) the withdrawal from this Decision and the date on which it takes effect; and
- (e) the accession by and admission of new States.

**12.2** Role of subregional and regional organizations Subregional and regional organizations are encouraged to pursue and to intensify their efforts in the implementation of this Decision.

### **12.3 Withdrawal**

**12.3.1** A State Party may withdraw from this Decision by a formal notification in writing addressed to the Depository of its intention to do so or in the circumstances contemplated under Article 104 of the Abuja Treaty. The Depository shall within 30 days of receipt of the notification of withdrawal notify the other State Parties.

**12.3.2** Notwithstanding the notice of withdrawal, this Decision shall apply to the State concerned for one year after the date of receipt of the notification by the Depository.

### **12.4 Annexes**

Relevant annexes adopted by the competent organs of the African Economic Community shall form an integral part of this Decision.

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**Done in Yamoussoukro this 14th day of November 1999.**

## **ANNEXES TO THE YAMOUSSOUKRO DECISION**

**Annex 1:** Form of Declaration of Commitment on the Decision relating to the implementation of the Yamoussoukro Declaration concerning the liberalization of access to air transport markets in Africa (a), (b) and (c)

**Annex 2:** Duties and Responsibilities of the Monitoring Body of the Yamoussoukro Decision

**Annex 3:** Dispute Settlement Mechanism

**Annex 4 :** Regulations On The Powers, Functions and Operations of the Executing Agency

**Annex 5:** Regulations on Competition in Air Transport Services within Africa

**Annex 6:** Regulations on the protection of Consumer of Air Transport Services

## ANNEX 1(a)

### **Form of Declaration of Commitment<sup>2</sup> on the Decision relating to the implementation of the Yamoussoukro Declaration concerning the liberalization of access to air transport markets in Africa**

I, [name of the Minister in charge of civil aviation] representing the Government of [insert name of country] and in reference to the Decision relating to the implementation of the Yamoussoukro Declaration concerning the liberalization of access to air transport market which was endorsed by the 36th ordinary Session of the Assembly of Heads of State and Government of the OAU as published in *the Official Journal No6 of the African Economic Community covering Decision of the fourth ordinary session of the Assembly of heads of State and government.*

By this Declaration of commitment, I declare that my country is bound by the Decision to liberalize the access to air transport market in Africa in its entirety and will fully implement the said Decision as party thereto.

I hereby inform that my government has taken all the necessary administrative measures to give full effect to this Declaration.

Our rights and obligations under the said Decision shall be effective 30 days after the receipt by you of this Declaration.

Done at on .....

For the Government of [.....insert name.....]

By: [ ..... signature.....]

Its: [ .....insert title of signatory.....]

<sup>2</sup>This form is to be used by State Parties that are not parties to the Abuja Treaty and wish to be parties to the Decision.



## ANNEX 1(b)

### **Form of Declaration of Commitment<sup>3</sup> on the Decision relating to the implementation of the Yamoussoukro Declaration concerning the liberalization of access to air transport markets in Africa**

I, [name of the Minister in charge of civil aviation] representing the Government of [insert name of country] and in reference to the Decision relating to the implementation of the Yamoussoukro Declaration concerning the liberalization of access to air transport market which was endorsed by the 36th ordinary Session of the Assembly of Heads of State and Government of the OAU as published in *the Official Journal No6 of the African Economic Community covering Decision of the fourth ordinary session of the Assembly of heads of State and government*.

By this Declaration of commitment, I declare that my country is bound by the Decision to liberalize the access to air transport market in Africa in its entirety and undertake to fully implement the said Decision as party thereto, except to the extent provided below for a maximum transitional period of **[insert period but not to exceed two years from date of declaration]**:

#### **1. Grant of traffic Rights**

**1.1** In accordance with the provisions of paragraph 3.2 of Article 3 of the said Decision, I commit my country to grant during the transitional period fifth freedom traffic to the designated airlines of States Party on the following basis:

**(a)** grant and receive unrestricted fifth freedom on sectors where, for economic reasons, there are no third and fourth freedom operators; and

**(b)** grant and receive a minimum of 20 percent **[or such other higher percentage]** of the capacity offered on the route concerned during any given period of time in respect to any sector where third and fourth freedom operators exist.

#### **2. Other Provisions**

All other provisions of the Decision shall remain valid and be binding on us.

**3.** This Declaration shall terminate at the latest on [insert date] and thereafter we shall be bound to the fullest extent by the terms of the Decision.

<sup>3</sup> This form is to be filled by States that are not parties to the Abuja Treaty and wish to be parties to the Decision with limitation of their commitment.

4. With respect to matters covered by the foregoing paragraphs, my country confirms the understanding that during the transitional period the obligations of other States Party to grant any rights to us will be strictly equivalent to our commitment hereunder.

Done at on .....

For the Government of [.....insert name.....]

By: [ ..... signature.....]

Its: [ .....insert title of signatory.....]

## ANNEX 1(c)

### **Form of Declaration of Commitment<sup>4</sup> on the Decision relating to the implementation of the Yamoussoukro Declaration concerning the liberalization of access to air transport markets in Africa**

By this Declaration of commitment, I [insert name of the minister] representing the Government of the Republic of [insert name] declare that my country is bound by the Decision to liberalize the access to air transport market in Africa in its entirety and will fully implement the said Decision as party thereto, except to the extent provided below for a maximum transitional period of [ **insert period but not to exceed two years from date of declaration** ]:

#### **1. Grant of traffic Rights**

**1.1** In accordance with the provisions of paragraph 3.2 of Article 3 of the said Decision, we commit ourselves to grant during the transitional period fifth freedom traffic to the designated airline of State Parties on the following basis:

- (a) grant and receive unrestricted fifth freedom on sectors where, for economic reasons, there are no third and fourth freedom operators; and
- (b) grant and receive a minimum of 20 percent [or such other higher percentage] of the capacity offered on the route concerned during any given period of time in respect to any sector where third and fourth freedom operators exist.

#### **2. Other Provisions**

All other provisions of the Decision shall remain valid and be binding on us.

**3.** This Declaration shall terminate at the latest on [insert date] and thereafter my Government shall be bound to the fullest extent by the terms of this Decision.

**4.** With respect to matters covered by the foregoing paragraphs, my country [insert the name] confirm the understanding that during the transitional period the obligations of other States Party to grant any rights to us will be strictly equivalent to our commitment hereunder.

**5.** I hereby inform that my Government has taken all the necessary administrative measures to give full effect to this Declaration.

<sup>4</sup> This form is to be filled by States that are parties to the Abuja Treaty who wish to limit the extent of their commitment.

**6.** Our rights and obligations under the said Decision shall be effective 30 days after the receipt by you of this Declaration.

Done at on .....

For the Government of [.....insert name.....]

By: [ ..... signature.....]

Its: [ .....insert title of signatory.....]

## **ANNEX 2**

### **Revised Duties and Responsibilities of the Monitoring Body of the Yamoussoukro Decision as admemded by the African Union Specialised Technical Committee on Transport, Intercontinental and Interregional Infrastructure, Energy and Tourism, Lome, Togo March 2017**

## **ANNEX 2**

### **DUTIES AND RESPONSIBILITIES OF THE MONITORING BODY (MB)**

**1. Terms of Reference:**

The Monitoring Body, as established under Article 9 of this Decision, shall have the following duties and responsibilities. The mission of the Monitoring Body is to assist the Ministers Responsible for air Transport ensure the full implementation of the Yamoussoukro Decision and realisation of the Single African Air Transport Market in Africa. In this capacity, the Monitoring Body shall have oversight and advisory responsibilities over the functioning of the SAATM and the role of facilitating the smooth operation of the market at a strategic level, in support of the Executing Agency.

**It shall therefore carry out the following duties:**

1. Prepare, for adoption by the Ministers Responsible for air transport, the relevant annexes to the Decision;
2. Assist the AU to organize the meeting of the sub -committee on Air Transport of the Committee on Transport, Communications and Tourism;
3. Bring to the attention of the Ministers Responsible for air transport, any provisions of the Decision that hinders the development of air transport in Africa and/or impose difficulties in the application of the decision, with recommendation for mitigation.
4. Analyse and plan for the periodic review of the Decision (article 11.5).
5. Ensure appropriate regulations are in place for the smooth functioning of the Single African Air Transport Market;
6. Receive declarations made in accordance with the Decision, notification of withdrawals of any declaration of complaints and requests and shall inform the Depository accordingly;
7. Ensure the implementation of Resolution, Declaration, Directives and Decision of the Ministers responsible for air transport, the AU Executive Council and Assembly as concerns air transport matters in Africa;
8. Issue such Directives as necessary to the Executing Agency of YD, in



accordance with the Powers and functions of the Executing Agency and AU procedures;

9. Ensure the fair and equal application of the Yamoussoukro regulatory text on competition and consumer protection;

10. Define and advise the sub-committee on Air Transport of the Committee on Transport, Communications and Tourism on the qualification of membership of the African Civil Aviation Tribunal

11. Provide its opinion, when requested, on any disputes resulting from the application and/or interpretation of the Decision and recommend solution to the dispute to the Africa Civil aviation arbitration tribunal

12. Support the Executing Agency of YD in Formulating proposals on studies, seminars, workshops and other measures aimed at enhancing and updating air transport services in Africa;

13. Request competent national and international bodies for the support required to carry out studies, seminars, work programs and other measures aimed at enhancing and updating air transport services in Africa;

14. Ensure a seamless implementation of the Yamoussoukro Decision between and within sub-regions and the realisation of the Single Market cross the continent;

15. Advocate and facilitate fund mobilisation for sustainable operation of the single African air transport market and financial sustainability of the Executing Agency of YD.

16. Ensure the application of a monitoring and evaluation mechanism on the implementation of YD;

17. Assist the sub-Committee on Air Transport of the STC to review any reports and/or recommendation submitted to the Ministers for consideration on all activities concerning the functions of the Executing Agency and other matters requiring political Decisions in accordance with the African Union procedures;

18. Participate in the process of approving the work programme, business plan, budget, rules and regulations of the Executing Agency of YD;

19. Ensure that the Executing Agency adopts and implements appropriate rules and regulations for the smooth management of the air transport market in Africa;

20. Perform any other duties as may be required by the sub-Committee on Air Transport of the STC;

### **Seat of the Committee**

21. The seat of the Monitoring Body will be within ECA, which is designated to serve its secretariat.
22. The Secretariat of Monitoring Body shall;
  - (a) Convene regular meetings of the MB and maintain records of the proceedings;
  - (b) Keep records of membership of the SAATM;
  - (c) Undertake specific studies on the performance of the single market;
  - (d) Prepare for the Monitoring Body draft reports on the activities of the Monitoring Body to be submitted to the Minister responsible for air transport; and
  - (e) Host and ensure a functional database and knowledge portal for African Air Transport is operational a report on the activities of the Monitoring Body to the Minister responsible for air transport.

### **Meeting**

23. The Monitoring Body will meet, on a rotational basis, at least twice a year. The monitoring Body shall also participate in the Plenary meeting (ordinary sessions) of the Executing Agency of YD

### **Funding**

24. Participation in meetings of the Monitoring Body will be funded by each participating organization.
25. Other activities of the Monitoring Body could be financed from external sources.

### **ANNEX 3**

#### **Dispute Settlement Mechanism (TBC)**

**Regulations on the powers, functions and operations of the executing agency of the Yamoussoukro decision**

### **ANNEX 4**

#### **To the Yamoussoukro Decision {Assembly/AU/Dec 676(XXX) - Decision on Legal Instruments}**

**Regulations On The Powers, Functions and Operations of the Executing Agency**

WE, the Ministers responsible for Transport, Infrastructure, Energy and Tourism meeting at the First Ordinary Session of the African Union Specialized Technical Committee on Transport, Transcontinental and Interregional Infrastructure, Energy and Tourism in Lomé, Togo, 17th March 2017 have adopted these Regulations developed by the Bureau of the Conference of African Ministers of Transport, meeting in Malabo, Republic of Equatorial Guinea, on 18th and 19th December 2014, on the occasion of the Fourth Meeting of the Bureau of the Conference of African Ministers of Transport dedicated mainly to implement the Executive Council Decisions EX.CL/Dec.826(XXV) endorsing the report of the Third Session of the Conference of African Ministers of Transport (CAMT);

**Considering** the Constitutive Act of the African Union adopted in Lomé on 11 th July 2000, namely its Article 3, 5, 6, 9, 13, 14, 15, 16 and 20;

**Considering** the Treaty establishing the African Economic Community signed in Abuja on 3 rd June 1991, namely its articles 8, 10, 11, 13, 25 to 27;

**Considering** the Decision relating to the implementation of the Yamoussoukro Declaration concerning the liberalization of air transport markets access in Africa of 14 th November 1999, hereinafter called the Yamoussoukro Decision;

**Considering** the African Union Commission's Statutes adopted by the Assembly of the African Union in Durban (South Africa) on 10 th July 2002;

**Considering** EX.CL/Dec.359 (XI) wherein the Executive Council took note the Resolution of the 3rd Session of the Conference of African Ministers of Transport (CAMT) in Malabo, Equatorial Guinea in 2014 entrusting the functions of the Executing Agency of the Yamoussoukro Decision of 1999 to the African Civil Aviation Commission (AFCAC), hereinafter called the Executing Agency ;

**Considering** the Resolution on the follow-up of the implementation of the Yamoussoukro Decision of 1999 adopted by the First African Union Conference of Ministers responsible for Air Transport in Sun City(South Africa) in May 2005;

**Considering** the Resolution on air transport safety in Africa adopted by the Second

Conference of African Union Ministers responsible for air transport in Libreville (Gabon) in May 2006;

**Considering** the need to speed-up the full implementation of the Yamoussoukro Decision with a view to giving a boost to the operations of African airlines and other air transport service providers and effectively meeting the challenges of globalisation of international air transport;

**Recognising** the need for an effective institutional structure to manage liberalization of the air transport sector on the continent and direct safety, security, dispute resolution, consumer protection among others;

**Noting** the importance of the harmonization of legislation and policies in air transport necessary to achieve the objectives of the Yamoussoukro Decision;

**Mindful Of** the interests of the African consumer and the need to protect such interests through active continental, regional and national policies that enhance their sense of safety and eases their burden on travelling in the continent;

**Considering** the important role that airlines and other air transport service providers play in the process of liberalization and the integration of African economies and the need to support their efforts.

## **HEREBY MAKE THE FOLLOWING REGULATIONS:**

### **Chapter 1**

#### **Definition, Scope of application and Object and Basic Principles**

#### **Article 1 Definitions**

In these Regulations, unless the context otherwise requires:

**“Abuja Treaty”**: the Treaty Establishing the African Economic Community adopted at Abuja, Nigeria on the 3<sup>rd</sup> day of June 1991 and which entered into force on 12 May 1994.

**“Aeronautical Authority”**: any Governmental authority, body corporate or organ duly authorised to perform any function to which these Regulations relate.

**“Executing Agency”**: the Executing Agency provided for in Article 9 (4) of the Yamoussoukro Decision.

**“Airline”**: an air transport enterprise holding a valid Air Operators Certificate and operating air transport services.

**“Air Transport Services”** mean any scheduled or unscheduled air service performed by aircraft for the public transport of passengers, mail or cargo.

**“Air Transport Service Providers”** shall include airports, air navigation service providers, airport ground passenger and cargo handling companies, travel agents, suppliers of computer reservations systems or global distribution systems, and all other categories of services provided to airlines directly at the airports.

**“Organ of the African Union”** shall refer to Organs of the African Union as provided for in the Constitutive Act of the African Union.

**“Organ of the Decision”** means the bodies in the Yamoussoukro Decision tasked with the supervision and follow up of its implementation and includes include the Executing Agency, the Monitoring Body, the Sub-Committee on Air Transport of the Committee on Transport, the Conference of African Ministers of Transport or any such body or bodies as are appointed to replace them by them.

**“Regional Yamoussoukro Decision Authority”** means the authority or agency established or constituted by a regional economic community recognized by the African Union under the Abuja Treaty and invested with powers to supervise and manage the implementation of the Yamoussoukro Decision within the region.

**“State Party”** means a Member State that has ratified or acceded to the Abuja Treaty and such other African country, which, though not a party to the said Treaty, has declared in writing its intention to be bound by the Yamoussoukro Decision.

## **Article 2 Scope of Application**

The scope of this Regulation is to provide detailed rules for African Civil Aviation Commission as the Executing Agency to supervise, manage, formulate and enforce measures for the successful implementation of the Yamoussoukro Decision.

## **Article 3 Object and Basic Principles**

1. On the objective of this Regulation is to Executing Agency enable the effective operation, supervision and management of liberalisation of air transport in Africa.

2. To achieve this objective the Executing Agency, the State Parties, Organs of the African Union and of the Decision, the regional economic communities, airlines and other air transport service providers shall be guided by the following basic principles:

(a) All air transport activities undertaken on the African continent shall aim at achieving smooth, safe, comfortable and efficient intra-African travel.

(b) All air transport activities shall be conducted in the interest of the consumer and whose interests shall be considered as protected by all stakeholders.

(c) Airlines shall be encouraged to operate profitably with least operating

cost, preferably utilising all logical fifth freedom routes and assisted to identify potentially attractive routes based on long term focused economic activities in different localities of Africa.

**(d)** Air transport activities shall be aimed at maximum utilisation of airport slots and airports infrastructure and services and thereby encourage economic activities at and around all African airports

**(e)** Continental and regional institutions and State Parties shall encourage active cooperation between eligible airlines and work towards multiple establishment of airlines and other air transport service providers in different regional economic communities.

**(f)** The consideration of liberalised routes as a public good held for the use of and in the interest of the African continent.

Executing Agency

## **Chapter 2 Powers and Functions**

### **Article 4 Functions of the Executing Agency**

**1.** In addition to the functions provided for under Article 9 (4) of the Yamoussoukro Decision the Executing Agency shall inter alia:

**(a)** Outline, stipulate and enforce conditions under which a state may limit its commitment under Article 3.2 of the Yamoussoukro Decision;

**(b)** Continuously review, recommend and, where applicable, enforce modern and effective measures of tariff notification under Article 4, frequency and capacity notification under Article 5.1, designation and authorization of eligible airlines under Article 6.1, 6.2 and 6.3 of the Yamoussoukro Decision;

**(c)** Develop and enforce the criteria for eligibility under Article 6.9 of the Yamoussoukro Decision and safety of airline operations;

**(d)** Conduct studies on the further liberalization of air transport in Africa. ,

**(e)** Enforce competition and consumer protection Regulations;

**(f)** Ensure the efficient functioning of the dispute resolution mechanisms

**(g)** Ensure State Party application of the International Civil Aviation Organization (ICAO) safety, security and environmental protection standards and recommended practices; and

**(h)** On its own initiative, or at the request of the Monitoring Body or any Organ of the African Union, undertake action aimed at assisting and advising the Monitoring Body in relation to its function provided for under Annex 2 to the

Yamoussoukro Decision.

**Article 5**  
**Powers of the Executing Agency**

1. The Executing Agency shall have the power to:
  - (a) Ensure that the Yamoussoukro Decision is applied consistently throughout the African continent;
  - (b) Formulate and enforce appropriate rules and regulations that give fair and equal opportunities to all players and promote healthy competition in the air transport market;
  - (c) Formulate opinions, make decisions, guidelines and guidance materials including clarifications of provisions of the Decision and acceptable means of compliance;
  - (d) Ensure that senior management of aeronautical authorities or any such senior personnel in State Parties, regional economic communities, organs of the African Union and other relevant institutions who are directly involved in the implementation of the Decision are reasonably trained in the understanding of their global responsibilities in relation to the Decision;
  - (e) Request specific action of State Parties and other stakeholders, including but not limited to, collection and submission of data and reports to the Executing Agency;
  - (f) Make determinations on the state of compliance of the Decision and any relevant implementing rules and regulations and recommend or take appropriate remedial action;
  - (g) Make recommendations to the Monitoring Body or organs of the African Union on imposition of sanctions on State Parties, where appropriate;
  - (h) Impose sanctions on airlines and other air transport service providers including fines and any other penalty payments.
  - (i) Enforce the penalties including sanctions, interim measures and commitments of compliance from states and eligible airlines set out in the Regulations on Dispute Settlement Mechanisms relating to the implementation of the Yamoussoukro Decision.
  - (j) Report annually or as often as is determined from time to time on the status of implementation of the Yamoussoukro Decision;
  - (k) Carry out any other decisions, declarations and functions from the relevant Organs of the African Union and of the Yamoussoukro Decision
  - (l) Conduct investigations in the territories of the State Parties and undertake all necessary measures within the powers conferred on it by this Regulation or other legislation; and

(m) Exercise such other powers and perform such other functions as are vested in or conferred on it by the Executive Council, or any other organ of the African Union or the Yamoussoukro Decision.

2. In exercising the above functions the Executing Agency shall have full regard of the sovereign rights of State Parties and the commercial interests of air transport service providers, save that no aeronautical authority shall of its own have the power to dictate the terms and conditions of operations of the Executing Agency.

### **Chapter 3 Operations of the Executing Agency**

#### **Article 6 Implementing Measures at National and Regional Levels**

1. The Executing Agency shall recommend the establishment by regional economic communities and states parties of regional and national monitoring groups for the implementation of the Decision.

#### **Article 7 Training of Senior Management**

1. Having regard to its training and information generation and collection function the Executing Agency shall encourage, conduct or facilitate training of senior management personnel directly involved in the implementation of the Yamoussoukro Decision and are likely to be involved in any investigations and inspections arising in the course of its supervision mandate.

2. The training may be conducted at the regional level or continental levels and, in the case of regional training, shall be conducted or facilitated by the regional economic communities.

3. The Executing Agency shall adopt rules on training and sponsorship of senior personnel.

#### **Article 8 Monitoring, Evaluation and Reporting**

1. Having regard to the object of this Regulation, the Executing Agency shall, in close cooperation with the regional economic communities, monitor the application of the Yamoussoukro Decision by aeronautical authorities, airlines and other air transport service providers.

2. The Executing Agency shall submit annual reports to the Monitoring Body and the organ of the African Union responsible for air transport as appropriate.

3. The Executing Agency, in fulfilment of its reporting function outlined in this



Article, shall:

- (a) conduct regular investigations,
  - (b) carry out evaluations,
  - (c) Request for and review national aviation regulations including but not limited to economic regulations, air services agreements, and operational statistics of air transport falling within its field of competence.
4. The Executing Agency shall publish a Yamoussoukro Decision state report on each State Party every five (5) years on the level and effectiveness of application of the Yamoussoukro Decision and any relevant implementing rules and regulations.
5. The Executing Agency shall submit the following additional annual reports to the relevant organs of the African Union:
- (a) Activities including a summary of activities of each regional economic community and in particular the state of operations by eligible airlines of regional routes.
  - (b) implementation of competition regulations,
  - (c) implementation consumer protection regulations,
  - (d) sanctions imposed or recommended, and
  - (e) Complaints filed and dispute resolution.
6. The Executing Agency shall in complying with its responsibilities under this Article request reports from regional economic communities, State Parties, airlines and other air transport service providers.

## **Article 9 Research and Development**

1. The Executing Agency shall encourage research in areas of its competence.
2. It shall encourage African universities, other educational institutions and research institutes to conduct such research as will enhance understanding and further promote air transport liberalisation in Africa
3. The Executing Agency shall maintain a publicly available database of research undertaken by itself, State Parties, regional economic communities, organs of the African Union and other regional organisations, academic and research institutions related to air transport.
4. The Executing Agency may develop, finance and coordinate financed research in so far as it relates to the improvement of activities in its field of

competence and particularly under the following conditions:

**(a)** It shall coordinate its research activities with the African Union, the regional economic communities and State Parties so as to ensure that policies and actions are mutually consistent and to prevent duplication of efforts.

**(b)** Results of research funded, facilitated, coordinated by or in any way owned by the Executing Agency that are not classified as confidential shall be published in the manner the Executing Agency deems fit. Where published as a commercial publication, at least the executive summary of such reports shall be made available on the Executing Agency's website and shall be made freely available to interested parties.

### **Article 10 Work plan**

**1.** The Executing Agency shall, within six (6) months of the entry into force of this Regulation, submit a tri-annual work plan to the relevant organs of the African Union for approval.

**2.** The Executing Agency shall, within six (6) months of entry into force of this Regulation, submit a tri-annual list of proposed regulatory activities to be undertaken in pursuance of Article 17 of this Regulation to the relevant organs of the African Union for approval.

**3.** The tri-annual work plan and the list of proposed regulatory activities shall be submitted on the anniversary of the date of first submission in accordance with paragraphs (1) and (2) above.

### **Article 11 Database, Website, Privacy and Publication**

**1.** The Executing Agency, aeronautical authorities, regional Yamoussoukro Decision authorities, airlines and other air transport service providers, the African Union Commission and the Monitoring Body, shall be encouraged to exchange information among themselves using the most secure, expeditious, efficient and cost effective means of communication. In this regard, the Executing Agency shall:

**(a)** Encourage the use of information communication technologies to transact its business.

**(b)** ensure that national authorities and members of the regional Yamoussoukro Decision authorities have direct access to its information network and database and are able to communicate seamlessly and securely using such information technology.

**(c)** Facilitate the use by African airlines and other air transport service providers to utilise the website of the Executing Agency to communicate with the Executing Agency, State Parties, regional economic communities and other

institutions.

**(d)** The Executing Agency shall create an internet platform and establish conditions for consumer reporting.

**2.** The Executing Agency shall compile a central database of air transport on all aspects of its competence.

**3.** In giving effect to this Regulation the Executing Agency shall be guided by openness, transparency and a willingness to publish relevant documentation to all interested parties, including the general public.

**4.** Without prejudice to paragraph (3) of this Article, measures for the dissemination to interested parties of information shall be based on the need:

**(a)** to provide persons and organisations with the information they need to enable them undertake their obligations under the Yamoussoukro Decision;

**(b)** to limit the dissemination of information to what is strictly required for the purpose of its users, in order to ensure appropriate confidentiality of that information.

**5.** Aeronautical authorities and regional economic communities, organs of the African Union, airlines and other air transport service providers shall take necessary measures to ensure appropriate confidentiality and respect for data protection, of the information transmitted and received by them in the application of this Regulation.

**6.** The Executing Agency shall have an official publication.

## **Article 12 Investigation**

**1.** In supervising and managing the liberalisation of air transport in Africa, the Executing Agency shall, working closely with the regional economic communities, monitor the application of the Yamoussoukro Decision by conducting investigations of aeronautical authorities. Investigations shall be carried out in compliance with the laws of State Parties in which they are undertaken.

**2.** The Executing Agency shall only be entitled to conduct investigations in a State Party after exhausting the following:

**(a)** Making a determination of non-compliance or persistent breaches of provisions of the Decision and submitting the same to the Monitoring Body.

**(b)** Offering the State Party the opportunity to comply within a specified time period.

**(c)** Taking a decision of non-compliance of its determination made under sub-paragraph (a), and reporting the same to the Monitoring Body.

**3.** Officials of the Executing Agency, regional economic communities, or of State Parties may be authorised to undertake such tasks for and on behalf of the Executing Agency and are thus empowered in compliance with the laws of the State Parties concerned to:

**(a)** examine statutes, rules, policies, statements, guidelines, relevant records, data, procedures and any other material relevant to the achievement of the objectives of the Decision in accordance with this Regulation and implementing rules and regulations;

**(b)** take copies of or extracts from such records, statutes, rules, policies, statements, guidelines, , data, procedures and other relevant material;

**(c)** request for oral interviews and explanation;

**(d)** Enter any relevant premises.

**4.** The officials of the Executing Agency, regional economic communities and State Parties authorised for the purpose of these investigations shall exercise their powers upon the production of an authorisation in writing specifying the subject matter, the purpose of the investigation and the date on which it is to begin. In good time before the inspection, the Executing Agency shall inform the State Party concerned of the investigation of the identity of the authorised officials.

**5.** The State Party concerned shall assist the Executing Agency in conducting its investigations.

**6.** Investigation reports shall be made available in the official language of the State Party concerned.

### **Article 13** **Inspections of service providers**

**1.** The Executing Agency may itself conduct or delegate to the regional economic community, aeronautical authorities, or qualified entities all necessary investigation of eligible airlines and other air transport service providers. Inspections shall be carried out in compliance with the laws of State Parties in which they are undertaken. To that end the persons authorised under this Regulation are empowered:

**(a)** To examine the relevant records, data, procedures and any other relevant material;

**(b)** Take copies of or extracts from such records, data, procedures and other material;

**(c)** Request for oral interviews and explanation;

**(d)** To enter any relevant premises.

2. The persons authorised for the purpose of these investigations shall exercise their powers upon production of appropriate identification and written authorisation specifying the subject matter and the purpose of the investigation.

3. In good time before the commencement of an investigation, the Executing Agency shall inform the State Party concerned in whose territory the investigation is to be made, of the investigation and of the identity of the authorised persons. Officials of the State Parties shall, at the request of the Executing Agency or the regional economic community, assist the authorised persons in carrying out their duties.

#### **Article 14 Imposition of Sanctions**

The Executing Agency may determine the appropriate sanctions to be imposed for breaches of the Yamoussoukro Decision and its implementing rules and regulations.

2. The Executing Agency shall submit a Regulation on sanctions to be imposed under the Yamoussoukro Decision and its implementing Regulations to the relevant organs of the African Union for approval.

3. The regulation shall clearly stipulate:

- (a) detailed conditions under which the Regulation on sanctions will be implemented;
- (b) modality for the enforcement of imposed sanctions;
- (c) conditions for prior notification of intended sanction;
- (d) confidentiality in the period before the imposition of any intended sanction;
- (e) publication of any sanction imposed;
- (f) the right to remedy the cause of the intended sanction;
- (g) right of appeal against the sanction; and
- (h) Liability of the Executing Agency for wrongful imposition of a sanction.

#### **Article 15 Procedures for development of Decisions, Regulations and Guidelines**

When the Executing Agency develops regulations, procedures, to be applied by State Parties, it shall establish a procedure for consulting the State Parties, the regional economic communities, eligible airlines, service providers and all interested parties.

The Executing Agency shall adopt rules through the procedure of Notification of Proposed Rulemaking on the Yamoussoukro Decision (Hereinafter, YDNPR).

The Executing Agency shall adopt detailed procedures for taking decisions and making regulations, and issuing guidelines.

Those procedures shall:

- (a) Draw on expertise available in standing and ad-hoc AFCAC Committees, aeronautical authorities, the regional economic communities, airlines and other air transport service providers;
- (b) Involve appropriate experts from relevant interested parties, including but not limited to African Universities and Research institutions related to air transport;
- (c) Ensure that the Executing Agency publishes documents widely with interested parties according to a timetable and a procedure which includes an obligation on the Executing Agency to submit written responses to the consultation process.

#### **Article 16**

#### **Procedures for taking enforcement decisions**

1. The Executing Agency shall establish transparent procedures for taking decisions affecting State Parties, eligible airlines and other air transport service providers.

2. Those procedures shall:

- (a) If they are intended to affect State Parties, ensure that State Parties have been given ample time to remedy the cause of the eventual decision and that such an enforcement decision is based on the decision of the relevant policy organ of the African Union.
- (b) If they are intended to affect eligible airlines or other service providers, ensure a hearing of the airlines and service providers to be addressed in the decision and of any other party with a direct and individual interest;
- (c) Provide for service upon an airline or service provider of a decision and its publication;
- (d) Provide information of the legal remedies available to an airline or service provider under this Regulation;
- (e) Ensure that the decision contains adequate reasons.

## **Chapter 4 Institutional Arrangements**

### **Article 17**

#### **Oversight role of the AFCAC Plenary**

- 1.** In accordance with Section II of the AFCAC Constitution of 2009, the Plenary of AFCAC, acting as the supreme organ of the Executing Agency shall:
  - (a)** adopt its reports in accordance with Article 6 (l) and cause further action to be taken;
  - (b)** adopt its tri-annual work plan in accordance with Article 10
  - (c)** establish procedures for decision-making by the Secretary General;
  - (d)** approve the provisional budget submitted by the Secretary General;
  - (e)** recommend candidates to serve on as Expert Mediators or Arbitrators;
  - (f)** make recommendations for the imposition of sanctions against a State Party;
  - (g)** Approve the Notification of Proposed Rulemaking on the Yamoussoukro Decision.
  
- 2.** The Plenary may advise the Secretary General on any matter related to strategic development of air transport liberalisation, on.

### **Article 18**

#### **The Secretary General**

- 1.** The Executing Agency shall be managed by the Secretary General of AFCAC, who shall be completely independent in the performance of his/her duties. Without prejudice to the respective competencies of the Plenary, the Secretary General shall neither seek nor take instructions from any government or from any other body.
  
- 2.** Relevant organs of the African Union may at any time invite the Secretary General of the Executing Agency to report on matters relating to the implementation of the Yamoussoukro Decision.
  
- 3.** The Secretary General, shall in addition to the function and powers provided for in Article 14 of the AFCAC Constitution of 2009, shall exercise powers and perform the functions hereto :
  - (a)** Execute the powers and functions of the Executing Agency as defined in Article 5 of this Regulation, its implementing rules and any applicable law;
  - (b)** Cooperate and collaborate with the regional economic communities and

liaise with the organs of the African Union to ensure the implementation of the Yamoussoukro Decision;

- (c) Undertake investigations and inspections as provided for in Articles 12 and 13;
- (d) Prepare reports pursuant to Article 8 of this Regulation and submit it to the AFCAC Plenary and relevant organs of the African Union;
- (e) Prepare a provisional budget for the Executing Agency.

## **Chapter 5 Financial Arrangements**

### **Article 19 Budget**

1. The revenues of the Executing Agency shall consist of:
  - (a) Contributions from the African Union and any State Party;
  - (b) Grants from stakeholders and development partners;
  - (c) Donations, penalties, charges for publications, training, and any other services provided by the Executing Agency;
  - (d) Any other sources as may be approved from time to time.
2. The expenditure of the Executing Agency shall include the staff, administrative, infrastructure and operational expenses.
3. The Executing Agency shall in accordance with this Regulation submit the approved provisional budget and proposed work plan to the organs of the African Union

### **Article 20 Implementation and control of the budget**

1. The Secretary General shall implement the budget of the Executing Agency.
2. The Secretary General shall submit audited accounts to the AFCAC Plenary and the organs of the African Union for their consideration and appropriate action.

### **Article 21 Fees**

1. The Executing Agency shall within six (6) months of entry into force of this Regulation submit a draft regulation on fees and charges for approval by the rele-



vant organs of the African Union.

2. The Regulations on fees and charges shall determine in particular the matters for which fees and charges are eligible, the amount and the way in which they are to be paid.

## **Final Provisions**

### **Article 25 Entry into force**

This Regulation shall enter into force upon adoption by the Assembly of Heads of State and Government of the African Union.

{Adopted by the 30th Ordinary Session of the Assembly, 28-29 January 2018, Addis Ababa - Ethiopia. Assembly/AU/Dec 676(XXX) - Decision on Legal Instruments}

## **APPENDIX 1**

### **TO THE REGULATION ON POWERS, FUNCTIONS AND OPERATIONS OF THE EXECUTING AGENCY OF THE YAMO USSOUKRO DECISION**

Procedure to be applied by the Executing Agency for the Issuing of Decisions, Regulations and Guidelines (“Rulemaking Procedure”).

Preamble Whereas these Rules of Procedure are adopted pursuant to Article 15 of the Regulation on the Powers, Functions and Operations of the Executing Agency of the Yamoussoukro Decision and outline steps to be followed in developing Regulations, Decisions and Guidelines.

### **Rule 1 Definitions**

For the purposes of this Rules of Procedure:

**‘Rulemaking’** shall mean the development and issuance of rules by the Executing Agency.

**‘Rules’** comprises the following proposed to be developed by the Executing Agency:

- decisions
- Regulations
- guidelines

Section 2 – Rulemaking Procedure

### **Rule 3**

#### **Rule-making Programme**

- 1.** The Secretary General shall establish an annual rule-making programme in consultation with the Monitoring Body and the regional economic communities.
- 2.** The rule-making programme shall take account of:
  - i.** the object and basic principles set out in Article 3 of the Regulation on the Powers, Functions and Operations of the Executing Agency;
  - ii.** the object of implementing a liberalised air transport market in Africa;
  - iii.** significant protection of the interests of the African air transport consumer;
  - iv.** the need to ensure a vibrant but safe, economically viable, efficient and healthy African airline sector; and
  - v.** The objective of developing an efficient, transparent and responsive continental regulatory system.
- 3.** Any person or organisation may propose the development of a new rule or an amendment thereto. The Secretary General shall consider such requests in the context of the revision of the rulemaking programme.
- 4.** Proposals, including the identification of the proposer, the proposed text and the justification for the proposal, shall be sent to the Executing Agency and shall be individually acknowledged.
- 5.** The Secretary General shall provide the proposer with justification for his or her decision on whether to act on his or her proposal.
- 6.** The Secretary General shall prioritize each task taking into account the urgency, resources at the disposal of the Executing Agency and potential continental impact of the proposal.
- 7.** The Secretary General shall adapt the rule-making programme as appropriate in light of unforeseen and urgent rule-making demands. The Monitoring Body shall be informed of any such changes.
- 8.** The adopted rulemaking programme shall be published in the Executing Agency's official publication.
- 9.** The Secretary General shall conduct regular reviews of the impact of the Rules issued under this Regulation.

#### **Rule 4 Initiation**

1. Rule-making activities shall be initiated in accordance with Rule 3 (6).
2. The Secretary General shall draw up terms of reference and from time to time amend the same for each rule-making task after consulting the Monitoring Body. The terms of reference, which shall be published in the Executing Agency's official publication, shall include the following:
  - i. a clear definition of the task;
  - ii. a timetable for completion of the task; and
  - iii. The format of the deliverable.
3. The Secretary General shall choose between the use of a drafting group, consultants or Executing Agency resources for the fulfilment of each rulemaking task, taking into account the complexity of the task at hand and the need to draw upon the expertise of persons involved in the implementation of the rule envisaged. This decision shall be taken after consulting the Monitoring Body.
4. When a drafting group is convened, the Secretary General shall determine its exact composition, which shall draw upon technical expertise available among national authorities and, where necessary, airlines, other service providers and other interested parties, as well as within the Executing Agency itself.
5. The Executing Agency shall provide drafting groups with the administrative and logistical support necessary for the fulfilment of their tasks, including the provision of standard operating procedures, to be adapted as necessary by the groups themselves according to their specific circumstances.
6. The Executing Agency shall adopt standardised working methods for drafting groups.

#### **Rule 5 Drafting**

1. New rules or amendments thereto shall be drafted in accordance with the terms of reference referred to in Rule 4 of this Rules of Procedure.
2. Drafting of rules shall have regard to the Yamoussoukro Decision and Rules adopted by the regional economic communities
3. Upon completion of the drafting of the proposed rule, the Secretary General shall verify that the rule satisfies the terms of reference established for the rulemak-

ing task and shall then publish a Notice of Proposed Rulemaking (YDNPR) in the Executing Agency's official publication, including the following information:

- (a) the proposed rule;
- (b) an explanatory note describing the development process;
- (c) full details of significant or contentious or interface issues identified during the drafting process;
- (d) details of the situation with respect to the Yamoussoukro Decision in relation to the proposed rule;
- (e) The role of the regional economic communities, the Monitoring Body and other organs of the African Union in relation to the proposed rule.

### **Rule 6 Consultation**

1. All State Parties, eligible airlines, air transport service providers and any person or organisation with an interest in the rule under development shall be entitled to comment on the published Notice of Proposed Rulemaking.
2. The proposed rule shall be disseminated to all relevant stakeholders entitled to comment upon it.
3. The consultation period shall be four (4) months from the date of publication of the proposed rule, unless the Secretary General specifies otherwise.
4. During the consultation period, the Secretary General may, in exceptional and strictly justified circumstances, extend the consultation period specified in paragraph 4 at the request of States Parties, airlines, other service providers or interested parties. Such changes to the length of the consultation period shall be published in the official publication of the Executing Agency.

Written comments shall be forwarded to the Secretary General and shall contain the following elements:

- i. Identification of the commentator;
- ii. YDNPR reference code; and
- iii. Position of the commentator, relative to the proposal (including justification for the position taken).

### **Rule 7 Review of comments**

1. The Secretary General shall ensure that comments are reviewed by appro-

priately qualified experts not directly involved in the drafting of the proposed rule together with the Executing Agency staff or drafting group tasked with the drafting of the rule in question.

2. Further consultation may be undertaken as necessary for the sole purpose of securing a better understanding of comments submitted.

3. The Secretary General shall review the comments received and publish a response within three (3) months detailing the following:

(a) summary of the original proposed rule;

(b) publication and commentary dates;

(c) list of all parties commenting on the rule in question; and

(d) Summary of comments received and the Executing Agency's responses thereto;

(e) summary of revised rules.

4. If, based on the number of comments received, the Secretary General is unable to publish the Response to the proposed rule referred to in paragraph (3) above by the deadline specified, he or she shall publish an amended timetable for the rulemaking process.

5. If the result of the review of comments is that the revised text differs significantly from that circulated at the start of the consultation process, the Secretary General shall consider a further consultation round in accordance with this Rules of Procedure.

6. If the comments received indicate major objections to the proposed rule, the Secretary General shall consult the AFCAC Committee on Air Transport to discuss the rule further. In those cases where additional consultation results in continuing disagreement regarding the rule, the Secretary General shall take a decision and include in the Response to the proposed rule the results of this consultation and the impact and consequences of his/her decision regarding the issue at stake.

## **Article 8 Adoption and Publication**

1. The Secretary General shall issue a decision in respect of the rule in question no earlier than two (2) months following the date of publication of the Response to proposed rule.

2. Rules issued by the Executing Agency shall be published in its official publication, together with an explanatory memorandum.

## **REGULATIONS ON COMPETITION IN AIR TRANSPORT SERVICES WITHIN AFRICA**

### **ANNEX 5 To the Yamoussoukro Decision {Assembly/AU/Dec 676(XXX) - Decision on Legal Instruments}**

Regulations on Competition in Air Transport Services within Africa,

#### **PREAMBLE**

WE, the Ministers responsible for Transport, Infrastructure, Energy and Tourism meeting at the First Ordinary Session of the African Union Specialized Technical Committee on Transport, Transcontinental and Interregional Infrastructure, Energy and Tourism in Lomé, Togo, 17th March 2017 have adopted these Regulations, developed by the Bureau of the Conference of African Ministers of Transport, meeting in Malabo, Republic of Equatorial Guinea, on 18th and 19th December 2014, on the occasion of the Fourth Meeting of the Bureau of the Conference of African Ministers of Transport dedicated mainly to implement the Executive Council Decisions EX.CL/Dec.826(XXV) endorsing the report of the Third Session of the Conference of African Ministers of Transport (CAMT);

**Considering** the Constitutive Act of the African Union adopted in Lomé on 11th July 2000, namely its Article 3, 5, 6, 9, 13, 14, 15, 16 and 20;

**Considering** the Treaty establishing the African Economic Community signed in Abuja on 3 rd June 1991, namely its articles 8, 10, 11, 13, 25 to 27;

**Considering** the Decision relating to the implementation of the Yamoussoukro Declaration concerning the liberalization of air transport markets access in Africa of 14 th November 1999, hereinafter called the Yamoussoukro Decision;

**Considering** the African Union Commission's Statutes adopted by the Assembly of the African Union in Durban (South Africa) on 10 th July 2002;

**Considering** EX.CL/Dec.359 (XI) wherein the Executive Council endorsed the Resolution of the 3 rd Session of the Conference of African Ministers of Transport (CAMT) in Malabo, Equatorial Guinea in 2014 entrusting the functions of the Executing Agency of the Yamoussoukro Decision of 1999 to the African Civil Aviation Commission (AFCAC), hereinafter called the Executing Agency;

**Considering** the Resolution on the follow-up of the implementation of the Yamoussoukro Decision of 1999 adopted by the First African Union Conference of Ministers responsible for air transport in Sun City (South Africa) in May 2005;

**Considering** the Resolution on air transport safety in Africa adopted by the Second

Conference of African Union Ministers responsible for air transport in Libreville (Gabon) in May 2006;

**Considering** the need to speed-up the full implementation of the Yamoussoukro Decision with a view to giving a boost to the operations of African airlines and other air transport service providers and effectively meeting the challenges of globalisation of international air transport;

**Desirous of** ensuring fair opportunity on a non-discriminatory basis for the designated eligible African airlines, to effectively compete in providing air transport services within the African Air Transport Market.

## **HEREBY MAKE THE FOLLOWING REGULATIONS:**

### **Chapter 1 Definitions, objectives and the scope of application**

#### **Article 1 Definitions**

In these Regulations,:

**“Abuja Treaty”** means the Treaty Establishing the African Economic Community adopted at Abuja, Nigeria on the 3<sup>rd</sup> day of June, 1991 and which entered into force on 12 May 1994.

**“Aeronautical Authority”** means any Governmental authority, body corporate or organ duly authorised to perform any function to which these Regulations relate.

**“Air transport undertakings”** includes airlines and other air transport service providers.

**“Air Transport Services”** means any scheduled or unscheduled air service performed by aircraft for the public transport of passengers, mail or cargo.

**“Air Transport Service Providers”** shall include airports, air navigation service providers, airport ground passenger and cargo handling companies, travel agents, suppliers of computer reservations systems or global distribution systems, and all other categories of services provided to airlines directly at the airports.

**“Airline”** means an air transport enterprise holding a valid Air Operators Certificate and operating air transport services.

**“Capacity”** means the number of seats and cargo space offered to the general public on air services over a given period and in a given sector.

**“Concerted practice”**: means co-ordination between airlines that, without having reached the stage where an agreement properly so-called has been concluded, knowingly substitutes practical co-operation to the exclusion of competition.

**“Competent authority”**: means a body established in a State Party and charged with regulating competition in the air transport sector, or in absence of such an institution.

**“Dominant position”**: means a position of one or more airlines which enables them to prevent effective competition being maintained within the market or part thereof, by giving them the power to behave to an appreciable extent independently of their competitors, their suppliers, their customers or end users.

**“Executing Agency”** means the African Air Transport Executing Agency provided for under Article 9 (4) of the Yamoussoukro Decision.

**“Excessive capacity”** means more capacity than that reasonably required on a route or in a given sector.

**“Excessively high price”** means the price of a service which bears no reasonable relation to the economic value of that service and reasonable profit margin.

**“Excessively low price”** means the price of a service which bears no reasonable relation to the economic value of those services.

**“Market”** means a relevant geographic area, including routes or sector thereof and a relevant air transport service provided by an airline.

**“Member State”** means a Member State of the African Union.

**“Regional Competition Authority”** means an authority set up by a regional economic community with mandate to regulate and supervise the implementation of these regulations.

**“Regional Economic Community”** means a regional economic community recognised as such by the African Union.

**“Regional Yamoussoukro Decision Authority”** means an authority set up by a regional economic community with mandate to regulate and supervise the implementation of the Yamoussoukro Decision within the territory of the regional economic community concerned.

**“State Party”** means a Member State that has ratified or acceded to the Abuja Treaty and such other African country which, though not a party to the said Treaty, has declared in writing its intention to be bound by the Yamoussoukro Decision.

**“Scheduled and non-scheduled air services”** shall bear the same meaning assigned to them in the Chicago Convention of 1944 and in resolutions of the Council of the International Civil Aviation Organization (ICAO).

**“Trade association”** means an association of airlines with the aim of promoting co-operation activities of its members.



## **Article 2 Objectives**

The purpose of this Regulation is to promote and guarantee free and fair competition in Intra-African air transport services in order to develop the air transport industry and to contribute to the welfare of the citizens of the State Parties.

## **Article 3 Scope of Application**

This Regulation shall apply to scheduled and non-scheduled intra-Africa air transport services, including any practice, agreement or conduct thereto which might have an anti-competitive effect within the separate and joint territories of the regional economic communities and within the entire African continent.

## **Chapter 2 Prohibited Practices, Agreements And Decisions**

### **Article 4 Prohibited Practices, Agreements and Decisions**

- 1.** Any practice, agreement or decision which negates the objective of free and fair competition in air transport services shall be prohibited. To this end, State Parties shall undertake to ensure that any agreement between airlines, any decision taken by an association of airlines and any concerted practice which negatively affects the liberalization of intra-Africa air transport services and which has as its object or effect the prevention, restriction or distortion of competition, is prohibited.
- 2.** Subject to paragraph 3(a) of this Article and Article 8 of these Regulations, anti-competitive practices and agreements, shall be deemed illegal. Such practices include, but are not limited to, any agreement between airlines, any decision by associations of airlines and any concerted practice which:
  - (a)** directly or indirectly fixes purchase or selling or any other trading conditions including charging prices on routes at levels, which are in the aggregate, insufficient to cover the direct operating costs of providing the services to which they relate;
  - (b)** limits or controls markets, technical development, or investment;
  - (c)** involves the addition of excessive capacity or frequency of services;
  - (d)** divides markets or sources of supply by allocating passengers, territories, or specific types of services; or
  - (e)** applies dissimilar conditions to similar transactions with other airlines, thereby placing them at a competitive disadvantage;

**(f)** Makes the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contract; and; has a detrimental effect on consumers.

**3.a** Any practice, agreement or decision prohibited or deemed illegal pursuant to this Article shall be void unless a party proves that technological efficiency or other pro-competitive gain outweighs the alleged anti-competitive effect.

**3.b** Without prejudice to the generality of paragraph (a) any practice, agreement or decision shall not be deemed to be anti-competitive unless:

- i.** it is sustained rather than temporary;
- ii.** it has an adverse economic effect on or causes economic damage to any competitor;
- iii.** it reflects an apparent intent or has the probable effect of crippling, excluding or driving any competitor from the market; or
- iv.** it limits the rights or interests of consumers.

## **Article 5 Abuse of Dominant Position**

**1.** Any abuse by one or more airlines of a dominant position within the African Air Transport market shall be prohibited insofar as it may affect air transport services at the regional or at the African continent level. Such abuse may include:

**(a)** directly introducing unfair trading conditions to the prejudice of competitors such as:

- i.** the introduction on a route or sector thereof of excessive capacity, which is likely to have an adverse impact upon any competing airline;
- ii.** the introduction by an airline on a route or sector thereof of an excessively low price, which is likely to have an adverse impact on any competing airline and is likely to be perceived as specifically designed, targeted and intended to keep out a new airline or to drive out another airline; or
- iii.** the introduction by an airline on route or sector thereof of an excessively high price because of lack of a price competition or collusion.

**(b)** limiting capacity or markets to the prejudice of consumers such as:

- i.** charging excessively high prices to the detriment of consumers;
- ii.** the introduction by an airline on a route or sector thereof of capacity, which is designed, targeted and intended to drive out another airline;

iii. the intentional under-supply, by an airline, of capacity contrary to the set objectives of healthy and sustained competition; or

iv. the allocation of capacity by an airline on a route in a manner which is unduly discriminatory including requiring consumers not to use the services of a competitor;

(c) applying dissimilar conditions to similar transactions with other trading parties, thereby, placing them and/or resulting in other airlines being placed at a competitive disadvantage including discriminating between different consumers and competitors in equivalent transactions of services of like quality in terms of:

I. The price charged;

II. Any discount, allowance, or rebate given or allowed in relation to the supply of services;

III. The provision of services; or

IV. Payment for services;

(d) Making the conclusion of contracts subject to acceptance by the other parties, of supplementary obligations, which, by their nature or according to commercial usage, have no connection with the subject of. Such contracts.

#### **Article 6**

#### **Non-discrimination in national and regional legislation and administrative measures**

1. Legislation or administrative measures in the territory of a State Party or of a regional economic community shall not discriminate against the provision of services by airlines or associations of airlines of other State Parties.

2. A State Party or a regional economic community may, before enacting legislation or adopting administrative measures which in their view may have the effect of discriminating against airlines of other State Parties, invite The Executing Agency to review the legislation in question and recommend appropriate amendment of any provision that may directly or indirectly permit or promote anti-competitive behaviour.

#### **Article 7**

#### **Subsidies**

1. These Regulations prohibit the granting of any subsidy by any State Party or regional economic community which distorts or threatens to distort competition.

2. The Executing Agency shall propose rules on the conditions under which subsidies may be granted.

## **Article 8**

### **Exemptions and Safeguard Measures**

- 1.** The Executing Agency may, by these Regulations, exempt any particular practices, agreements or decisions which may be deemed illegal or prohibited under Article 4 hereof.
- 2.** The Executing Agency may, on application by an eligible airline, approve measures designed to remedy any adverse effects a State Party may experience by reason of the implementation of the provisions of Chapters 1 and 2 of these Regulations.
- 3.** Copies of all applications for exemption under paragraph 1 hereof shall be sent to the relevant Regional Competition Authority and the Executing agency.
- 4.** Notwithstanding paragraph 1 of this Article, in the event of negative economic factors prevailing in a State Party following the application of the provisions of these Regulations, the State Party concerned shall, after informing the relevant Regional Competition Authority and the Executing Agency take the necessary safeguard measures pending the written approval of the Regional Competition Authority and/or the Executing Agency.
- 5.** These safeguard measures shall remain in force for a maximum period of one (1) year and shall not distort or threaten to distort competition.
- 6.** The regional competition authority and/or the Executing Agency shall examine the method of application and the effects of these safeguard measures while they remain in force and shall in all cases determine whether any measure taken pursuant to Article 8(5) hereof distorts, threatens to distort or has the effect of distorting competition.
- 7.** The regional competition authority and/or the Executing Agency shall recommend to a State Party the withdrawal, determination or suspension of such a safeguard measure in the event of a negative determination in terms of the impact thereof.
- 8.** Any recommendation for the withdrawal, termination or suspension shall clearly specify the grounds for making such determination, the latest date for the withdrawal, termination or suspension, and the grounds of appealing the recommendation. Such a recommendation shall be classified as a decision under the terms of the Regulations on the Powers, Functions and Operations of the Executing Agency of the Yamoussoukro Decision.
- 9.** The Regional Competition Authority and/or the Executing Agency may decide to take interim measures that it deems fit when it determines that the State Party concerned has failed to take any action to address the recommendation addressed to it pursuant to Article 8(8) hereof.
- 10.** Such interim measures shall apply for a period not exceeding ninety (90) days.

**11.** The relevant authority may extend the interim measures for a period not exceeding thirty (30) days thereafter in the event that subsequent to an objective assessment of the circumstances such extension is deemed necessary.

### **Chapter 3** **Enforcement, investigation, negotiation, arbitration and** **Judicial review**

#### **Article 9** **The Executing Agency**

**1.** The Executing Agency shall be responsible for supervising and implementing these regulations and shall be responsible for:

**(a)** implementing measures to increase transparency in the air transport sector;

**(b)** implementing measures to develop public awareness of the provisions of these Regulations;

**(c)** investigating and evaluating alleged violations of Chapter Two;

**(d)** granting, refusing or revoking exemptions in terms of Article 8;

**(e)** reviewing legislation or administrative measures of State Parties in terms of Article 6;

**(f)** reporting to the organ of the African Union responsible for the air transport sector on any matter relating to the application of these Regulations; and

**(g)** Performing any other function assigned to it under these Regulations.

**2.** The Executing Agency may delegate its functions or powers of investigation to the Regional Competition Authority or a State Party

#### **Article 10** **Complaints**

**1.** Any State Party, air transport undertaking, or any interested party may lodge a complaint in writing with the Regional Competition Authority or Executing Agency against an air transport undertaking concerning an alleged breach of these Regulations by that air transport undertaking.

**2.** The relevant Regional Competition Authority or Executing Agency shall within thirty (30) days of receipt of a complaint made under paragraph 1, forward a copy of such complaint to the competent authority of the State Parties.

3. Such competent authorities shall have the right of audience before the Executing Agency.

4. The Executing Agency may, on its own motion, initiate an investigation into a suspected breach of these Regulations by an air transport undertaking.

### **Article 11** **Investigation and Procedural Fairness**

1. 1. In the execution of the duties under these Regulations, the Executing Agency may undertake all necessary investigations into air transport undertakings and associations of air transport undertakings.

2. Where a Regional Competition Authority or the competent authority of a State Party undertakes investigation into an air transport undertaking or association of air transport undertakings either of its own motion or on the delegated authority of the Executing Agency, the Authority shall submit its investigation report to the Executing Agency within a reasonable period.

3. Without prejudice to paragraphs (1) and (2) above, the investigating body shall submit its preliminary findings within thirty (30) days and complete its investigation and final report within sixty (60) days of receipt of a complaint.

4. The Executing Agency or relevant Regional Competition Authority shall within a reasonable time, prior to the envisaged investigation inform the competent authority of the State Parties of the proposed investigation and the identity of the authorised officials. The competent authority of the State Parties shall assist the officials of the Executing Agency or Regional Competition Authority if so requested.

5. In the execution of its duties, the Executing Agency or Regional Competition Authority shall act with due regard to the rules of natural justice.

### **Article 12** **Hearing of the Parties Concerned**

1. Before taking any decision under these Regulations affecting air transport undertakings or associations of air transport undertakings, the Regional Competition Authority and/or Executing Agency shall give the air transport undertakings or associations of air transport undertakings concerned the opportunity of being heard. There shall be a written record of the hearing.

2. The hearing shall be conducted in accordance with appropriate Rules of Procedure and there shall be a written record of the hearing.

### **Article 13** **Outcome of Complaint**

1. Where the Executing Agency finds that there has been an infringement of

any provision of Chapter Two of these Regulations, it shall direct the air transport undertaking or association of air transport undertakings concerned to bring such an infringement to an end, failing which it may impose such provisional measures or penalties as appropriate.

2. If the Executing Agency, acting on a complaint concludes that, on the evidence before it, there are no grounds for intervention in respect of any agreement, decision or concerted practice, it shall reject the complaint.

3. The Executing Agency shall simultaneously send a copy of its decision to the competent authority of the State Party in whose territory the head office of the air transport undertaking or association of air transport undertakings is situated.

#### **Article 14 Provisional Measures**

1. Where there is prima facie evidence before the Executing Agency that certain practices are contrary to these Regulations and have the object or effect of directly jeopardising the existence of an air transport undertaking it may decide to take such provisional measures that it deems fit to ensure that these practices are not implemented, or where implemented they are stopped.

2. Such provisional measures shall apply for a period not exceeding ninety (90) days.

3. The Executing Agency may extend the provisional measures for a period not exceeding thirty (30) days.

#### **Article 15 Cooperation with Member State Authorities and Access to Information**

1. 1. The Executing Agency shall exercise its powers and apply its procedures in collaboration with the Regional Competition Authorities and competent authorities of the State Parties.

2. In carrying out the duties assigned to it by these Regulations, the Executing Agency may request all necessary information from the competent authorities of the State Parties and from an air transport undertaking or association of air transport undertakings.

3. A copy of the request for information to an air transport undertaking or association of air transport undertakings shall also be sent to the competent authority of the State Party in whose territory the head office of the air transport undertaking or association of air transport undertakings is situated.

4. The Executing Agency shall in its request clearly state the legal basis and purpose of the request and also the penalties for the supply of incorrect information or for the failure to supply information within the time limit indicated by the Executing Agency.

## **Article 16**

### **Penalties**

1. The Executing Agency may, depending on the gravity and the duration of the infringement, decide to impose penalties on an air transport undertaking or association of air transport undertakings where they intentionally or negligently:
  - (a) infringe any provision of these Regulations;
  - (b) supply incorrect or misleading information in connection with an application; or
  - (c) Supply incorrect information in response to a request made, or fail to supply information within the time limit indicated by the Executing Agency.
2. The Executing Agency shall from time-to-time review such penalties.
3. In the case of a second or subsequent infringement, the Executing Agency may impose a stiffer penalty.

## **Article 17**

### **Review of the Decisions of the Executing Agency**

1. Any party whose rights, interests or legitimate expectations have been affected by a decision of the Executing Agency may appeal to the relevant institutions applicable under the terms of the Regulations on Dispute Settlement Mechanisms Relating to the Implementation of the Yamoussoukro Decision.

## **Article 18**

### **Dispute Settlement among State Parties**

1. If any dispute arises between State Parties relating to the interpretation or application of these Regulations, the State Parties concerned shall have recourse to the dispute settlement mechanisms outlined in the Regulations on Dispute Settlement Mechanisms Relating to the Implementation of the Yamoussoukro Decision.

## **Article 19**

### **Confidentiality**

1. Information acquired as a result of the application of these Regulations shall be used only for the purpose of the relevant request or investigation.
2. The Executing Agency, the Regional Competition Authorities and the competent authorities of the State Parties, their officials and other servants shall not disclose information of a kind covered by the obligation of confidentiality and which has been acquired by them as a result of the application of these Regulations. The Executing Agency shall develop and strictly enforce appropriate rules to give effect to this provision.



**Article 20**  
**Publication of decisions**

1. The Executing Agency shall publish the decisions which it makes under these Regulations.
2. In publishing any decision the Executing Agency shall state the names of the parties and the main contents of the decision. In so doing, the Executing Agency shall have regard to the legitimate interest of air transport undertakings in the protection of their business secrets.

**Article 21**  
**Implementing provisions**

The Executing Agency shall formulate implementing provisions for adoption by the relevant institutions on, inter alia:

- (a) guidelines on subsidies;
- (b) rules of procedure on exemptions;
- (c) the standard form, content and other details pertaining to:
  - (i) applications; and
  - (ii) complaints and their outcomes;
- (d) the rules on hearings;
- (e) penalties;

**Article 22**  
**Amendments**

1. Each State Party may propose amendments to this Regulation.
2. Any proposal for amendment to these Regulations shall be submitted to the Executing Agency in writing, which shall within thirty (30) days of its receipt communicate it to the State Parties.
3. Amendments to this Regulation shall enter into force after their approval by the Assembly of Heads of State and Government of the African Union.

**Article 23**  
**Entry into Force**

This Regulation shall enter into immediate force following its endorsement by the Assembly of Heads of State and Government of the African Union.

{Adopted by the 30th Ordinary Session of the Assembly, 28-29 January 2018, Addis

## **APPENDIX 1**

### **TO ANNEX 5 TO THE YAMMOUSSOUKRO DECISION: GUIDELINES AND PROCEDURES FOR THE IMPLEMENTATION OF THE REGULATIONS ON COMPETITION IN AIR TRANSPORT SERVICES WITHIN AFRICA**

Whereas the Regulations on Competition in Air Transport Services within Africa calls for a number of guidelines, implementing provisions and rules of procedure for the application of the Regulations by the regional competition authorities and the Executing Agency. Now therefore the following Guidelines and Procedures shall apply:

#### **GUIDELINES**

##### **Article 1**

The following airline industry standards shall normally not be considered as a violation of Article 4 of the Competition Regulations and shall be presumed excepted under Article 4 (3) (a) (b) of the Competition Regulations:

**(a)** certain technical agreements and concerted practices, to the extent that their sole object and effect is to achieve technical improvements or co-operation: the introduction or uniform application of mandatory or recommended technical standards for aircraft, aircraft parts, equipment and aircraft supplies, where such standards are set by an organisation normally accorded international recognition, or by an aircraft or equipment manufacturer; the introduction or uniform application of technical standards for fixed installations for aircraft, where such standards are set by an organisation normally accorded international recognition; the exchange, leasing, pooling, or maintenance of aircraft, aircraft parts, equipment or fixed installations for the purpose of operating air services and the joint purchase of aircraft parts, provided that such arrangements are made on a non-discriminatory basis; the introduction, operation and maintenance of technical communication networks, provided that such arrangements are made on a non-discriminatory basis; and the exchange, pooling or training of personnel for technical or operational purposes;

**(b)** agreements or concerted practices between airlines with respect to capacity, frequency and scheduling co-operation, provided that joint planning and co-ordination of capacity, frequencies and flight schedules to be provided on scheduled air services be limited to agreements and practices that help to ensure a spread of services at the less busy times of a week

or day, or on less busy routes, and/or improve inter-regional connectivity, provided any partner may withdraw without penalty from agreements or practices by giving not more than three months' notice of its intention not to participate in such joint planning and co-ordination for future (summer or winter) seasons;

**(c)** consultations and agreements on interlining and tariff co-ordination, for the purpose of promoting the establishment of fully interline able air fares and rates, upon the following conditions: that the inter-carrier consultations (inside or outside the framework of global or regional airlines organizations) on the development of interline able tariffs (passenger fares and cargo rates) be transparent and open to all carriers operating direct or indirect services on air routes concerned; and that the consultations are not binding upon participants that is, following consultations, airline participants retain the right to act independently in respect of passenger and cargo tariffs;

**(d)** provision of common rules for the appointment of airlines agents, whether developed inside or outside the IATA (International Air Transport Association) Agency Conferences, as long as those rules are limited to the professional and financial fitness of agents (accreditation) and do not limit the number of agency establishments in any Member State, and do not fix agency commission rates; systems for the clearing of accounts between airlines or between airlines and agents should normally not be considered as anti-competitive;

**(e)** airline alliances and other commercial arrangements between airlines, provided that these arrangements do not go beyond code-sharing and blocked space agreements, and that in the case of blocked space agreements the purchasing airline will sell the purchased seats as its own, at its own prices and at its own risk; where the arrangements go beyond code-sharing and blocked space agreements, and involve common pricing, common capacity provision, common scheduling and/or revenue and/or cost pooling (joint ventures), such arrangements shall normally not be permissible under Article 4 of the Regulations, save where an exemption is obtained from the relevant authority under Article 8 of the Regulations;

**(f)** slot co-ordination agreements and practices between airlines at airports, provided that all air carriers concerned are entitled to participate in such agreements and arrangements, that the national and multilateral procedures (including, but not limited to IATA Scheduling Conferences) for such agreements and arrangements are transparent, and that they take into account any constraints and distribution rules defined by national and international authorities and any rights which air

carriers may have historically acquired; and

**(g)** agreements and arrangements on the joint ownership and operation or participation in Global Distribution Systems (GDS), on condition that all airlines of State Parties have access to such systems on equal terms, that participating carriers have their services listed on a non-discriminatory basis, that any participant may withdraw from the system on giving reasonable notice, and that the system operate in accordance with the policies and regulatory framework of the International Civil Aviation Organization (ICAO).

## **Article 2**

The following shall apply to the implementation of State subsidies under the terms of Articles 7 of the Competition Regulations:

- (a)** in the context of granting or denying subsidies, State Parties shall not discriminate between publicly-owned, state-owned and privately-owned airlines;
- (b)** a State Party may grant a subsidy to an airline, provided that it is for airline restructuring purposes, or in extraordinary circumstances beyond the control of the airline, including acts of war; and
- (c)** The prohibition on subsidies does not prevent the operation by a State Party of an essential air services programme or of public service obligations, where certain air services cannot be operated profitably;
- (d)** Where the relevant authority finds that a subsidy has been granted illegally by a State Party or is about to be given by a State Party, it may issue a cease and desist order against the State Party in question; and
- (e)** Where the relevant authority finds that a subsidy, illegally given by a State Party, has already been paid in fact, it may order that the moneys given as illegal subsidy be paid back to the State Party in question, in whole or in part.

## **Article 3**

Where a State Party wishes to obtain a prejudicial ruling from the regional competition authority or the Executing Agency (hereafter, relevant authorities) on non-discrimination in national legislation and administrative measures under Article 6 of the Competition Regulations:

- (a)** that State shall submit a written request to that effect to the relevant authority through diplomatic channels, giving reasons for its request;
- (b)** the relevant authority shall endeavour to respond to such a request within ninety days from its reception in an advice;
- (c)** Where the relevant authority is the opinion that the proposed legislation

or administrative measure in question needs amendment, it shall give reasons therefore in its advice; and

**(d)** The relevant authority shall send copies of its advice to all competent authorities of the State Parties.

#### **Article 4**

Applications by any undertaking, or association of undertakings to the Executing Agency for exemptions under Article 8(1) of the Regulations shall be made using Form A provided for in the Schedule to these Guidelines, Provisions and Procedures.

#### **Article 5**

In addition to the information and procedures contained in Form A of the Schedule mentioned in Article 6, the relevant authority:

**(a)** shall render decisions on applications for exemptions under Article 8 of the Regulations within ninety days from their submission;

**(b)** shall not take legal action under the Regulations against an applicant for an exemption, before the application has been decided upon; and

**(c)** may revoke an exemption granted, before its normal expiry date, considering also that the maximum duration of validity of an exemption is five years, where there has been any material change on any of the facts upon which the exemption was based; or where the parties breach any condition attached to the exemption; or the granting of the exemption was based on incorrect information or induced by deceit; or where the parties abuse the exemption as provided for under Article 5 of the Regulations.

#### **Article 6**

Where a State Party wishes to apply to the relevant authority to approve safeguard measures under Article 8(2) of the Regulations:

**(a)** the application shall be in writing, through diplomatic channels, giving reasons for the application;

**(b)** the relevant authority shall send copies of such applications for approval of safeguard measures to the competent authorities of the State Parties;

**(c)** the relevant authority shall decide upon an application for approval of safeguard measures within ninety days from its reception, giving reasons for its decision;

**(d)** The relevant authority may approve or disapprove the application, or approve it subject to conditions; and

**(e)** The approval of an application for safeguard measures may be valid for one year. A State Party may apply for an extension provided such State Party shall

furnish proof that it has taken the necessary and reasonable steps to overcome or correct imbalances for which safeguard measures are being applied and that the measures applied are on the basis of non-discrimination.

## **RULES OF PROCEDURE**

### **Article 7**

**(h)** Complaints, lodged with the relevant authority by any undertaking or association of undertakings, shall be made using **Form B** provided for in the Schedule to these Guidelines and Procedures; and

**(i)** Relevant shall advise the complainant of its decision within a period of ninety days from receipt of the complaint. Where it is not in a position to do so, it shall advise the complainant of the procedure to be followed under Articles 8, 9, 10, 11, and 12 of these Guidelines, Provisions and Procedures.

### **Article 8**

In addition to the provisions contained in **Form B** of the Schedule to these Guidelines, Provisions and Procedures, the relevant authority, in carrying out investigations under Article 9 of the Competition Regulations, shall:

**(a)** appoint and empower officials to examine the books and other business records, make copies of or extracts from the books and business records, demand oral or written explanations and enter any premises, land and vehicles used by undertakings or associations of undertakings provided that, in performing their duties, the authorised officials shall respect applicable national laws and regulations pertaining to privileged information on the part of the undertakings;

**(b)** ensure its authorised officials shall exercise their powers upon production of written authorisation, specifying the subject matter and purpose of the investigation and the penalties provided for in Article 14 of the Regulations in cases where production of the required books or business records is incomplete, provided that the relevant authority shall inform the competent authority of the State Party, in whose territory same is to be made, of the investigation and the identity of the authorised officials;

**(c)** Specify the subject matter and purpose of the investigation, indicate the date on which the investigation will commence, indicate the penalties as provided for in Article 14 of the Competition Regulations and the right to have the decision of the Executing Agency under Article 11 and any penalties reviewed under Article 17 of the Regulations;

**(d)** In addition undertakings and associations of undertakings shall submit to investigations authorised by the Executing Agency. The authorisation shall specify the subject matter and purpose of the investigation, appoint the date on which it is to begin and indicate the penalties provide for in Article 16 of the

Competition Regulations, and the right to have the decision of the Executing Agency under Article 13 and any penalties reviewed under Article 17 of the Competition Regulations;

**(e)** Officials of the competent authority of the State Party in whose territory the investigation is to be made should assist the officials of the relevant authority in carrying out their duties, at the request of such authority, and they shall observe the privileges and secrecy of information as provided under Article 10(b) of these Guidelines and Procedures; and

**(f)** Where an undertaking or association of undertakings opposes an investigation authorised pursuant to these procedures, the State Party concerned shall afford the necessary assistance to the officials authorized by the Executing Agency to enable them to carry out their investigation.

## **Article 9**

Where, under the Competition Regulations, the Executing Agency must hear an undertaking or association of undertakings, the following rules of procedure shall apply:

**(a)** Before taking a decision negatively affecting an undertaking or association of undertakings, the Executing Agency shall give such undertaking or association the opportunity to be heard on (the) matter(s) to which the Agency objects; affected undertakings and associations of undertakings shall be so informed in writing;

**(b)** Officials of interested State Parties shall be entitled to attend oral hearings;

**(c)** If the Agency, upon its own motion or upon the recommendation of interested State Parties, finds it necessary, it may also hear other natural or legal persons. Applications to the Executing Agency by such persons to be heard shall be granted when they show sufficient interest;

**(d)** Before the oral hearing, the affected undertaking or association of undertakings may submit its views on the objection(s) raised in writing; it may in its written comment set out all matters relevant to its defence; it may attach any relevant documents in proof of the facts set out. It may also propose that the Executing Agency hear persons who may corroborate those facts;

**(e)** The Executing Agency shall in its decision deal only with those objections raised against undertakings and associations of undertakings in respect of which they have been afforded the opportunity of making known their views;

**(f)** The Executing Agency shall summon the persons to be heard to attend on such date as it shall appoint; copy of the summons shall be sent to the officials of interested State Parties;

**(g)** Hearings shall be conducted by the persons appointed for that purpose by the Agency;

**(h)** Persons summoned to attend shall either appear in person or by a duly authorised legal representative, and may be assisted by lawyers, duly admitted to the practice of law in their respective States of principal residence;

**(i)** Hearings shall not be public. Persons shall be heard separately or in the presence of other persons summoned to attend. In the latter case, regard shall be had to the legitimate interests of the undertakings in the protection of their business secrets; and

**(j)** The essential content of the statements made by each person heard shall be recorded in minutes, which shall be read and approved by such person.

In case of refusal to approve, the person in question shall nevertheless sign that he has read the minutes.

## **Article 10**

The Executing Agency shall, in making decisions in accordance with Article 13 of the Regulations, adhere to the following rules of procedure:

**(a)** where the Executing Agency is of the opinion that there has been an infringement in terms of Article 13(1) of the Regulations, it may render a decision containing a cease and desist order;

**(b)** the decision shall be in writing and accompanied by reasons for judgment;

**(c)** the decision may be accompanied by an imposition of penalties in accordance with Article 16 of the Regulations;

**(d)** in the event of a prohibited subsidy under Article 7 of the Regulations, the Executing Agency may, in addition to the cease and desist order, order that the moneys given as prohibited subsidy be paid back to the relevant State Party, in whole or in part;

**(e)** in the event of abuse of an exemption under Article 8 of the Regulations, the Executing Agency may also revoke such exemption;

**(f)** where the Executing Agency is of the opinion that a complaint is ill founded in law and/or in fact in the sense of Article 13(2) of the Competition Regulations, it shall reject the complaint in a written decision accompanied by reasons for judgment;

**(g)** where the Executing Agency is of the opinion that a complaint is frivolous in the sense of Article 21(g) of the Regulations, it may dismiss it summarily;

**(h)** the Executing Agency shall apportion the costs among the parties engaged in the proceedings; and

**(i)** In all cases, the Executing Agency shall abide by the rules of Article 13(3) of the Regulations.



## Article 11

Where the Executing Agency is of the opinion that provisional measures must be ordered in terms of Article 14 of the Regulations, the following rules of procedure shall apply:

- (a)** Where there is evidence of anti-competitive behaviour by one undertaking or association of undertakings, seriously threatening the existence of another undertaking, the Executing Agency may suspend the practices, agreements or decisions of the former undertaking or association for a period not exceeding ninety days, provided that such suspension can only be renewed once for thirty days. Such decision by the Executing Agency shall be taken within a period of thirty days from the receipt of the complaint; and
- (b)** Without limiting the generality of the foregoing, such suspension may include the withdrawal of the excessively high or excessively low prices charged by the undertaking or association of undertakings involved, and, where excessively high or excessively low frequencies have been introduced by the undertakings involved, either decrease or increase them accordingly.

## Article 12

Where, in terms of Article 15 of the Regulations, the Executing Agency finds it necessary to communicate with State Parties or undertakings or associations of undertakings, the Executing Agency shall:

- (a)** conduct such communications preferably through diplomatic channels; and
- (b)** Conduct communications with undertakings or associations of undertakings through registered mail or other appropriate means.

## Article 13

In imposing penalties under Article 16 of the Regulations, the Executing Agency shall apply the following rules of procedure and schedule of penalties and fines:

- (a)** The Executing Agency may impose fines on undertakings or associations of undertakings, not less than one hundred special Drawing Rights and not more than five thousand special Drawing rights per infringement, where, intentionally or negligently, they supply incorrect or misleading information in connection with an application for an exemption or in connection with the revocation of an exemption, or where they file a frivolous complaint, or where they supply incorrect information in response to a request made, or do not supply information within the limit fixed by the Executing Agency, or do not or incompletely produce books or business records in the framework of an investigation, or refuse to submit to an investigation;
- (b)** the Executing Agency may impose fines on undertakings or associations of undertakings of no less than one thousand Special Drawing Rights and no more than one hundred thousand Special Drawing Rights, or a sum in excess thereof

but not exceeding 10 percent of the turnover in the preceding business year of the undertaking or association of undertakings participating in the infringement, where, either intentionally or negligently, they infringe Articles 4 and/or 5 of the Regulations, or do not comply with a cease and desist order under Article 13 of the Regulations;

**(c)** in fixing the amount of the fine, regard shall be had both to the gravity and to the duration of the infringement;

**(d)** in the event of a second or subsequent infringement of the same nature and perpetrated by the same offending undertaking or association of undertakings, the Executing Agency may double or triple a previously imposed fine, without nevertheless exceeding the maximum amounts indicated in (a) and (b) above; and

**(e)** The Executing Agency shall periodically review the Schedule of penalties and fines.

## **SCHEDULE**

### **Form A - Application for an exemption – 1003/17/A**

Application for an exemption  
By the Executing Agency

Under Article 8(1) of the Competition Regulations for competition in air transport services.

Identity of the parties:

**1.** Identity of applicant: Full name and address, telephone, telex and facsimile numbers, and brief description of the undertaking(s) or association(s) of undertakings submitting the application.

**2.** Identity of other parties: Full name and address and brief description of any other parties to the agreement, decision or practice (hereinafter referred to as the “arrangements”).

Purpose of the application:

Applicant(s) to state for which length of time an exemption is sought. The maximum duration is five years.

Full description of the arrangements:

Applicant(s) should provide details of the arrangements, including financial details (which enjoy professional secrecy under Article 19 of the Regulations) (if necessary, Appendixes to the application may be used).

Reasons for an exemption:

Applicant(s) must state why the sought exemption is merited, in fact and in law (if necessary, Appendixes to the application may be used). In particular, applicant(s) must comment upon the effects of the sought exemption on competition in the relevant geographical markets (air routes) and product markets (air transportation versus other modes of transportation).

Notice to applicant(s):

**(a)** Copy of this signed application and any Appendixes thereto will be sent to the competent authorities of State Parties according to Article 8(3) of the Competition Regulations;

**(b)** Applicant(s) will receive an acknowledgement of receipt of the application, accompanied by the text of the Regulations, any implementing provisions and rules of procedure;

**(c)** The Executing Agency may ask applicant(s) for any additional information (which will enjoy professional secrecy under Article 19 of the Regulations) and may set a deadline for the provision of such information;

**(d)** Applicant(s) should realise that the provision of any late, incorrect or misleading information may lead to the imposition of a penalty under Article 16 of the Regulations;

**(e)** Where the Executing Agency, on the basis of the written evidence, is of the opinion that an exemption should be granted, it may do so in writing for a period not exceeding five years, either unconditionally or subject to conditions;

**(f)** Where the Executing Agency tends towards a rejection of the application, it shall so inform the applicant(s) who remain(s) entitled to a hearing under Article 12 of the Regulations;

**(g)** Where the Executing Agency rejects the application, it shall give written reasons therefore;

**(h)** An exemption that has been granted may be revoked for reasons set out in the implementing provisions, referred to under (b) above.

Place and date:

Signature(s):

### **Form B – Complaint Form – 1003/17/B**

Complaint

To the Executing Agency

Under Article 10 of the Competition Regulations for competition in air transport services.

Identity of the complainant(s): Full name and address, telephone, telex and facsimile numbers of the complainant or complainants

Object of the complaint:

Complainant(s) to state which practice(s), agreement(s), decision(s), abuse(s) of dominant position or abuse(s) of exemption it contests.

Subject of the complaint:

Complainant(s) to state against which undertaking(s) (or association[s] of undertakings) the complaint is addressed.

Remedy (ies) sought:

Complainant(s) to state which remedy or remedies they seek under Article 13 (cease and desists orders) and/or Article 16 (penalties).

Full description of the fact(s):

Complainant(s) to describe the fact or facts leading to the complaint, including financial details (which enjoy professional secrecy under Article 19 of the Regulations) (if necessary, Appendixes to the complaint may be used).

Reasons for the complaint:

Complainant(s) to state why the complaint is justified, in fact and in law (if necessary, Appendixes to the complaint may be used). In particular, complainant(s) must comment upon the effects of the attacked practice, agreement, decision, abuse of dominant position or abuse of exemption on competition in the relevant geographical markets (air routes) and product markets (air transportation versus other modes of transportation).

Notice to applicant(s):

**(a)** Copy of this signed complaint and any Appendixes thereto will be sent to the competent authority of a State Party according to Article 10(3) of the Regulations;

**(b)** Complainant(s) will receive an acknowledgement of receipt of the complaint, accompanied by the text of the Regulations, any implementing provisions and rules of procedure. The Executing Agency shall advise the complainant of its decision within ninety days or advise the complainant of further procedures to be followed;

**(c)** The Executing Agency may ask complainant(s) for any additional information (which will enjoy professional secrecy under Article 19 of the Regulations) and may set a deadline for the provision of such information;

**(d)** Complainant(s) should realise that the provision of any late, incorrect or misleading information may lead to the imposition of a penalty under Article 16 of the Regulations;

**(e)** The undertaking (or association of undertakings) against whom a complaint

has been made be entitled to a hearing under Article 12 of the Regulations;

**(f)** The Executing Agency shall endeavour to render a decision on the complaint under Article 13 of the Regulations (cease and desist orders) and/or Article 16 of the Regulations (Penalties) within a period of thirty days from receipt of the complaint;

**(g)** Complainant(s) is (are) reminded that frivolous complaints are forbidden and may result in fines under the Regulations and provisions implementing these.

Place and date:

Signature(s):

## **AFRICAN UNION REGULATIONS ON THE PROTECTION OF CONSUMERS OF AIR TRANSPORT SERVICES**

### **ANNEX 6 TO THE YAMMOUSSOUKRO DECISION {Assembly/AU/Dec 676 (XXX) - Decision on Legal Instruments}**

#### **PREAMBLE**

WE, the Ministers responsible for Transport, Infrastructure, Energy and Tourism meeting at the First Ordinary Session of the African Union Specialized Technical Committee on Transport, Transcontinental and Interregional Infrastructure, Energy and Tourism in Lomé, Togo, 17th March 2017 have adopted these Regulations developed by the Bureau of the Conference of African Ministers of Transport, meeting in Malabo, Republic of Equatorial Guinea, on 18 th and 19 th December 2014, on the occasion of the Fourth Meeting of the Bureau of the Conference of African Ministers of Transport dedicated mainly to implement the Executive Council Decisions EX.CL/Dec.826(XXV) endorsing the report of the Third Session of the Conference of African Ministers of Transport (CAMT);

**Considering** the Constitutive Act of the African Union adopted in Lomé on 11 th July 2000, namely its Article 3, 5, 6, 9, 13, 14, 15, 16 and 20;

**Considering** the Treaty establishing the African Economic Community signed in Abuja on 3 rd June 1991, namely its articles 8, 10, 11, 13, 25 to 27;

**Considering** the Decision relating to the implementation of the Yamoussoukro Declaration concerning the liberalization of air transport markets access in Africa of 14 th November 1999, approved by the Conference of Heads of State and Government of OAU and signed by the current Chairman in Lomé on 12 th July 2000, hereinafter called the Yamoussoukro Decision;

**Considering** the African Union Commission's Statutes adopted by the Assembly of the African Union in Durban (South Africa) on 10 th July 2002;

**Considering** the Decision EX. CI/Dec.369 (XI) of the Assembly of Heads of State and Government of the African Union establishing the Executing Agency of the Yamoussoukro Decision of 1999, hereinafter called the Executing Agency of 27th July 2007;

**Considering** the resolution on the follow-up of the implementation of the Yamoussoukro Decision of 1999 adopted by the First African Union Conference of Ministers responsible for Air Transport in Sun City (South Africa) in May 2005;

**Considering** the resolution on air transport safety in Africa adopted by the Second Conference of African Union Ministers responsible for air transport in Libreville (Gabon) in May 2006;

**Considering** the need to speed-up the full implementation of the Yamoussoukro Decision with a view to giving a boost to the operations of African airlines and other

air transport service providers and effectively meeting the challenges of globalisation of international air transport;

**Observing** the need to strike a balance between the right of airlines to operate efficiently in a liberalised and increasingly competitive market and the right of the consumer to be assured of sufficient protection and information of his rights;

**Recognising** the need to assist the travelling public through time saved by the legitimate (non-targeted) passenger while undergoing normal arrival formalities and thereby enhance quality of travel;

**Noting** that passengers suffer considerable delays, overbookings, flight cancellations and often live in uncertainties;

**Concerned** that the increasingly liberalised environment requires the protection of consumers on the African continent;

## **HEREBY MAKE THE FOLLOWING REGULATIONS:**

### **Article 1 Definitions**

In these Regulations, unless the context otherwise requires:

**“Abuja Treaty”** means the Treaty Establishing the African Economic Community adopted at Abuja, Nigeria on the 3<sup>rd</sup> day of June, 1991 and which entered into force on 12 May 1994.

**“Aeronautical Authority”** means any Governmental authority, body corporate or organ duly authorised to perform any function to which these Regulations relate.

**“Air transport undertakings”** include airlines and other air transport service providers.

**“Air transport services”** means any scheduled or unscheduled air service performed by aircraft for the public transport of passengers, mail or cargo.

**“Air transport service providers”** include airports, air navigation service providers, airport ground passenger and cargo handling companies, travel agents, suppliers of computer reservations systems or global distribution systems, and all other categories of services provided to airlines directly at the airports.

**“Aircraft services”** comprise the external and internal cleaning of the aircraft, and the toilet and water services; the rearrangement of the cabin with suitable cabin equipment, the storage of this equipment.

**“Airline”** means an air transport enterprise holding a valid Air Operators Certificate and operating air transport services within the territory of a State Party.

**“Airport”** means any area of land especially adapted for the landing, taking-off and

manoeuvres of aircraft, including the ancillary installations which these operations may involve for the requirements of aircraft traffic and services including the installations needed to assist commercial air services.

**“Cargo”** means any property carried on an aircraft other than mail, stores and accompanied or mishandled baggage.

**“Consumer”** in relation to passengers means the person who takes or agrees to purchase an airline ticket or take a tour package (i.e., a combination of air transportation and ground or cruise accommodations) or tour component (e.g., a hotel stay) (‘hereinafter, the principal contractor’), or any person on whose behalf the principal contractor agrees to purchase the ticket, package or component (‘the other beneficiaries’) or any person to whom the principal contractor or any of the other beneficiaries transfers the ticket, package or component (‘the transferee’).

**“Eligible airline”** means any airline duly licensed by a State Party and authorised to lift and put down passengers, cargo and mail in the territory of one or more State Parties and actually operating the flights in question and Certificated as an eligible airline to operate under the terms of the Yamoussoukro Decision.

**“Ground handling”** means the services provided to airlines at airports and comprise the following passenger handling, baggage handling, freight handling, mail handling, ramp handling, oil and fuel handling, aircraft maintenance, flight operations and crew administration, and surface transport.

**“Licence”** means a valid licence granted by the Civil Aviation Authority or its equivalent under valid Regulations of States Parties to an air transport undertaking.

**“Non-eligible airline”** means any airline duly licensed by a State Party and authorised to operate intra-African routes but has not been certificated as an eligible airline to operate under the terms of the Yamoussoukro Decision.

**“Non-African airline”** means an airline licensed by a third party state and authorised by a State Party to lift and put down passengers, cargo and mail in the territory of one or more State Parties and actually operating the flight in question.

**“State Party”** a Member State that has ratified or acceded to the Abuja Treaty and such other African country which, though not a party to the said Treaty, has declared in writing its intention to be bound by the Yamoussoukro Decision.

## **Article 2**

### **Scope of application of the Regulations**

1. This Regulation shall apply to the, implementation of Article 9.6 of the Yamoussoukro Decision.
2. It prescribes rights of consumers of air transport services within Africa and lays down responsibilities of air transport undertakings.
3. This Regulation shall not apply to passengers travelling free of charge or



at a reduced fare not available directly or indirectly to the public. However, it shall apply to passengers having tickets issued under a frequent flyer programme, other commercial arrangement or programme by an airline or tour operator.

### **Article 3 Objectives**

1. The objective of these Regulations is to protect the consumer of air transport services against unfair treatment in the provision of services.
2. It provides a basis for compensation for the consumer for breach of the rights of the consumer by air transport services providers and a mechanism for the consumer to seek redress.

### **Article 4 Prohibitions: Unfair and Deceptive Practices**

1. Under these Regulations, the following are inherently unfair practices:
  - (a) Misleading Advertising:
    - i. Shall be considered , an unfair marketing and deceptive practice for any seller of scheduled air transportation within, to or from any State Party, or of a tour, or tour component that includes scheduled air transportation within, to or from any State Party, to increase the price of that air transportation, tour or tour component to a consumer, including but not limited to an increase in the price of the seat, an increase in the price for the carriage of passenger baggage, or an increase in an applicable fuel surcharge, after the air transportation has been purchased by the consumer, except in the case of an increase in a government-imposed tax or fee. A purchase is deemed to have occurred when the full amount agreed upon has been paid by the consumer;
    - ii. No airline or travel agent shall charge or collect additional fare (whether commissions, brokerage fees, administrative charges, or any other fees) to passengers not expressly advertised, displayed in the marketing material or expressly communicated to the consumer at the initial inquiry displayed.
  - (b) Failure to disclose Ticket Conditions Where an airline, or an air ticket agent fails to disclose, verbally or in written communication, prior to the purchase of a ticket the following:
    - i. the name of the air carrier providing the air transportation; and
    - ii. if the flight has more than one flight segment, the name of each air carrier providing the air transportation for each such flight segment.
  - (c) Persistent boarding denials.  
It is an unfair and deceptive practice if an airline persistently denies boarding to

passengers involuntarily, without requesting for volunteers or where so requested fails to allow a reasonable time for passengers to volunteer, or persistently fails to pay the accepted amount of compensation.

**(d)** Persistent abuse of free-seating policy.

It is an unfair and deceptive marketing practice if an airline persistently denies checked-in passengers their right to sit on the seat classes they have paid for and/or have been assigned to them at check-in as a result of the imposition of a free seating policy.

**(e)** Discriminatory application of compensation under Warsaw/Montreal Convention. Where it is observed that any practices, conduct, policy or procedure adopted by an airline consistently falls short of the required obligations including but not limited to compelling consumers to accept compensation regimes less than what they are entitled to under the Warsaw Convention/Montreal 1999, imposing additional burdens calculated at or capable of frustrating their efforts to obtain compensation, or where compensation, though paid is paid under such terms as to nullify the usefulness of such compensation.

**(f)** Chronically delayed flights.

A series of delayed flights shall be considered as unfair and defective practice. An airline shall be considered as operating chronically delayed flights if flights by an airline is operated at least 30 times in a calendar quarter arrives more than 15 minutes late, or is cancelled more than 50 percent of the time during that quarter.

**2.** The Executing Agency, a Regional Yamoussoukro Decision Authority or a State Party may on its own initiative or upon the receipt of a complaint, and if it considers it to be in the public interest, investigate and decide whether an airline or ticket agent has or is engaged in an unfair or deceptive practice in air transportation.

**3.** The Executing Agency, a Regional Yamoussoukro Decision Authority or a State Party, before investigating, shall serve sufficient notice to the airline or ticket agent and afford it a fair opportunity to be heard.

**4.** If the Executing Agency, a Regional Yamoussoukro Decision Authority or a State Party establishes that an airline or ticket agent is engaged in an unfair or deceptive practice, it shall order that airline or ticket agent to stop the practice or method.

**5.** In enforcing Article 4 against an airline, the Executing Agency, a Regional Yamoussoukro Decision Authority or a State Party may opt to apply Article 4 (1) of the Regulations on Competition in Air Transport Services within Africa.

## **Article 5 Non-Discrimination**

**1.** Within the scope of application of this Regulation, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality, race, sex, age, colour, creed, physical ability, and physical stature, shall be

prohibited in accordance with the African Charter of Human and Peoples Rights

## **Article 6**

### **Maintaining adequate third party insurance cover**

- 1.** Each air transport service provider shall at all material times maintain an insurance cover as required by the laws of the State Party in which it operates, including but not limited to third party liability, and shall visibly display the insurance schedule or certificate at a reception visited by or accessible to consumers.
- 2.** Where demanded by authorized officials inspecting the airline under Article 19 of the Regulations on the Powers, Functions and Operations of the Executing Agency, the air transport service provider shall demonstrate compliance with this Article by providing the officials with a deposit of an insurance certificate or other evidence of a valid insurance from a recognised third party insurance company.

## **Article 7**

### **Means of Communication**

- 1.** Airlines, tour operators, consolidators and agents shall be obliged at all material times to obtain and hold a telephone number and/or email address of the passenger or, in the case of a group, the group leader or the person responsible for arranging the booking or for payment of the booking, and where more than one mode of communication is offered, obtain from the person concerned the preferred mode of communication in case of emergencies.
- 2.** Subject to the data protection rules applicable in the territories of State Parties, the contact details obtained shall only be used to contact the person whose on record to rearrange a flight, inform him of any possible delay or arrange for alternative means of transport or pass any essential information relevant to the flight in question.
- 3.** Where a passenger is unable to offer either a telephone number or an email for any destination, the airline shall inform him of a telephone number at which the local office at the destination in question may be reached, in which language he can contact the local office and the opening hours of the local office. Where such information is available on the website of the airline, it shall suffice that a reference to the website is clearly made at the customer service point. In applying this provision the airline shall be made available in the at least one official language of the African Union.
- 4.** The airline and/or the air transport service provider shall ensure that they utilise the preferred mode of contact of each passenger in cases involving anticipated cancellations, overbooking, or delays. Where the notice is made less than 12 hours of the departure of the flight, unless the passenger has confirmed that he/she is able to retrieve his/her emails on a mobile device, such notice shall be communicated by phone or SMS.
- 5.** The burden of proof rests with the air transport service provider in question

as to whether the preferred details of a passenger was obtained when it was used to contact the passenger or whether alternative means of communication has been furnished and under what circumstances.

## **Article 8**

### **Information to the consumer**

**1.** At the time of purchase of the ticket or at the check-in counter the airline and the ground handling agent shall be obliged to inform the passenger in one official language of the African Union understood by the passenger the following:

- (a)** The obligation to supply a means of communication for emergencies;
- (b)** Any planned cancellations or long term delays anticipated at least 12 hours before the scheduled flight;
- (c)** The airline's obligations to provide alternative solutions and compensation in case of denied boarding, free seating, flight cancellation, delayed flight;
- (d)** Right to request for documents, policies procedures on insurance, compensation, assistance, complaints procedures in line with these Regulations;
- (e)** appropriate alternative means of communication as an illiterate, visually impaired, and/or physically challenged persons;
- (f)** Any other information the Executing Agency may demand to be displayed to the passenger under the terms of this provision.

**2.** Air transport service providers shall visibly display information on their premises, on their websites and relevant marketing materials stating the rights of the consumer in relation to specific services provided.

**3.** Information displayed under the terms of sub-paragraph 2 of this Article shall include:

- (a)** Mission of the institution with specific regard to customer service;
- (b)** right of the client to specific information regarding the services provided by the institution;
- (c)** Right to complain against the institution in case of a failure of the service provider in question to meet the minimum service standard;
- (d)** Complaints procedures indicating the agency to whom the complaint may be submitted; and
- (e)** Right to specific redress including but not limited to compensation as prescribed in this Regulation and its Appendixes.

## **Article 9 Complaints Procedures**

Each Air transport service provider shall, either establish a consumer relations desk or contact person at every airport it operates for the purpose of receiving, resolving and channelling complaints to their head offices, as well as liaising with the aeronautical authorities, where necessary.

## **Article 10 Overbooking**

**1.** An airline shall, in overbooking a flight, utilise intelligent market analysis tools to assist it analyse regular loading patterns which may eventually result in certain flights being oversold but shall take all necessary measures to limit negative effect on passengers including, but not limited to, offering passengers online boarding facilities.

**2.** When, upon utilising pre-boarding facilities an airline reasonably expects to deny boarding on a flight, it shall, where such can be established in excess of six hours before the flight, contact passengers by phone, SMS or email, where a passenger has offered to accept email in emergency communication, first call for volunteers to surrender their reservations in exchange for benefits under conditions to be agreed between the passenger concerned and the airline which shall not be lower than the compensation scheme applied in Article 19 to these Regulations. Airlines shall, in this regard, pay particular attention to passengers travelling furthest from the departing airport as a measure of preventing unnecessary hardship on consumers and may for this reason compile information on which part of the territory passengers are likely to travel from.

**3.** In the event of the airline having to deny boarding at check-in or during boarding on the day of the flight, the airline shall be permitted to make discrete requests for volunteers subject to requested volunteers being informed of their rights to compensation as applicable under these Regulations.

**4.** If an insufficient number of volunteers come forward, the airline may then deny boarding to passengers against their will subject to the following conditions:

**(a)** that the smallest practicable number of persons holding confirmed reserved space on that flight are denied boarding involuntarily;

**(b)** That passengers are compensated in accordance with its compensation scheme which shall not be lower than the compensation scheme applied in Article 19 hereof.

## **Article 11 Delay**

When an airline reasonably expects a flight to be delayed beyond its scheduled time of departure:

**(a)** between two and four hours the airline shall:

- i.** i. inform the passengers every 45 minutes of the earliest time they will be expecting to depart, the specific reasons for the delay and, where the flight is supposed to last for less than 3 hours, informed of their right to reschedule their flight without incurring any penalties and travel within an agreed period on the same route on a flight operated by the same airline;
- ii.** provide refreshments including water, soft drinks, confectioneries or snacks;
- iii.** provide two international telephone calls, SMS or e-mails; and
- iv.** Cause an announcement to be made at their airport of arrival of the new estimated time of arrival.

**(b)** for four hours or more, the airline shall:

- i.** i. inform the passengers every 45 minutes of the earliest time they will be expecting to depart, the specific reasons for the delay and, where the flight is supposed to last for less than 2 hours, informed of their right to reschedule the flight without incurring any penalties and travel within an agreed period on the same route on a flight operated by the same airline;
- ii.** provide refreshments including water, soft drinks, confectioneries or snacks;
- iii.** provide a meal;
- iv.** provide hotel accommodation;
- v.** provide two international telephone calls, SMS or e-mails;
- vi.** supply transport between the airport and place of accommodation (hotel or other accommodation); and
- vii.** Cause an announcement to be made at their airport of arrival of the new estimated time of arrival.

**(c)** when the reasonably expected time of departure is at least six hours after the time of departure previously announced, the airline shall:

- i.** inform the passengers of their right to immediate reimbursement of the full cost of the ticket at the price at which it was bought, for the part or parts of the journey not made if the flight is no longer serving any purpose in relation to the passenger's original travel plan, together with, when relevant, a return flight to the first point of departure, at the earliest opportunity;
- ii.** re-route the consumer, under comparable transport conditions, to their final destination at the earliest opportunity; or

**iii.** re-route the consumer, under comparable transport conditions, to their final destination at a later date at the passenger's convenience, subject to availability of seats.

**(d)** In applying this provision, the following additional terms shall apply when arrangements are made under paragraphs a – c above:

**i.** In instances where a passenger opts to reschedule a flight under sub-paragraphs a (i) or b (i) of this provision, the airline shall assure itself of the availability of seats on the flight the passenger is requesting;

**ii.** When an airline offers a passenger a flight to an airport alternative to that for which the booking was made, the operating air carrier shall bear the cost of transferring the passenger from that alternative airport either to that for which the booking was made, or to another close-by destination agreed with the passenger;

**iii.** The airline shall, at all materials times, prioritize the needs of persons with reduced mobility and any persons accompanying them, as well as to the needs of unaccompanied minors.

## **Article 12 Cancellation of Flight**

**1.** In case of cancellation of a flight,

**(a)** Where the decision to cancel the flight is taken less than 24 hours before the scheduled departure of the flight in question and the passengers at the airport, or where the passenger on a connecting flight may have begun the earlier part of his/her flight before the decision to cancel the flight and may only know of the cancellation on arrival at the airport, the airline shall:

Inform the passengers of the specific reasons for the cancellation and inform them of their rights under this provision including but not limited to:

**i.** Right to cancel their booking in accordance;

**ii.** Right to be re-routed or offered an alternative means of transport, where convenient to the passenger in question; and

**iii.** Right to compensation;

**iv.** Offer refreshments including water, soft drinks, confectioneries or snacks;

**v.** Right to two international telephone calls, SMS or e-mails.

**(b)** Where the decision to cancel is taken at least 24 hours before the flight the airline shall immediately contact passengers affected by the decision, offer

them the option not to travel to the airport if they have not already set off and advise them of their rights under this provision including but not limited to:

- i. Right to cancel their booking;
- ii. Right to be re-routed or offered an alternative means of transport, where convenient to the passenger in question; and
- iii. Right to compensation.

**2.** When passengers are informed of the cancellation, an explanation shall be given concerning possible alternative transport which may include but not be limited to travel on the same airline but on a different date or time whether or not from the same airport, travel on another airline from the same airport on a different date or time whether or not from the same airport, travel on another mode of transport, where reasonable and convenient to the passenger.

**3.** Passengers shall have the right to compensation by the airline for a cancelled flight unless:

**(a)** they are informed of the cancellation between two weeks and seven days before the scheduled time of departure and are offered re-routing, allowing them to depart no more than two hours before the scheduled time of departure and to reach their final destination less than four hours after the scheduled time of arrival; or

**(b)** they are informed of the cancellation less than seven days before the scheduled time of departure and are offered re-routing, allowing them to depart no more than one hour before the scheduled time of departure and to reach their final destination less than two hours after the scheduled time of arrival.

**4.** An airline shall not be obliged to pay compensation in accordance with Article 21, if it can prove that the cancellation is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.

**5.** The burden of proof concerning the questions as to whether and when the passenger was informed of the cancellation of the flight or of the alleged extraordinary circumstances shall rest with the airline.

### **Article 13 Downgrading**

**1.** If an airline places a passenger in a class lower than that for which the ticket was purchased, including but not limited to operating a free seating policy, it shall within seven days reimburse:

- (a)** 25% of the price of the ticket for all flights of 3 hours duration or less; or



**(b)** 50% of the price of the ticket for all flights of more than 3 or more hours duration.

**2.** If an airline places a passenger in a class higher than that for which the ticket was purchased, it shall not be entitled to any supplementary payment.

#### **Article 14**

#### **Travel Agents and Package Tour Operators**

Subject to the provisions of this Regulations, where applicable the travel agent and or tour operator, in a contract that involves air travel provided by an airline as well as other services including but not limited to accommodation and other tourist services, shall:

**(a)** provide the consumer, in writing or any other appropriate form, before the contract is concluded, with general information on passport and visa requirements applicable to nationals of the State Party concerned and in particular on the periods for obtaining them, as well as with information on the health formalities required for the journey and the stay;

**(b)** provide the consumer, in writing or any other appropriate form, with the following information in good time before the start of the journey:

**i.** the times and places of intermediate stops and transport connections as well as details of the place to be occupied by the consumer;

**ii.** the name, address and telephone number of the organizer's and/or its local representative or, failing that, of local agencies on whose assistance a consumer in difficulty could call;

**iii.** Where no such representatives or agencies exist, the consumer must in any case be provided with an emergency telephone number or any other information that will enable him to contact the agent or the airline, as the case may be;

**iv.** in the case of journeys or stays abroad by minors, information enabling direct contact to be established with the child or guardian at the child's place of stay;

**v.** Information on the optional conclusion of an insurance policy to cover the cost of cancellation by the consumer or the cost of assistance, including repatriation, in the event of accident or illness;

**vi.** Where the consumer is prevented from proceeding with the package, he may transfer his booking, having first given the organizer or the retailer reasonable notice of his intention before departure, to a person who satisfies all the conditions applicable to the package. The transferor of the package and the transferee shall be jointly and severally liable to the organizer or retailer party to the contract for payment of the balance due and for any additional costs arising from such transfer.

## **Article 15**

### **Airport Operators**

- (a)** An airport operator shall provide the following for passengers and all other persons within the airport premises: visible notices on passengers rights;
- (b)** Decent and healthy toilet facilities;
- (c)** reasonable seating space before check-in, after security and passport checks and while waiting for arriving or departing aircraft; and
- (d)** Reasonably clean and safe environment.

## **Article 16**

### **Right to reimbursement**

- 1.** When reference is made in these Regulations to the right of the passenger to reimbursement, reimbursement shall be made within thirty (30) days for the full cost of the ticket at the price at which it was bought for:
  - (a)** the part or parts of the journey not made; and
  - (b)** the part or parts already made if the flight is no longer serving any purpose in relation to the passenger's original travel plan, together with, when relevant, a return flight to the first point of departure, at the earliest opportunity.
- 2.** The reimbursement shall be paid in the form in which the ticket or tour package was purchased.

## **Article 17**

### **Re-routing**

- 1.** Where an airline decides to re-route a passenger, the passenger shall be entitled to:
  - (a)** reimbursement within thirty (30) days of the full cost of the ticket at the price at which it was bought, for the part or parts of the journey not made, and for the part or parts already made if the flight is no longer serving any purpose in relation to the passenger's original travel plan, together with, when relevant;
  - (b)** a return flight to the first point of departure, at the earliest opportunity and accommodation.
- 2.** Either re-routing, under comparable transport conditions, to their final destination at the earliest opportunity and accommodated; or at a later date at the passenger's convenience, subject to availability of seats. where a town, city or region is served by several airports, and an airline offers a passenger a flight to an airport alternative to that for which the booking was made, the airline shall bear the cost of transferring the passenger from that alternative airport either to that for which the booking was made, or to another close-by destination agreed with the

passenger.

### **Article 18** **Right to compensation**

**1.** Where reference is made to this Regulation to the passenger's right to compensation, other than compensation pursuant to the Warsaw Convention or Montreal Convention as applicable in the State Party, passengers shall receive compensation amounting to:

**(a)** USD 250 for all flights with an estimated duration of 3 hours or less for the entire flight;

**(b)** USD 400 for all flights with an estimated duration between 3 hours and 6 hours for the entire flight;

**(c)** USD 600 for all flights with an estimated duration of more than 6 hours for the entire flight.

**2.** In determining the duration of the flight, the basis shall be the last destination at which the denial of boarding or cancellation will delay the passenger's arrival after the scheduled time and shall include all scheduled stop over, transit or any other scheduled break in the flight.

**3.** When passengers are offered re-routing to their final destination on an alternative flight pursuant to Article 22, the airline may reduce the compensation provided for in paragraph 1 by 50% if the arrival time does not exceed the scheduled arrival time of the flight originally booked:

**(a)** by two hours, in respect of all flights of 3 hour duration or less; or

**(b)** by three hours, in respect of flights lasting between 3 and 6 hours; or by four hours, in respect of all flights in excess of 6 hours;

**4.** The compensation shall be paid in the form in which the ticket or tour package was purchased.

### **Article 19** **Administrative Procedures**

**1.** Each Aeronautical Authority shall appoint a customer relations officer at each airport to whom complaints may equally be addressed.

**2.** The Executing Agency and the Regional Yamoussoukro Decision Authority shall establish consumer protection units and publish their details, including but not limited to their contact details and their procedures on their websites.

**3.** A complaint may be made to the Aeronautical Authority against a service provider, or failing a satisfactory resolution to the Regional Yamoussoukro Decision

Authority or the Executing Agency, in relation to the breach of these Regulations by filling and submitting a complaint form, after the consumer must have notified the service provider in question of such a breach and the complaint remains unresolved.

4. A complaint may be made in writing as in the prescribed form and transmitted to the Aeronautical Authority.
5. Every complaint shall be accompanied by:
  - (a) a copy of the airline ticket;
  - (b) a copy of the letter to the air service provider in question stating a claim for breach of the regulations or any evidence of the complaint;
  - (c) any response or responses or correspondence thereto;
  - (d) Any other relevant document(s).
6. Where a complaint has been made in a representative capacity, the representative shall provide the complainant's written authority to act on his or her behalf.

Complainants can present a class action before the Aeronautical Authority.

## **Article 20 Investigation**

1. The Executing Agency, the Regional Yamoussoukro Decision Authority or the Aeronautical Authority shall carry out an investigation on the substance of the complaint and the response of the service provider within a reasonable period of time after the receipt thereof.
2. In carrying out any assessment under these Regulations, a designated officer shall have all the powers of investigation under national law or under the provisions of the Regulations on Dispute Resolution under the Yamoussoukro Decision, and in addition may request for submissions to be made by any interested person(s) in relation to a complaint.
3. It shall be unlawful for any service provider, their employees or agent to obstruct or prevent the designated officers from carrying out investigations or withhold any information requested and relating to any violation of these Regulations.
4. The designated officer shall amongst other things:
  - (a) Notify the Respondent that a request has been lodged under these rules;
  - (b) Require the Respondent to respond to the complaint within 7 days;

- (c) Require the Respondent to describe the procedures taken to resolve the matter.

## **Article 21**

### **Determination of Complaints**

1. After each investigation an assessment report shall be produced with its recommendations therein.
2. Upon consideration of the assessment report, the nature of the conduct alleged against the Respondent, the extent of the claim by the complainant, public interest and other relevant factors, the Executing Agency, the Regional Yamoussoukro Decision Authority or the Aeronautical Authority shall make a determination in one of the following respects:
  - (a) the complaint lacks merit pursuant to which the complaint shall be deemed dismissed;
  - (b) The complaint is of such a nature as to advise the parties to resolve the dispute through mediation;
  - (c) The complaint is of such a nature as to be subjected to the administrative hearing procedure in accordance with applicable regulations of the relevant body conducting the investigations.
3. The Executing Agency, the Regional Yamoussoukro Decision Authority or the Aeronautical Authority shall give notice of its determination to the interested parties with fourteen (14) days.

## **Article 22**

### **Penalty**

1. Any service provider that violates any provision of these Regulations shall be liable to penalties imposed by the Executing Agency, the Regional Yamoussoukro Decision Authority or the Aeronautical Authority in accordance with applicable law.
2. The penalties imposed shall be dissuasive, proportionate to both the gravity of the case, and the economic capacity of the service provider concerned. The defaulter's compliance record shall also be taken into consideration.
3. The Executing Agency shall draft a schedule of penalties to be imposed for breach of provisions of this Regulation and submit for adoption by the appropriate Organs of the African Union.

**Article 23**  
**Review by the Executing Agency**

Within 2 years of entry into force of this Regulation, the Executing Agency shall report to the concerned Specialized Technical Committee of the African Union on the operation and the results of this Regulation. The report shall be accompanied where necessary by proposals to modify this regulations.

**Article 24**  
**Amendments**

4. Each State Party may propose amendments to this Regulation.
5. Any proposal for amendment to these Regulations shall be submitted to the Executing Agency in writing, which shall within thirty (30) days of its receipt communicate it to the State Parties.
6. Amendments to this Decision shall enter into force after the approval by the Heads of State and Government of the African Union.

**Article 25**  
**Entry into Force**

**This Regulation shall enter into force immediately following its adoption by the Assembly of Heads of State and Government.**

**[Adopted by the 30th Ordinary Session of the Assembly,  
28-29 January 2018, Addis Ababa - Ethiopia -  
Assembly/AU/Dec 676(XXX) - Decision on Legal Instruments]**





