

**MEMORANDUM OF UNDERSTANDING**

BETWEEN

**THE COMPETITION AUTHORITY OF KENYA**



AND

**KENYA CIVIL AVIATION AUTHORITY**



## MEMORANDUM OF UNDERSTANDING

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**THIS MEMORANDUM OF UNDERSTANDING (MOU)** is made on the .....<sup>6<sup>th</sup></sup> day of.....<sup>AUGUST</sup>.....Two Thousand and Eighteen between **The Competition Authority of Kenya ("CAK")**, a State Corporation established by Section 7 of the Competition Act No.12 of 2010 and whose address of service care of Post Office Box 36265-00200 Nairobi in the Republic of Kenya which expression shall, where the context so admits include its successors and assigns, on the one hand and **The Kenya Civil Aviation Authority ("KCAA")**, an Authority established by Section 4 of the Civil Aviation Act 2013 whose address of service care of Post Office Box 30163-00100 Nairobi in the said Republic on the other which expression shall, where the context so admits include its successors and assigns.

**WHEREAS** The CAK is responsible for promoting and safeguarding competition in the national economy in order to protect consumers from unfair and misleading market conduct.

**WHEREAS** Section 5 (3) of the Competition Act mandates CAK to; identify and establish procedures for management of areas of concurrent jurisdiction, provide for the exchange of information and protection of confidential information among others. Also, Section 9 (m) mandates CAK to liaise with regulatory bodies and other public bodies in all matters relating to competition and consumer welfare

**WHEREAS** KCAA is responsible for regulating the aviation industry in Kenya, providing air navigation services in the Kenya flight region and training.

**WHEREAS** KCAA is mandated among others, to plan, develop, manage, regulate and operate a safe, economically sustainable and efficient civil aviation system in Kenya, perform economic oversight of air services, protecting consumer rights, environment and ensuring fair trade practices in accordance with the provisions of the Civil Aviation Act, 2013.

**NOW THEREFORE** CAK and KCAA now come to an understanding on collaboration arrangements to address competition concerns in the Kenya aviation industry.

### **1.0 Purpose**

The purpose of this MOU is to outline an acceptable detailed framework for co-operation between the parties within their statutory mandates in order to properly manage concurrent jurisdictions so as to effectively address competition concerns and also exchange of information and consumer protection issues in the Kenyan aviation industry.

## **2.0 Status of the Parties**

- a) Neither party nor its personnel shall be considered as an official, agent, employee or representative of the other party. Neither party shall enter into any contract or commitment on behalf of the other party.
- b) Each party shall carry out its own responsibilities and obligations under this MOU in accordance with the laws and Regulations applicable to it and unless separately agreed in writing, bear its own costs in relation to implementation of this MOU.

## **3.0 Confidentiality and Exchange of Information**

- a) The Parties recognize the intrinsic value of the information they each hold and the potential efficiencies that can be gained from sharing the said information. The Parties therefore undertake to:
  - (i) Promote free access to and exchange of information in an efficient and expedient manner;
  - (ii) Use the information exchanged under this MOU solely for the purpose for which the relevant information was sought and or disclosed;
  - (iii) Keep strictly confidential all information and materials exchanged pursuant to this MOU. Neither party shall release any such information and or materials to third parties without prior express written consent of the other party except as may be required by law.

## **4.0 Delineation of roles**

Pursuant to Section 5 (3) and 9 (m) of the Competition Act, the parties shall consult on any complaints and or investigations on issues pertaining to CAK's mandate. The decision of a party to consult the other shall be discretionary and voluntary, and the consulting party shall thereafter make its independent decision irrespective of the outcome of the consultations pursuant to its respective statutory mandate. A party shall however, be at liberty to invite the other to participate in any of its investigations in an advisory capacity.

## **5.0 Manner of cooperation between the Parties**

Where a notification/application is made or complaint is lodged about a practice or a complaint is taken cognizance of through other means in respect of which the parties have concurrent jurisdiction, or where either party requires the other's expertise to facilitate an investigation and or determination of a matter:-

- (i) The Party that receives the notification/application complaint or takes cognizance of the concern through other means shall ensure that the other party is notified of the notification/application, complaint or breach warranting investigation;
- (ii) Where the recipient Party does not intend to investigate, it shall notify the other party of its intention.
- (iii) Where the recipient party expresses the intention to investigate the notification/application or complaint, the parties shall agree on who shall conduct the investigations and in case of disagreement on which Party to conduct the investigations, the provisions of Section 5 (2) & (3) of the Competition Act shall apply.
- (iv) The parties hereto undertake to expedite consultation in order to avoid delays in resolution of any complaints and or conclusion of investigations in which both parties have concurrent jurisdiction.
- (v) Where only CAK has jurisdiction to investigate a notification/application or complaint KCAA undertakes to facilitate the investigation by availing any information in its custody and vice versa.
- (vi) Both Parties endeavor to take into account and as much as possible be guided by international best practice in competition and consumer protection matters in handling matters under this MOU in order to ensure consistency in determination of cases.

## **6.0 ESTABLISHMENT OF A JOINT WORKING COMMITTEE**

The Parties shall establish a Joint Working Committee ("the Committee") within one (1) month of signing this MOU. The Committee will be comprised of three (3) representatives each of CAK and KCAA as nominated by the authorities respectively, pursuant to this MOU and shall function on an on-going basis.

The functions of the Committee shall include:

- (i) Management and facilitation of cooperation and consultation in respect of matters relating to competition in the aviation sector;
- (ii) Proposals, where necessary, for amendment or supplementation to this MOU; and
- (iii) Advising the management of CAK and KCAA on issues affecting competition in the aviation sector. Such advice shall include, but not be limited to, the following:

- a) Cooperation and collaboration in conducting joint market studies in the aviation sector;
- b) Mutual consultation on matters involving competition and consumer protection in the aviation sector, including drafting of new legislation and regulations;
- c) Amendments to the relevant or applicable statutes that may be necessary from time to time;
- d) International approaches to addressing issues of competition in the aviation sector;
- e) Providing updates and sharing information on recent developments in the sector;
- f) Exchange of staff between authorities; and,
- g) Conducting joint training and workshops in areas of concurrent jurisdiction or mutual benefit to interest.

## **7.0 Duration, amendment and termination**

This MOU may only be amended by mutual written agreement of the parties. Either party may only terminate the MOU upon issuance of a sixty day (60) notice in writing to the other party. The initiation of arbitration or any other dispute resolution mechanism pursuant to the provisions of this MOU shall not in itself be deemed as termination of this MOU or a ground for its termination. This MOU shall enter into force upon signature by both parties and shall remain in force unless terminated.

## **8.0 Costs**

Both parties shall, unless otherwise agreed, bear their respective costs with regard to implementation and administration of this MOU.

## **9.0 Coordination and Management**

- a) The KCAA designated representatives for the coordination and management of the implementation issues of this MOU are:

**Name: Capt. Gilbert M. Kibe**  
**Designation: Director General**  
**P.O Box 30163-00100**  
**Nairobi**

- b) The CAK designated representatives for the coordination and management of the implementation issues of this MOU are:

**Name: Mr. Wang'ombe Kariuki, MBS**  
**Designation: Director General**  
**P.O Box 36265-00200**  
**Nairobi**

- c) Any party may from time to time, by written notice to the other party designate a different person to whom the correspondence, notices or communications must be addressed. Such change shall take effect only after fourteen (14) calendar days from the date of the receipt of the written notice from the other party.

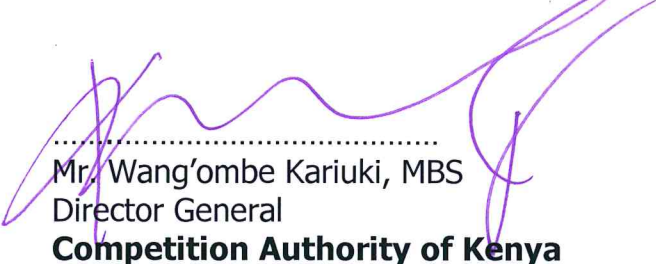
**10.0 Settlement of Disputes**

Both parties shall adhere to the above procedures and shall continuously engage in consultations, exchange of information and review of processes of the mechanisms in order to avoid disputes. Parties undertake to use their best efforts to settle any disputes, controversy or claims arising out of this MOU or the breach, termination or invalidity thereof. In the event that amicable settlement of the dispute, controversy or claim fails the respective parties to this MOU shall constitute a joint panel to resolve the dispute failure to which the matter should be referred to an arbitration panel comprising three members, one appointed by each of the parties who shall then appoint the Chairman of the panel.

**IN WITNESS WHEREOF**, the duly authorized representatives of the parties affix their signatures below.

**For: The Competition Authority of Kenya**

**For: Kenya Civil Aviation Authority**

  
.....  
Mr. Wang'ombe Kariuki, MBS  
Director General  
**Competition Authority of Kenya**

  
.....  
Capt. Gilbert M. Kibe  
Director General  
**Kenya Civil Aviation Authority**

**Witnessed by:**

**Witnessed by:**

  
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**Competition Authority of Kenya**

  
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**Kenya Civil Aviation Authority**  
Cyril S. Wayong'o  
Manager, Legal Services  
Kenya Civil Aviation Authority  
Aviation House  
P.O. Box 30163 - 01000  
Nairobi