MEETING OF AIR TRANSPORT EXPERTS ON THE REGULATORY TEXTS FOR THE YAMOUSSOUKRO DECISION OF 1999 ON LIBERALISATION OF AIR TRANSPORT MARKETS IN AFRICA
ADDIS ABABA, 18-19 JUNE 2014

DRAFT COMPETITION RULES, DISPUTE SETTLEMENT MECHANISM AND CONSUMER PROTECTION REGULATIONS
**LIST OF ABBREVIATIONS**

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>AFCAC</td>
<td>African Civil Aviation Commission</td>
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<tr>
<td>AFRAA</td>
<td>African Airlines Association</td>
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<td>ANSP</td>
<td>Air Navigation Service Providers</td>
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<td>AU</td>
<td>African Union</td>
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<td>AUC</td>
<td>African Union Commission</td>
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<td>BASAs</td>
<td>Bilateral Air Service Agreements</td>
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<tr>
<td>BSc</td>
<td>Bachelor of Science</td>
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<td>CA</td>
<td>Contracting Authority</td>
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<td>CAA</td>
<td>Civil Aviation Authority</td>
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<td>CIS</td>
<td>AFI Cooperative Inspection Scheme</td>
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<tr>
<td>CEN-SAD</td>
<td>Community of Sahel-Saharan States</td>
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<tr>
<td>COMESA</td>
<td>Common Market for Eastern and Southern Africa</td>
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<td>DG</td>
<td>Directorate General</td>
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<td>EA</td>
<td>Executing Agency</td>
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<td>EAC</td>
<td>East-African Community</td>
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<td>EC</td>
<td>European Commission</td>
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<td>ECA</td>
<td>The United Nations Economic Commission for Africa</td>
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<td>ECCAS</td>
<td>Economic Community of Central African States</td>
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<td>EUD</td>
<td>European Union Delegation</td>
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<td>ECOWAS</td>
<td>Economic Community of West African States</td>
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<td>EU</td>
<td>European Union</td>
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<td>FR</td>
<td>Final Report</td>
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<td>GACA</td>
<td>General Authority of Civil Aviation</td>
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<td>GDP</td>
<td>Gross Domestic Product</td>
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<td>IATA</td>
<td>International Air Transport Association</td>
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<td>ICAO</td>
<td>International Civil Aviation Organization</td>
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<td>ICT</td>
<td>Information and Communications Technology</td>
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<td>IGAD</td>
<td>Intergovernmental Authority on Development</td>
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<td>IMF</td>
<td>International Monetary Fund</td>
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<td>IR</td>
<td>Inception Report</td>
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<td>MoT</td>
<td>Ministry of Transport</td>
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<td>NEPAD</td>
<td>New Partnership for Africa's Development</td>
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<td>PR</td>
<td>Progress Report</td>
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<td>RECs</td>
<td>Regional Economic Communities</td>
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<td>RSOO</td>
<td>Regional Safety Oversight Organization</td>
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<td>RYA</td>
<td>Regional YD Authority</td>
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<td>SAA</td>
<td>South African Airways</td>
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<td>SADC</td>
<td>Southern Africa Development Community</td>
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<td>SC</td>
<td>Steering Committee</td>
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<td>TA</td>
<td>Technical Assistance</td>
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<td>TL</td>
<td>Team Leader</td>
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<td>ToR</td>
<td>Terms of Reference</td>
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<td>UEMOA</td>
<td>Union Monétaire et Economique Ouest Africaine (West African Economic and Monetary Union)</td>
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<td>UMA</td>
<td>Arab Maghreb Union</td>
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<td>YD</td>
<td>Yamoussoukro Decision</td>
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1 Executive Summary

1. This document is the report of a four-part study commissioned as part of a continental study on Support to the Operationalisation of the Executing Agency of the Yamoussoukro Decision.

2. The expected output is the draft of various pieces of legislation all aimed at empowering the Executing Agency to undertake its duties assigned in Article 9 of the Yamoussoukro Decision, 1999.

3. The main findings of this analysis are that there is need to define a detailed framework establishing the powers and functions of the Executing Agency. The need arises from the fact that though AFCAC has assumed the responsibility and has global powers in its revised Constitution, there is need for a more enhanced regulatory framework.

4. An instrument is provided in Appendix 2 to this Report, namely Draft Regulation on the Powers, Functions and Operations of the Executing Agency of the Yamoussoukro Decision.

5. The definition of the later raised an issue that needs to be dealt with. The issue was how the Executing Agency was going to issue decisions. This was dealt with in the form of a draft legal instrument outlining consultation and rule-making procedures. The draft Regulation on Procedure to be Applied by the Executing Agency for the Issuing of Opinions, Recommendations, Decisions and Guidance Material (“Rulemaking Procedure”) is attached to this instrument as Appendix 3.

6. Key tasks in this study were to outline a dispute settlement mechanism and review an already existing draft. Based on our analysis of the powers of the Executing Agency, this study concluded that arbitration is not the only means and indeed may at times not even be effective to settle disputes arising from the implementation of the YD.

7. Consequently an additional set of dispute settlement mechanism was introduced, namely recourse to a Board of Appeals, national courts and regional and continental courts and tribunals. This structure is combined with the AU instrument on dispute mechanism in the Draft Regulation on Dispute Settlement Mechanisms Relating To the Implementation of the Yamoussoukro Decision. This draft instrument is attached to this study as Appendix 3. Various provisions in the different sets of legislation drafted point to appropriate sections of this dispute settlement regulation as a measure of resolving issues.

8. Another part of the study was to harmonise existing drafts on competition law and propose practical implementation guidelines. This is achieved in two sets of instruments - Draft Regulations on Competition in Air Transport within Africa and Guidelines and Procedures for The Implementation of The Regulations on Competition in Air Transport Services within Africa. The two instruments are attached to this report as Appendixes 4 and 5.

9. Finally, the matter of consumer protection analysed in the report is also dealt with as a draft instrument attached as Appendix 6 - Regulation on Protection of Consumers and liability of service providers in passenger air transport services.

10. A component of this study that was added in the course of the study, namely the relationship between the Executing Agency and African organisations such as NPCA and the African Development Bank, is studied in the report. This also translates in alternative provisions proposed in the draft Regulation on the Powers and Functions of the Executing Agency.

11. While issues of coordination of the contract made it impossible to organise, it is important that the AFCAC Legal Committee be constituted to review the proposed draft instruments in some detail.

12. Naturally, the set of instruments proposed are going to dictate how the Executing Agency functions. The functions identified require dedicated staff with legal and air transport expertise to implement them. Unfortunately, AFCAC as it now is constituted does not have the manpower required. It is imperative that the human resource be created to enable the
1.1 Draft Regulations on Competition in Air Transport Services within Africa

DRAFT ANNEX 5 TO THE YAMOUSSOUKRO DECISION:
Draft Regulations on Competition in Air Transport Services within Africa

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PREAMBLE

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

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

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

WHEREAS the African Union Commission’s Statutes were adopted by the African Union Conference in Durban (South Africa) on 10th July 2002;


WHEREAS the Convention on International Civil Aviation (ICAO), signed in Chicago (United States of America) on 7th December 1944 and its annexes as well as the legal instruments of the international air law are applicable to State Parties;

WHEREAS further the Resolution on the follow-up of the implementation of the Yamoussoukro Decision of 1999, was adopted by the Ministers responsible for air transport of Member States of the African Union, in Sun City (South Africa) on 19th May 2005;

WHEREAS further the resolution on air safety in Africa, was adopted by the Ministers responsible for air transport of Member States of the African Union, in Libreville (Gabon) on 19th May 2006;

MINDFUL OF the necessity to speed-up the full implementation of the Yamoussoukro Decision, for the purpose of giving a boost to the African airlines’ operations and facing up to the challenges of the globalization of international air transport;

DESIROUS OF ensuring fair opportunity on a non-discriminatory basis for the designated African airlines, to effectively compete in providing air transport services within their respective territories.
HEREBY MAKE THE FOLLOWING REGULATIONS:

CHAPTER ONE
PURPOSE, DEFINITIONS, OBJECTIVES AND THE SCOPE OF APPLICATION

Article 1: Citation
These Regulations shall be cited as “Regulations on Competition in Air Transport Services within Africa.”

Article 2: Definitions
In these Regulations, unless the context otherwise requires:


“African Air Transport Executing Agency”: the Executing Agency provided for in the Article 9 of the Yamoussoukro Decision.

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

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

“Capacity”: 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 anybody established in each State Party charged with regulating competition in the air transport sector, or in absence of such an institution, the Civil Aviation Authority.

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

"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 YD 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 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 the Yamoussoukro Decision and these Regulations.

"Scheduled and non-scheduled air services": 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": an association of airlines with the aim of promoting co-operation activities of its members.
Article 3: Object and Scope of Application

1. The purpose of these Regulations is to promote and guarantee free and fair competition in air transport services within Africa in order to develop the air transport industry and to contribute to the welfare of the citizens of the State Parties.

2. This Decision shall apply to scheduled and non-scheduled air transport services within the State Parties, 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 TWO

PROHIBITED PRACTICES, AGREEMENTS AND DECISIONS

Article 4: Anti-competitive 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 associations of airlines and any concerted practice which negatively affect the liberalization of air transport services within the continent of Africa and which has as its object or effect the prevention, restriction or distortion of competition within the continent of Africa, 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;

   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.

   (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 cause 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**

Any abuse by one or more airlines of a dominant position within State Parties 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;
   iii. the introduction by an airline on a 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;
   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;
   iv. payment for services; or
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 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 guidelines and implementing rules indicating circumstances 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 have been deemed illegal or prohibited under Article 4 hereof.

2) The Executing Agency may, on application by an airline of a State Party, approve measures designed to remedy any adverse effects the State 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 all relevant regional competition authorities and the Executing agency.

4) Notwithstanding paragraph 1 of this Article, in the event of negative economy 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 Agency.

5) These safeguard measures shall remain in force for a maximum period of one 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(3) hereof distorts, threatens to distort or has the effect of distorting competition.
7) The regional competition authority and/or the Executing Agency shall recommend 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 Article 7 of the [Draft Regulation 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(5) 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 THREE
ENFORCEMENT, INVESTIGATION, NEGOTIATION, ARBITRATION AND JUDICIAL REVIEW

Article 9: The Executing Agency and regional competition authorities
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 Member States in terms of Article 6;

f) reporting to CAMT on any matter relating to the application of these Regulations; and

g) performing any other function assigned to it under these Regulations.

Article 10
Complaints

1. Any State Party, undertaking, regional competition authority or any interested party may lodge a complaint with the Joint Competition Authority against an undertaking concerning an alleged breach of these Regulations by that undertaking.

2. The Executing Agency may, on its own motion, initiate an investigation into a suspected breach of these Regulations by an undertaking.
3. The Executing Agency shall within 30 days of receipt of a complaint made under paragraph 1, forward a copy of such complaint to the competent authorities of the Member States.

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

**Article 11: Investigation and Procedural Fairness**

1. In the execution of its duties under these Regulations, the Executing Agency, the relevant regional competition authority, or the competent authorities of State Parties as required by the relevant competition authorities may undertake all necessary investigations into undertakings and associations of undertakings.

2. The Executing Agency shall within a reasonable time, prior to the envisaged investigation inform the competent authorities of the State Parties of the proposed investigation and the identity of the authorised officials. The competent authorities of the Member States shall assist the officials of the Executing Agency if so requested.

3. In the execution of its duties, the Executing Agency shall act with due regard for the rules of natural justice.

**Article 12**

**Hearing of the Parties Concerned**

Before taking any decision under these Regulations affecting undertakings or associations of undertakings, the Executing Agency shall give the undertakings or associations of undertakings concerned the opportunity of being heard. 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 undertaking or association of undertakings concerned to bring such an infringement to an end.

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 authorities of the Member States in whose territory the head office of the undertaking or association of 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 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. The Executing Agency shall execute its powers and procedures in collaboration with the regional competition authorities and competent authorities of the Member States.

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 Member States and from an undertaking or association of undertakings.

3. A copy of the request to an undertaking or association of undertakings shall also be sent to the competent authorities of the Member States in whose territory the head office of the undertaking or association of 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 non-supply of information within a fixed time limit.

**Article 16**

Penalties

1. The Executing Agency may decide, depending on the gravity and the duration of the infringement, to impose penalties on an undertaking or association of undertakings where they intentionally or negligently:

   (a) infringe any provision of these Regulations; or
   (b) supply incorrect or misleading information in connection with an application; or
   (c) supply incorrect information in response to a request made, or do not supply information within the time limit fixed by a decision.

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 have recourse to Part One of the Dispute Settlement Regulation.

**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 Part Two of the Dispute Resolution Regulation

Article 19
Professional secrecy

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 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 professional secrecy and which has been acquired by them as a result of the application of these Regulations.

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 undertakings in the protection of their business secrets.

Article 21
Implementation provisions

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

a) guidelines on subsidies in terms of Article 7;

b) rules of procedure on exemptions granted in terms of Article 8;

c) the standard form, content and other details pertaining to:
   (i) applications submitted in terms of Article 8; and
   (ii) complaints submitted in terms of Article 10 and outcomes of complaints in terms of Article 13;

d) the rules on hearings provided for in Article 12;

e) penalties imposed in terms of Articles 16; 

f) guidelines and rules of procedure for the implementation of these Regulations; and

g) guidelines dealing with frivolous complaints.

Article 22
Amendments
1. Each State Party may propose amendments to this Decision.

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 Decision shall enter into force after their approval by the Conference of Heads of State and Government of the African Union.

**Article 23**

**Entry into Force**

This Regulation shall enter into immediately force following its endorsement by Assembly of Heads of State and Government.
1.2 Appendix 3: Guidelines and Procedures for The Implementation Of The Regulations on Competition in Air Transport Services within Africa

DRAFT ANNEX 6 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 (hereinafter cited as the Competition Regulations) 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:

**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; 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 interlineable 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 interlineable 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
(a) 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
(b) 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.

In addition:

d) 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 authorities of the State Parties 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 Member States 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

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 Joint Competition Authority 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 Joint Competition Authority, 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 Joint Competition Authority 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 Joint Competition Authority 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

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 authorities of Member States 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):
DRAFT ANNEX 7 TO THE YAMMOUSSOUKRO DECISION:
Draft Regulation on Protection of Consumers

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Regulation on Protection of Consumers

Preamble

WE, African Ministers of Transport, meeting in Malabo, Republic of Equatorial Guinea, from 7 to 11 April 2014, on the occasion of the First Meeting of the Sub Committee of the Specialised Technical Committee on Transport, Intercontinental and Interregional Infrastructure, Energy and on the theme: Speeding-up transport programme delivery for facilitating Africa’s economic growth;

Considering Article 9.6 of the Council Decision Relating to the Implementation of the Yamoussoukro Declaration Concerning the Liberalisation of Access to Air Transport Markets in Africa (the Yamoussoukro Decision) adopted by Council on (date) under CM/2178 (LXX11) as endorsed by the Assembly of Heads of State and Government of the under AHG/OAU/AEC/Dec.1(IV) and which entered into force on 12 August 2000;

Recalling that the African Ministers Responsible for Air Transport, meeting in Sun City, South Africa, from 18 to 19 May 2005 expressing serious concerns about the inordinate delay in the implementation of the Decision, and taking note of progress some states have made in that regard, called for measures that will ensure effective implementation including the establishment of the African Air Transport Executing Agency (Executing Agency) provided for in the Yamoussoukro Decision under the auspices of the African Union;

Observing that there is a need to strike a balance between, on the one hand, 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 customers on the African continent;

HAVE ADOPTED THIS REGULATION:

Article 1 – Citation

These Regulations shall be cited as “Regulation on Protection of Consumers, provision of an African Air Transport Fund and liability of service providers in passenger air transport services”.

Article 2 – Definitions

For the purposes of this Regulation, the following expressions shall mean

‘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

‘Airlines’, unless the context otherwise requires include eligible airlines, non-eligible African Airlines, and non African airlines as defined in these Regulation

‘Consumer’ means the person who takes or agrees to take the package ('the principal contractor'), or any person on whose behalf the principal contractor agrees to purchase the package ('the other beneficiaries') or any person to whom the principal contractor or any of the other beneficiaries transfers the package ('the transferee');

‘Consumer Protection Agency’ means the institution or organisation authorised by this Regulation to regulate consumer protection under the Yamoussoukro Decision, by the regional economic communities or by state parties

‘Eligible airline’ mean any airline licensed duly licensed by a State Party and Certificated as an eligible airline to operate under the terms of the Yamoussoukro Decision and actually operating the flight in question under these regulations.

‘Ground handling’ means the services provided to airlines at airports and comprise the following sub-categories:

Passenger handling comprises any kind of information and assistance including those provided to arriving, departing, transfer or transit passengers, including checking tickets and travel documents, registering baggage and carrying it to the sorting area.

Baggage handling comprises handling baggage in the sorting area, sorting it, preparing it for departure, loading it on to and unloading it from the devices designed to move it from the aircraft to the sorting area and vice versa, as well as transporting baggage from the sorting area to the reclaim area.

Freight handling comprises physical handling of export, transfer and import freight, handling of related documents, customs procedures and implementation of any security procedure agreed between the parties or required by the circumstances;

Mail handling includes physical handling of incoming and outgoing mail, handling of related documents and implementation of any security procedure agreed between the parties or required by the circumstances.

Ramp handling comprises marshalling the aircraft on the ground at arrival and departure; assistance to aircraft packing and provision of suitable devices; communication between the aircraft and the air-side supplier of services; the loading and unloading of the aircraft, including the provision and operation of suitable means, as well as the transport of crew and passengers between the aircraft and the terminal, and baggage transport between the aircraft and the terminal; the provision and operation of appropriate units for engine starting; the moving of the aircraft at arrival and departure, as well as the provision and operation of suitable devices and the transport, loading on to and unloading from the aircraft of food and beverages.

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.

Fuel and oil handling comprises the organization and execution of fuelling and refuelling operations, including the storage of fuel, also if adjacent to the airport, and the control of the quality and quantity of fuel deliveries; the replenishing of oil and other fluids.
Aircraft maintenance comprises routine services performed before flight; non-routine services requested by the airline; the provision and administration of spare parts and suitable equipment; the request for or reservation of a suitable parking and/or hangar space.

**Flight operations and crew administration** comprise the preparation of the flight at the departure airport or at any other point; in-flight assistance, including re-dispatching if needed; post-flight activities; crew administration.

**Surface transport** comprises the organization and execution of crew, passenger, baggage, freight and mail transport between different terminals of the same airport, but excluding the same transport between the aircraft and any other point within the perimeter of the same airport and any special transport requested by the airline.

‘licence’ means a valid licence granted by the Civil Aviation Authority or its equivalent under valid Regulations of States Parties to an airline, a travel agent, a tour operator

‘Non-eligible African airline’ means any airline duly licensed by a State Party and authorised to operate international routes but has not been certificated as an eligible airline to operate under the terms of the Yamoussoukro Decision and actually operating the flight in question under these regulations.

‘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 under these regulations.

‘State Party’ shall include 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 the Yamoussoukro Decision

**Article 3 – 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 the passengers originating from or destined for the territory of a State Party and lays down responsibilities of airlines and other service providers

(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 or other commercial programme by an airline or tour operator.

**Article 4 – Objectives and principles**

The objective of these Regulations is to protect the consumer of air transport services provided in the territories of state parties of the Yamoussoukro Decision from suffering unfair treatment in the provision of services and lack of or inadequate information on services provided leading to a poor treatment.

**PART ONE**

**CONSUMER LOSSES**

**Article 5 – Interruption of services**
(1) No airline, travel agency, consolidator, packaged tour operator, shall accept payment to lift passengers, mail and cargo from the territory of any state party into another state party or the territory of a state not party to the Abuja Treaty unless it has insurance coverage to fulfil the contract with consumers in case of interruption of services.

(2) The Executing Agency shall establish a framework for mitigating losses incurred by consumers resulting from the interruption of services by airlines, travel agents, consolidators and packaged tour suppliers.

(3) An airline, travel agent, package tour operator, consolidator or any other individual or organisation may not be permitted to accept payment for any service for air transportation, tour or tour component from a consumer, unless it has a valid insurance as required by Article 6.7 of the Yamoussoukro Decision.

(4)

PART TWO

PROHIBITIONS

Article 6 – Prohibitions: Unfair and deceptive practices

(1) On the initiative of the Executing Agency, a Regional YD Authority, a State Party (hereafter, Consumer Protection Agency), or the complaint of a consumer, an association or associations of consumers, an eligible airline, a non-eligible African airline, a non-African airline, or a air ticket agent, and if the Executing Agency, the Regional YD Authority or the State Party considers it is in the public interest, it may investigate and decide whether an eligible airline, a non-eligible African airline, a non African airline or ticket agent has been or is engaged in an unfair or deceptive practice in air transportation or the sale of air transportation.

If the Consumer Protection Agency in question, after notice and an opportunity for a hearing, finds that an airline or ticket agent is engaged in an unfair or deceptive practice, it shall order that eligible airline or ticket agent to stop the practice or method.

In enforcing this Article against an eligible airline, the Consumer Protection Agency may opt to apply Article 4 (1) of the [draft Competition Regulations].

(2) Subject to the power of the Consumer Protection Agency to review, the following are inherently unfair practices and in breach of paragraph 1 of this provision:

a) Misleading Advertising

   i. It shall be considered a misleading advertisement; an unfair marketing and deceptive practice for any seller of scheduled air transportation within, to or from any country in Africa, or of a tour (i.e., a combination of air transportation and ground or cruise accommodations), or tour component (e.g., a hotel stay) 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 taxes, commissions, brokerage fees, administrative charges, or any other fees) from passengers not expressly advertised, displayed in the marketing material or expressly communicated to the consumer at the initial inquiry displayed.

b) Disclosure Requirement for Sellers of Tickets for Flights
Where an eligible airline, a non-eligible African airline, a non-African airline, or a air ticket agent fails to disclose, whether verbally in oral communication or in writing in written or electronic communication, prior to the purchase of a ticket

i. (A) the name of the air carrier providing the air transportation; and

ii. (B) 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) Internet offers
In the case of an offer to sell tickets described in subsection (i) on an Internet Web site, disclosure of the information required by paragraph (1) shall be provided on the first display of the Web site following a search of a requested itinerary in a format that is easily visible to a viewer.

d) 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.

e) 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.

f) The Consumer Protection Agency shall monitor the terms, conditions and extent of compliance by airlines of their obligations under the Warsaw Convention applicable in any State Party. Where it is observed that any practice, 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, 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. Such practices shall be considered as unfair and deceptive practice.

g) Failure by an eligible airline to obtain and, at all material times, maintain the required insurance cover shall be adjudged unfair practice and deceptive practice. The Consumer Protection Agency may demand that details of the insurance schedule and any amendments thereto be filed with it.

h) A chronically delayed flight shall be considered as unfair and defective practice. Flights shall be considered chronically delayed flight as a flight by an airline, that is operated at
least [X] (30) times in a calendar quarter and arrives more than 15 minutes late, or is cancelled, more than [xx] 70 percent of the time during that quarter.

**Article 7 - Obligations of Service Providers**

This section lays down general and specific obligations of service providers providing services directly to the passenger and includes airlines, tour operators, consolidator, travel agents, airport operators, Air Navigation Services Providers, Caterers and ground handling agencies whether operating as agents of one provider or not.

**PART THREE**

**OBLIGATIONS ON SERVICE PROVIDERS**

**General Obligations**

**Article 8 - Maintaining adequate third party insurance cover**

(1) Each 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 passengers visiting the premises.

(2) Where demanded by public officials inspecting the airline under Article 19 of the Executive Council Regulation on the Powers and Functions of the Executing Agency, the 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.

(3) The Executive Council may, on a proposal from the Executing Agency approved by the Council of Ministers for Air Transport in Africa adopt rules on insurance designed to benefit the end-consumer.

**Article 9 – 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, physical stature, shall be prohibited.

(2) The Executive Council may, on a proposal from the Executing Agency and adoption by the Conference (Committee) of Ministers of Transport of the Subcommittee of Ministers responsible for civil aviation and after consulting the African Parliament adopt rules designed to prohibit such discrimination.

**Article 10 - Telephone and Email contact**

(1) Airlines, tour operators, consolidators and agents shall be obliged at all material times to obtain and hold a telephone number 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 emergencies.
Subject to the data protection rules applicable in the territories of state parties, the contact details, including telephone number, fax or email address obtained shall only be used to contact the passenger 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.

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 at what times the office will be open. Where such information is available on the website of the airline, it shall suffice that a reference is made either on the ticket, or the website, at the airport check-in desk, on board each flight, at the destination airport or in a leaflet made available to each passenger. In applying this provision the airline shall pay particular attention to the language barriers in the territories of the state parties, and any difficulty any particular passenger may have in reading in any particular language.

Service providers concerned shall ensure that they utilise the preferred mode of contact of each passenger in cases involving anticipated cancellations, overbooking, delays, save that where the notice is in less than [12] hours of the departure of the flight in question, unless the passenger has confirmed that he is able to retrieve his emails on a mobile device, such notice shall be communicated by phone or SMS.

The burden of proof as to whether the preferred details of a passenger was obtained and when it was used to contact the passenger or alternatively whether alternative means of communication has been furnished and under what circumstances shall rest with the service provider in question.

Article 11 - Information to the consumer

The travel agent, airline, tour operator, and the ground handling agent shall be obliged at the time of purchase of the ticket and at check-in by the passenger shall be obliged to inform the passenger in a language understood by the passenger of his rights in the following situations:

a. to be informed in his own language of his obligation to supply a means of communication for emergencies;

b. to be informed at least 12 hours before the flight of any planned cancellations or long term delays anticipated;

c. to be informed of the airline’s obligations in case of denied boarding, free seating, flight cancellation, delayed flight in particular in relation to alternative solutions and compensation;

d. to request for documents, policies procedures on insurance, compensation, assistance, complaints procedures in line with these Regulations;

e. as an illiterate and/or visually impaired, and/or physically challenged to appropriate alternative means of communication;

f. Any other information the consumer protection agency may demand to be displayed to the passenger under the terms of this provision.

Airlines, travel agents, tour operators, airports, cargo handling agents, shall visibly display information at their premises, on their websites, marketing materials and brochures stating the rights of the consumer in relation to specific services provided by them to the consumer.
Article 12 - Complaints Procedures

Every service provider shall establish a consumer relations desk and particularly at every airport it operates and shall appoint an officer to manage the desk for the purpose of receiving, resolving and channelling complaints to their Head offices, as well as liaising with the Civil Aviation Authority of the state party where necessary.

Article 13 – Filing of advanced flight and Passenger Information

(1) Airlines shall transmit in advance of arrival into the territory of a state party information on each flight and on each passenger carried on board into an airport of a state party whether or not the passenger in question is destined to enter the state.

(2) The advanced flight and passenger information which shall be filed in accordance with national legislation of each state party shall be transmitted to the authorised recipient notified in schedule of this regulation and shall contain no less than the standard set of information notified numbers 1 and 2 of schedule 1. States party who require further information listed in number 3 of schedule 1 shall submit a specific requirements list to the airline.

(3) The Executing Agency shall liaise with states parties and propose further measures to the Sub Committee on Transport of the Specialised Technical Committee (STC) No.4 on Transport, Intercontinental and Interregional Infrastructure, Energy and Transport. State parties may submit formal complaints to the Executing Agency against an airline which persistently fails to supply the required advanced information.

(4) Without prejudice to paragraph 3 of this Article, the Executing Agency shall conduct a thorough review within 5 years of entry into force of these Regulations including but not limited to the need for a continental or regional administration of the data.

Article 14 - Compliance with Warsaw Liability Regimes

Airlines shall strictly comply with compensation requirements under the Warsaw Liability as applicable to each passenger and shall not impose any onerous terms and conditions on the passenger or otherwise apply policies and procedures or make any such demands of the consumers as is calculated or may be interpreted as limiting or having the effect of limiting its relevant liabilities.

Article 15 - Denied Boarding

(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 including offering passengers SMS or 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 but at any rate not which shall not be lower than the compensation scheme applied in Article 23 to these Regulations. Airlines shall, in this regards, pay particular attention to passengers travelling furthest from the departing airport as a measure of preventing unnecessary hardship in aborted and shall for this matter 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 as prescribed under Article (6 (iv), above under right of information).

(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 23 to these Regulations

**Article 16 - 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. 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 that 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 a flight operated by the same airline;
   ii. refreshments including water, soft drinks, confectioneries or snacks;
   iii. two international telephone calls, SMS or e-mails, and
   iv. that an announcement will be made at their airport of arrival of the new estimated time of arrival.

b. for four hours or more, the airline shall:

   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. refreshments including water, soft drinks, confectioneries or snacks;
iii. a meal;
iv. hotel accommodation;
v. two international telephone calls, SMS or e-mails, and
vi. transport between the airport and place of accommodation (hotel or other accommodation); and
vii. that an announcement will 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, 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, a return flight to the first point of departure, at the earliest opportunity;
ii. re-routing, under comparable transport conditions, to their final destination at the earliest opportunity; or
iii. re-routing, 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 paragraph a (1) or b(1) above, the airline shall ensure 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 17 - 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 are informed at the airport, or where the passenger on a connecting flight may have begun the earlier part of his flight hours before the decision to cancel the flight and may only know of the cancellation on arrival at the airport, the airline shall:
i. 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.

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

iii. 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 at least two weeks before the scheduled time of departure; or

b) 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

c) 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 22, 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 18 - 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 19 – Travel Agents and Package Tour Operators

Subject to the general obligations in this Part of the 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 retailer’s 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 contract the agent;

   iv. in the case of journeys or stays abroad by minors, information enabling direct contact to be established with the child or the person responsible 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 20 - Airport Operators
Subject to the general obligations in this Part of the Regulations, Passengers and all other persons attending the airport in any capacity excluding those waving off, dropping of, picking up or welcoming passengers, shall, subject to national security and safety legislation, be entitled to:

a) 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

PART FOUR
RIGHTS OF THE CONSUMER

Article 21 – Right to reimbursement
(1) When reference is made in this Regulation to the right of the passenger to reimbursement, reimbursement shall be made within seven 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, a return flight to the first point of departure, at the earliest opportunity.

(2) The reimbursement shall be paid in cash, by electronic bank transfer, bank orders or, with the signed agreement of the passenger, in travel vouchers and/or other services.

Article 22 - Right to be re-routed
Where passengers are offered the right of re-routing, passengers shall have the choice of:

- reimbursement within seven 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, a return flight to the first point of departure, at the earliest opportunity and accommodation;

- re-routing, under comparable transport conditions, to their final destination at the earliest opportunity and accommodation; or

a) re-routing, under comparable transport conditions, to their final destination at a later date at the passenger’s convenience, subject to availability of seats.

b) When, in the case where a town, city or region is served by several airports, 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 23 - 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 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 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 arrival time of which 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
- c) by four hours, in respect of all flights in excess of 6 hours,

the airline may reduce the compensation provided for in paragraph 1 by 50%.

(4) The compensation shall be paid in cash, by electronic bank transfer, bank orders or, with the signed agreement of the passenger, in travel vouchers and/or other services.

**PART FIVE**

**ADMINISTRATION**

**Article 24 - Administrative Procedures**

(1) Each Civil Aviation Authority shall appoint a customer relations officer at each airport to whom complaints may equally be addressed.

(2) The Executing Agency and the Regional YD Authority shall establish consumer protection units and advertise their details, including but not limited to their contact details and their procedures on a website dedicated to the implementation of this regulation.

(3) A complainant may make a complaint to the Civil Aviation Authority against a service provider, or failing a satisfactory resolution to the RYA 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 Civil Aviation 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;
   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.

(7) Complainants can present a class action before the Civil Aviation Authority especially in relation to a service provider that owes them a duty of care under Article 25, but must appoint a representative for the class.

Article 25 - Investigation

(1) The Executing Agency, the RYA or the Authority shall cause an investigation to be carried out 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, an officer designated by the Authority shall have all the powers of investigation under national law or under the provisions of the Dispute Resolution Regulation, and in addition may request for submissions to be made by any interested person(s) in relation to a complaint;

(3) The Authority 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 procedure it has taken to resolve the matter.

Article 26 - Determination of Complaints

(1) After every assessment, the investigator shall make an assessment report and shall make recommendations therein.

(2) Upon a 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 Authority shall make a determination in one of the following respects:
   a) the complaint lacks merit pursuant to which the complaint would be struck out;
   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 Authority’s administrative hearing procedure in accordance with national law.

(3) The Authority shall give notice of its determination to the interested parties.

Article 27 - Penalty

(1) Any service provider that violates any provision of these Regulations shall, subject to national law, be liable to penalties imposed by the Authority.

(2) The penalties imposed by the Authority under Section 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 considered.

(3) It shall be unlawful for any service provider, their employees or agent to obstruct or prevent the Authority or any of its designated officers from carrying out investigations or refuse to provide information requested by the Authority, relating to any violation of these Regulations.

(4) The Executive Council may, on a proposal from the Executing Agency and adoption by the Council of Ministers for Air Transport and after consulting the African Parliament adopt and maintain in place a schedule of penalties to be imposed for breach of provisions of this regulation.

PART SIX
MISCELLANEOUS

Article 28 - Duty of Care

(1) Consumers shall have no claim against air navigation service providers, airports, ground handling companies, travel agents, consolidators, cargo handling companies, freight forwarders, tour operators and other service providers for any delay, cancellation or overbooking of their flights or the failure by the airline to transport their cargo and or mail which delay, cancellation, overbooking or failure to transport cargo or mail is the direct action or omission of the airline.

(2) Without prejudice to the generality of the paragraph 1 of this Article, service providers in a contractual relationship with the airline owe a duty of care to the consumer not to negligently or recklessly provide unsafe services to the airline as may if relied on by the airline without exceptional caution make the aircraft or the operation of the aircraft unsafe and endanger the lives of passengers on board the aircraft or cause damage to cargo or mail on board the aircraft.

(3) The consumer shall, without prejudice to paragraph 2 of this Article, be required to prove the damage, the negligence or recklessness of the third party service provider and the causal relationship between defective service rendered to the airline and damage sustained.

(4) Consumers shall have no claim on any service provider for the delay, or cancellation of their flights or the failure by the service to transport or effect the transportation of their cargo.
and or mail which delay, cancellation, or failure to transport cargo or mail is the direct consequence of a natural disaster and over which no service provider shall have been able to control.

(5) Where, as a result of the provisions of this Regulation, two or more service providers are liable for the same damage, they shall be liable jointly and severally, without prejudice to the provisions of national law concerning the rights of contribution or recourse.

(6) The Executive Council may, on a proposal from the Executing Agency and adoption by the Council of Ministers for Air Transport and after consulting the African Parliament adopt appropriate rules on liability of service providers in relation to unsafe services.

**Article 29 - Service providers right of redress**

In cases where an airline pays compensation or meets the other obligations incumbent on it under this Regulation, no provision of this Regulation may be interpreted as restricting its right to seek compensation from any service provider, including third parties, in accordance with the law applicable in the state party. In particular, this Regulation shall in no way restrict the airline’s right to seek reimbursement from a travel agent, ground handling company, airport operator, air navigation service provider, tour operator or another person with whom the operating air carrier has a contract. Similarly, no provision of this Regulation may be interpreted as restricting the right of a travel agent or tour operator or a third party, other than a passenger, with whom an airline has a contract, to seek reimbursement or compensation from the airline in accordance with applicable laws.

**Article 30 - Review by the Executing Agency**

Within 2 years of entry into force of this Regulation, the Executing Agency shall report to the Council of African Ministers in charge of Transport on the operation and the results of this Regulation. The report shall be accompanied where necessary by legislative proposals.

**Article 31 - Entry into Force**

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

Schedule 1

In relation to Article 13 the following constitute the data to be supplied by each airline:

<table>
<thead>
<tr>
<th>Data relating to the flight</th>
<th>Data Description</th>
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<tbody>
<tr>
<td>No. 1 Flight Identification</td>
<td>IATA Airline code and flight number</td>
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<tr>
<td>2    Scheduled Departure Date</td>
<td>Date of scheduled departure of aircraft based on local time of departure location</td>
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<td>3    Scheduled Departure Time</td>
<td>Time of scheduled departure of aircraft (based on local time of departure location)</td>
</tr>
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<td>4    Scheduled Arrival Date</td>
<td>Date of scheduled arrival of aircraft (based on local time of arrival location)</td>
</tr>
<tr>
<td>5    Scheduled Arrival Time</td>
<td>Time of scheduled arrival of aircraft (based on local time of arrival location)</td>
</tr>
<tr>
<td>6    Last Place/Port of Call of Aircraft</td>
<td>Aircraft departed from this last foreign place/port of call to go to “place/port of aircraft initial arrival”</td>
</tr>
<tr>
<td>7    Place/Port of Aircraft Initial Arrival</td>
<td>Place/port in the country of destination where the aircraft arrives</td>
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Data relating to each individual passenger:

### Core Data Elements as may be found in the Machine Readable Zone of the Official Travel Document

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<thead>
<tr>
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<th>Description</th>
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<tr>
<td>2</td>
<td>Issuing State or Organization of the Official Travel Document</td>
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<tr>
<td>3</td>
<td>Official Travel Document Type</td>
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<td>4</td>
<td>Expiration Date of Official Travel Document</td>
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<td>Gender</td>
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### Additional Data Elements

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<td>Issue Date of the Visa</td>
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<td>11</td>
<td>Place of Issuance of the Visa</td>
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<td>12</td>
<td>Other Document Number Used for Travel</td>
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<td>Type of Other Document used for Travel</td>
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<td>d. State/Province/County</td>
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<td>c. State/Province/County</td>
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<td>Place/Port of Clearance</td>
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<td>20</td>
<td>Place/Port of Onward Foreign Destination</td>
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from the “last place/port of call of aircraft”

Subsequent Place/Port of Call within the country

Subsequent place/port of call within the country

Total number of passengers on the flight
| 21 | **Passenger Name Record Locator Number (or unique identifier)** | **As available in the traveller’s Passenger Name Record in the carrier’s airline reservation system** |
Details of Recipients of API Data and required mode of communication

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1.4 Appendix 5: Regulation on Dispute Settlement Mechanisms Relating To the Implementation of the Yamoussoukro Decision
DRAFT ANNEX 8 OF THE YAMOUSSOUKRO DECISION: DRAFT REGULATION ON DISPUTE SETTLEMENT MECHANISMS RELATING TO THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION

Article 1. Object
Article 2. The List  
Article 3. Composition of the Boards of Appeal  
Article 4. Members of the Boards of Appeal  
Article 5. Exclusion and objection  
Article 6. Decisions subject to appeal  
Article 7. Persons entitled to appeal  
Article 8. Time limit and form  
Article 9. Revision of the original decision  
Article 10. Examination of appeals  
Article 11. Decisions on appeal  
Article 12. Actions before the Court of Justice  
Article 13. Procedures to be applied and effect of outcome of appeals
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 3rd 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 14th November 1999, approved by the Conference of Heads of State and Government of OAU and signed by the current Chairman in Lomé on 12th July 2000;

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


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 African airlines operations and effectively meeting the challenges of globalisation of international air transport;

CONSIDERING that a considerable number of disputes arising from the implementation of the Yamoussoukro Decision are likely to be raised before the RYA of the regional economic communities, the Executing Agency or the Monitoring Body;

DESIROUS of resolving disputes in a speedy and cost effective fashion and utilising the dispute settlement measures provided for in the;

RECOGNISING the right of State Parties and airlines to have recourse to the courts and arbitration to resolve disputes that they opt to settle outside the ambit of the offices of the Executing Agency and or the Monitoring Body;

DESIROUS of using the mechanism of the office of the Executing Agency and the Monitoring Body dispute settlement mechanism as a means of settling through disputes through negotiation and or arbitration;

DESIROUS of developing a mechanism for disputes settlement through negotiation and arbitration between the Member States the designated African airlines and the consumers’ associations within the African Union;
DESIRIOUS of utilizing the UNCITRAL Rules in effect as the basis for arbitration relating to any dispute, controversy or claim arising out of or relating to the Yamoussoukro Decision or the breach, termination, or invalidity thereof.

HEREBY DECIDES:

PART ONE

Article 1
Object
1. The object of this Part of these regulations is to provide for measures of resolving disputes arising from measures of the Executing Agency and the Monitoring Body.
2. States Parties and airlines may also opt to use these regulations to appeal against acts of the RYA of the regional economic communities.
3. Where appropriate, states parties and airlines in resolving their disputes may, in agreement with the executing agency, use this part of these regulations instead of part two.
4. Part One of these regulations is not meant to and shall at no time be used to obtain the interpretation of provisions of the Yamoussoukro Decision.

Article 2
The List
1. The qualifications required for the members of each Board of Appeal shall be determined by the Monitoring Body in consultation with the Legal Counsel of the African Union Commission and upon the advice of the Secretary General.
2. The List, which shall be submitted to the Pan-African Parliament for approval as members of the Board of Appeal and Arbitral Tribunal, shall be maintained by the Office of the Legal Counsel of the African Union.
3. Once approved, the members of the Boards of Appeal/Arbitral Tribunal may not be removed either from office or from the list during their respective terms, unless there are serious grounds for such removal and the Office of the Legal Counsel of the African Union, after obtaining the opinion of the Monitoring Body may recommend to the Pan-African Parliament for the removal of a member.

Article 3
Composition of the Boards of Appeal
1. A Board of Appeal shall consist of a Chairperson and two other members.

2. The Chairperson and the two members shall have alternates who will represent them in their absence.

3. The Chairperson, the other members and their respective alternates shall be appointed by the Legal Counsel of the African Union Commission from the list of qualified candidates drawn up under Article 3 of this Regulation.

4. Where the Board of Appeal considers that the nature of the appeal so requires, it may call up to two further members from the aforesaid list for that case.

**Article 4**

**Members of the Boards of Appeal**

1. The term of office of the members of the Boards of Appeal, including their Chairperson and their respective alternates, shall be five years. This term shall be renewable.

2. The members of the Boards of Appeal shall be independent. In making their decisions they shall not be bound by any instructions.

3. The members of the Boards of Appeal may not perform any other duties in the Agency or the Monitoring Body. The function of the members of the Boards of Appeal may be a part-time function.

**Article 5**

**Exclusion and objection**

1. Members of the Boards of Appeal may not take part in any appeal proceedings if they have any personal interest therein, or if they have previously been involved as representatives of one of the parties to the proceedings, or if they participated in the decision under appeal.

2. If, for one of the reasons mentioned in paragraph 1 or for any other reason, a member of a Board of Appeal considers that he/she should not take part in any appeal proceedings, he/she shall inform the Board of Appeal accordingly.

3. Members of the Boards of Appeal may be objected to by any party to the appeal proceedings on any of the grounds mentioned in paragraph 1, or if suspected of partiality. An objection shall not be admissible if, while being aware of a reason for objecting, the party to the appeal proceedings has taken a procedural step. No objection may be based on the nationality of members.

4. The Boards of Appeal shall decide as to the action to be taken in the cases specified in paragraphs 2 and 3 without the participation of the member concerned. For the purposes of taking this decision, the member concerned shall be replaced on the Board of Appeal by his/her alternate.

**Article 6**
Decisions subject to appeal

1. An appeal may be brought against decisions of the Agency.
2. 
3. An appeal lodged pursuant to paragraph 1 above shall not have suspensory effect. The Agency may, however, if it considers that circumstances so permit, suspend the application of the contested decision.
4. An appeal against a decision which does not terminate proceedings as regards one of the parties may only be made in conjunction with an appeal against the final decision, unless the decision provides for separate appeal.

Article 7
Persons entitled to appeal

Any State Party or airline may appeal against a decision addressed to that party, or against a decision which, although in the form of a decision addressed to another party, is of direct and individual concern to the former. The parties to proceedings may be party to the appeal proceedings.

Article 8
Time limit and form

The appeal, together with the statement of grounds thereof, shall be filed in writing at the Agency within two months of the notification of the measure to the State Party or airline concerned, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be.

Article 9
Revision of the original decision

1. If the Secretary General considers the appeal to be admissible and well founded, he/she shall rectify the decision. This shall not apply where the appellant is opposed to another party to the appeal proceedings.
2. If the decision is not rectified within one month after receipt of the statement of grounds for the appeal, the Agency shall forthwith decide whether or not to suspend the application of the decision and shall remit the appeal to the Board of Appeal.

Article 10
Examination of appeals

1. If the appeal is admissible, the Board of Appeal shall examine whether the appeal is well founded.
2. When examining the appeal, the Board of Appeal shall act expeditiously. It shall as often as necessary invite the parties to the appeal proceedings to file observations on notifications issued by itself or on communications from the other parties to the appeal proceedings, within specified time limits. Parties to the appeal proceedings shall be entitled to make oral presentations.

Article 11
Decisions on appeal
The Board of Appeal may exercise any power which lies within the competence of the Agency, or it may remit the case to the competent body of the Agency. The latter shall be bound by the decision of the Board of Appeal.

Article 12
Actions before the Court of Justice
1. An appeal may be brought before the African Court of Justice or before court or tribunal of the regional economic community, against decisions of the Boards of Appeal.
2. Should the Agency fail to take a decision, proceedings for failure to act may be brought before the African Court of Justice or, subject to the agreement to the court or tribunal of the regional economic community.
3. The Agency shall be required to take the necessary measures to comply with the judgment of the African Court of Justice or, subject to the agreement to the court or tribunal of the regional economic community.

Article 13
Procedures to be applied and effect of outcome of appeals
1. In conducting its affairs, the Board of Appeal shall determine its own procedures, nature of its awards and costs.
2. The Board may award costs against the Executing Agency, any State Party or airline concerned or an organ of the African Union.
PART TWO

CHAPTER 1: General Provisions

ARTICLE 1
Scope of Application and Purpose

1. These Regulations apply to international commercial arbitration between two or more State Parties to the Yamoussoukro Decision or between an airline or airlines and one or more State Parties in relation to the interpretation and/or the implementation of the Yamoussoukro Decision its Appendixes, supplementary Rules and Regulations and for which the parties have opted not to utilise the complaints procedure of the Executing Agency and or the Monitoring Body.

2. These Regulations shall not affect any other law of a State Party by virtue of which certain disputes may not be submitted to arbitration or may only be submitted to arbitration according to provisions other than those of these Regulations.

ARTICLE 2
Definitions

For the purposes of these Regulations:

(a) “arbitration” means any arbitration whether or not administered by a permanent arbitral institution;

(b) “Arbitration agreement” is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract, treaty or in the form of a separate agreement.

(c) “arbitral tribunal” means a sole arbitrator or a panel of arbitrators;

(d) “court” means a body or organ of the judicial system of a State Party, a regional economic community or the African Union;

ARTICLE 3
Receipt of Written Communications

(1) Unless otherwise agreed by the parties:

(a) any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at the place of business or mailing address; if none of these can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee’s last-known place of business or mailing...
address by registered letter or any other means which provides a record of the attempt to deliver it;

(b) the communication is deemed to have been received on the day it is so delivered.

(2) The provisions of this article do not apply to communications in court proceedings.

(3) For the purposes of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice, notification, communication or proposal is received. If the last day of such period is an official holiday or a non-work day in the State of the addressee, the period is extended until the first work day which follows. Official holidays or non-work days occurring during the running of the period of time are included in calculating the period.

ARTICLE 4
Waiver of Right to Object
A party who knows that any provision of these Regulations from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time-limit is provided therefore, within such period of time, shall be deemed to have waived his right to object.

ARTICLE 5
Extent of Court Intervention
In matters governed by these Regulations, no court shall intervene except where so provided in these Regulations.

ARTICLE 6
Court Or Other Authority For Certain Functions Of Arbitration Assistance And Supervision

• The functions referred to in articles 11 (3), 11(4), 13 (3), 14, 16 (3) and 44(2) shall be performed by President of the African Court of Justice or the President of a court or tribunal of a regional economic community in which jurisdiction the arbitral tribunal shall conduct its sitting.

• The case shall be administered by the Executing Agency which shall take charge of the archives of the arbitration proceeding. In addition, upon written request of all the parties or of the arbitral tribunal, it shall act as a channel of communication between the parties and the arbitral tribunal provide secretariat services and/or serve as registry.
CHAPTER II. ARBITRATION AGREEMENT

ARTICLE 7
Definition and Form of Arbitration Agreement, Notice of Arbitration and Representation and Assistance

1) The arbitration agreement shall be in writing.

2) An arbitration agreement is in writing if its content is recorded in any form, whether or not the arbitration agreement or contract has been concluded orally, by conduct, or by other means.

3) The requirement that an arbitration agreement be in writing is met by an electronic communication if the information contained therein is accessible so as to be usable for subsequent reference; “electronic communication” means any communication that the parties make by means of data messages; “data message” means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy.

4) Furthermore, an arbitration agreement is in writing if it is contained in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other.

5) The reference in a contract to any document containing an arbitration clause constitutes an arbitration agreement in writing, provided that the reference is such as to make that clause part of the contract.

6) The party initiating recourse to arbitration (hereinafter called the ‘claimant’) shall give to the other party (hereinafter called the ‘respondent’) a notice of arbitration.

7) Arbitral proceedings shall be deemed to commence on the date on which the notice of arbitration is received by the respondent.

8) The notice of arbitration shall include the following:

   a) A demand that the dispute be referred to arbitration;

   b) The names and addresses of the parties;

   c) A reference to the arbitration clause or the separate arbitration agreement that is invoked;

   d) A reference to the treaty or other agreement out of or in relation to which the dispute arises;

   e) The general nature of the claim and an indication of the amount involved, if any;

   f) The relief or remedy sought;

   g) A proposal as to the number of arbitrators, if the parties have not previously agreed thereon.

9) Each party shall appoint an agent. The parties may also be assisted by persons of their
choice. The name and address of the agent must be communicated in writing to the other party, to the Executing Agency and to the arbitral tribunal after it has been appointed.

ARTICLE 8  
Arbitration Agreement And Substantive Claim Before Court

1) A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

2) Where an action referred to in paragraph (1) of this article has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court.

ARTICLE 9  
Arbitration Agreement and Interim Measures by Court

It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, an interim measure of protection from a court and for a court to grant such measure.

CHAPTER III. COMPOSITION OF ARBITRAL TRIBUNAL

ARTICLE 10  
Number of Arbitrators

1) The parties are free to determine the number of arbitrators.

2) Failing such determination, the number of arbitrators shall be three.

ARTICLE 11  
Appointment of Arbitrators

1) No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.

2) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of paragraphs (4) and (5) of this article.

3) Failing such agreement,

   a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the
arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the court or other authority specified in article 6;

b) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the court or other authority specified in article 6.

4) Where, under an appointment procedure agreed upon by the parties,
   a) a party fails to act as required under such procedure, or
   b) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure, or
   c) a third party, including an institution, fails to perform any function entrusted to it under such procedure,

any party may request the court or other authority specified in article 6 to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

5) A decision on a matter entrusted by paragraph (3) or (4) of this article to the court or other authority specified in article 6 shall be subject to no appeal. The court or other authority, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.

ARTICLE 12
Grounds for Challenge

1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him.

2) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.
ARTICLE 13

Challenge Procedure

1) The parties are free to agree on a procedure for challenging an arbitrator, subject to the provisions of paragraph (3) of this article.

2) Failing such agreement, a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in article 12(2), send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

3) If a challenge under any procedure agreed upon by the parties or under the procedure of paragraph (2) of this article is not successful, the challenging party may request, within thirty days after having received notice of the decision rejecting the challenge, the court or other authority specified in article 6 to decide on the challenge, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

ARTICLE 14: Failure or Impossibility to Act

1) If an arbitrator becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay, his mandate terminates if he withdraws from his office or if the parties agree on the termination. Otherwise, if a controversy remains concerning any of these grounds, any party may request the court or other authority specified in article 6 to decide on the termination of the mandate, which decision shall be subject to no appeal.

2) If, under this article or article 13 (2), an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in this article or article 12 (2).

ARTICLE 15

Appointment of Substitute Arbitrator

1) Where the mandate of an arbitrator terminates under article 13 or 14 or because of his withdrawal from office for any other reason or because of the revocation of his mandate by agreement of the parties or in any other case of termination of his mandate, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

2) If under articles 13 to 15 the sole arbitrator or presiding arbitrator is replaced, any hearings held previously shall be repeated; if any other arbitrator is replaced, such prior hearings may be repeated at the discretion of the arbitral tribunal.
CHAPTER IV. JURISDICTION OF ARBITRAL TRIBUNAL

ARTICLE 16

Competence of Arbitral Tribunal to Rule on Its Jurisdiction

1) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail _ipso jure_ the invalidity of the arbitration clause.

2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence. A party is not precluded from raising such a plea by the fact that he has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

3) The arbitral tribunal may rule on a plea referred to in paragraph (2) of this article either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within thirty days after having received notice of that ruling, the court specified in article 7 to decide the matter, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

CHAPTER V: INTERIM MEASURES AND PRELIMINARY ORDERS

Section 1. Interim Measures

ARTICLE 17

Power of Arbitral Tribunal to Order Interim Measures

1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, grant interim measures.

2) An interim measure is any temporary measure, whether in the form of an award or in another form, by which, at any time prior to the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party to:

   a) Maintain or restore the status quo pending determination of the dispute;

   b) Take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitral process itself;
c) Provide a means of preserving assets out of which a subsequent award may be satisfied; or

d) Preserve evidence that may be relevant and material to the resolution of the dispute.

ARTICLE 18
Conditions for Granting Interim Measures

1) The party requesting an interim measure under article 17 (2)(a), (b) and (c) shall satisfy the arbitral tribunal that:

a) Harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and

b) There is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.

2) With regard to a request for an interim measure under article 17 (2)(d), the requirements in paragraphs (1)(a) and (b) of this article shall apply only to the extent the arbitral tribunal considers appropriate.

Section 2. Preliminary Orders

ARTICLE 19:
Applications for Preliminary Orders and Conditions For Granting Preliminary Orders

1) Unless otherwise agreed by the parties, a party may, without notice to any other party, make a request for an interim measure together with an application for a preliminary order directing a party not to frustrate the purpose of the interim measure requested.

2) The arbitral tribunal may grant a preliminary order provided it considers that prior disclosure of the request for the interim measure to the party against whom it is directed risks frustrating the purpose of the measure.

3) The conditions defined under article 18 apply to any preliminary order, provided that the harm to be assessed under article 18 (1)(a), is the harm likely to result from the order being granted or not.

ARTICLE 20
Specific Regime for Preliminary Orders

1) Immediately after the arbitral tribunal has made a determination in respect of an application
for a preliminary order, the arbitral tribunal shall give notice to all parties of the request for the interim measure, the application for the preliminary order, the preliminary order, if any, and all other communications, including by indicating the content of any oral communication, between any party and the arbitral tribunal in relation thereto.

2) At the same time, the arbitral tribunal shall give an opportunity to any party against whom a preliminary order is directed to present its case at the earliest practicable time.

3) The arbitral tribunal shall decide promptly on any objection to the preliminary order.

4) A preliminary order shall expire after twenty days from the date on which it was issued by the arbitral tribunal. However, the arbitral tribunal may issue an interim measure adopting or modifying the preliminary order, after the party against whom the preliminary order is directed has been given notice and an opportunity to present its case.

5) A preliminary order shall be binding on the parties but shall not be subject to enforcement by a court. Such a preliminary order does not constitute an award.

SECTION 3: Provisions Applicable To Interim Measures and Preliminary Orders

ARTICLE 21
Modification, Suspension, Termination
The arbitral tribunal may modify, suspend or terminate an interim measure or a preliminary order it has granted, upon application of any party or, in exceptional circumstances and upon prior notice to the parties, on the arbitral tribunal’s own initiative.

ARTICLE 22
Provision of Security
1) The arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.

2) The arbitral tribunal shall require the party applying for a preliminary order to provide security in connection with the order unless the arbitral tribunal considers it inappropriate or unnecessary to do so.

ARTICLE 23
Disclosure
1) The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the measure was requested or granted.

2) The party applying for a preliminary order shall disclose to the arbitral tribunal all circumstances that are likely to be relevant to the arbitral tribunal’s determination whether to
grant or maintain the order, and such obligation shall continue until the party against whom the order has been requested has had an opportunity to present its case. Thereafter, paragraph (1) of this article shall apply.

ARTICLE 24

Costs and Damages
The party requesting an interim measure or applying for a preliminary order shall be liable for any costs and damages caused by the measure or the order to any party if the arbitral tribunal later determines that, in the circumstances, the measure or the order should not have been granted. The arbitral tribunal may award such costs and damages at any point during the proceedings.

Section 4: Recognition and Enforcement of Interim Measures

Article 25

Recognition and Enforcement
1) An interim measure issued by an arbitral tribunal shall be recognized as binding and, unless otherwise provided by the arbitral tribunal, enforced upon application to the competent court, irrespective of the country in which it was issued, subject to the provisions of article 27.

2) The party who is seeking or has obtained recognition or enforcement of an interim measure shall promptly inform the court of any termination, suspension or modification of that interim measure.

3) The court of the State where recognition or enforcement is sought may, if it considers it proper, order the requesting party to provide appropriate security if the arbitral tribunal has not already made a determination with respect to security or where such a decision is necessary to protect the rights of third parties.

ARTICLE 26

Grounds for Refusing Recognition or Enforcement
1) Recognition or enforcement of an interim measure may be refused only:

a) At the request of the party against whom it is invoked if the court is satisfied that:

i. Such refusal is warranted on the grounds set forth in article 36 (1)(a)(i), (ii), (iii) or (iv); or

ii. The arbitral tribunal's decision with respect to the provision of security in connection with the interim measure issued by the arbitral tribunal has not been complied with; or
iii. The interim measure has been terminated or suspended by the arbitral tribunal or, where so empowered, by the court of the State in which the arbitration takes place or under the law of which that interim measure was granted; or

b) If the court finds that:

i. The interim measure is incompatible with the powers conferred upon the court unless the court decides to reformulate the interim measure to the extent necessary to adapt it to its own powers and procedures for the purposes of enforcing that interim measure and without modifying its substance; or

ii. Any of the grounds set forth in article 36 (1)(b)(i) or (ii), apply to the recognition and enforcement of the interim measure.

2) Any determination made by the court on any ground in paragraph (1) of this article shall be effective only for the purposes of the application to recognize and enforce the interim measure.

The court where recognition or enforcement is sought shall not, in making that determination, undertake a review of the substance of the interim measure.

Section 5: Court-Ordered Interim Measures

ARTICLE 27

Court-Ordered Interim Measures

A court shall have the same power of issuing an interim measure in relation to arbitration proceedings, irrespective of whether their place is in the territory of any State, as it has in relation to proceedings in courts. The court shall exercise such power in accordance with its own procedures in consideration of the specific features of international arbitration.

CHAPTER V. CONDUCT OF ARBITRAL PROCEEDINGS

ARTICLE 28

Equal Treatment of Parties

The parties shall be treated with equality and each party shall be given a full opportunity of presenting his case.

ARTICLE 29
Determination of Rules of Procedure

1) Subject to the provisions of these Regulations, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

2) Failing such agreement, the arbitral tribunal may, subject to the provisions of these Regulations, conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

ARTICLE 30
Place of Arbitration

1) The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

2) Notwithstanding the provisions of paragraph (1) of this article, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

3) The award shall be made at the place of arbitration.

ARTICLE 31
Commencement of Arbitral Proceedings

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

ARTICLE 32
Language

1) The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

2) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

ARTICLE 33
Statements of Claim and Defence

1) Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have other-wise agreed as to the required elements of such statements. The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

2) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.

3) The arbitral tribunal shall, after inviting the views of the parties, decide which further written statements, in addition to the statement of claim and the statement of defence, shall be required from the parties or may be presented by them and shall fix the period of time for communicating such statements.

4) The periods of time fixed by the arbitral tribunal for the communication of written statements (including the statement of claim and statement of defence) should not exceed ninety days. However, the arbitral tribunal may set longer time limits, if it concludes that an extension is justified.

ARTICLE 34
Hearings, Written Proceedings and Evidence

1) Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. However, unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.

2) Each party shall have the burden of proving the facts relied on to support its claim or defence.

3) The arbitral tribunal may, if it considers it appropriate, require a party to deliver to the tribunal and to the other party, within such a period of time as the arbitral tribunal shall decide, a summary of the documents and other evidence which that party intends to present in support of the facts in issue set out in its statement of claim or statement of defence.

4) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property or documents.

5) At any time during the arbitral proceedings the arbitral tribunal may call upon the parties to produce documents, exhibits or other evidence within such a period of time as the tribunal shall determine. The tribunal shall take note of any refusal to do so as well as any reasons given for such refusal.
6) All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party. Also any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

7) In the event of an oral hearing, the arbitral tribunal shall give the parties adequate advance notice of the date, time and place thereof.

8) If witnesses are to be heard, at least thirty days before the hearing each party shall communicate to the arbitral tribunal and to the other party the names and addresses of the witnesses it intends to present, the subject upon and the languages in which such witnesses will give their testimony.

9) The Executing Agency shall make arrangements for the translation of oral statements made at a hearing and for a record of the hearing if either is deemed necessary by the tribunal under the circumstances of the case, or if the parties have agreed thereto and have communicated such agreement to the tribunal and the International Bureau at least thirty days before the hearing or such longer period before the hearing as the arbitral tribunal may determine.

10) Hearings shall be held in camera unless the parties agree otherwise. The arbitral tribunal may require the retirement of any witness or witnesses during the testimony of other witnesses. The arbitral tribunal is free to determine the manner in which witnesses are examined.

11) Evidence of witnesses may also be presented in the form of written statements signed by them.

12) The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.

ARTICLE 35
Default of A Party, Closure of Hearings and Waiver of Rules

1) Unless otherwise agreed by the parties, if, without showing sufficient cause,
   a) the claimant fails to communicate his statement of claim in accordance with article 23 (1), the arbitral tribunal shall terminate the proceedings;
   b) the respondent fails to communicate his statement of defence in accordance with article 23 (1), the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant’s allegations;
   c) any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

2) The arbitral tribunal may inquire of the parties if they have any further proof to offer or witnesses to be heard or submissions to make and, if there are none, it may declare the hearings closed. The arbitral tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own motion or upon application of a party, to reopen the hearings at any time before the award is made.

3) A party who knows that any provision of, or requirement under, these Rules has not been
complied with and yet proceeds with the arbitration without promptly stating its objection to such non-compliance, shall be deemed to have waived its right to object.

ARTICLE 36: Expert Appointed By Arbitral Tribunal
1) Unless otherwise agreed by the parties, the arbitral tribunal
   a) may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal;
   b) may require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in a hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

ARTICLE 37
Court Assistance in Taking Evidence
The arbitral tribunal or a party with the approval of the arbitral tribunal may request from a competent court of any State assistance in taking evidence. The court may execute the request within its competence and according to its rules on taking evidence.

CHAPTER VI. MAKING OF AWARD AND TERMINATION OF PROCEEDINGS

ARTICLE 38
Rules Applicable To Substance Of Dispute
1) The arbitral tribunal shall apply the law chosen by the parties, or in the absence of an agreement, shall decide such disputes in accordance with international law by applying:
   (a) International conventions, whether general or particular, establishing rules expressly recognized by the contesting States;
   (b) International custom, as evidence of a general practice accepted as law;
   (c) The general principles of law recognized by civilized nations;
   (d) Judicial and arbitral decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.
2) This provision shall not prejudice the power of the arbitral tribunal to decide a case *ex aequo et bono*, if the parties agree thereto.

3) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the air transport or aviation industry applicable to the transaction.

**ARTICLE 39**

**Decision-Making by Panel of Arbitrators**

In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members. However, questions of procedure may be decided by a presiding arbitrator, if so authorized by the parties or all members of the arbitral tribunal.

**ARTICLE 40**

**Settlement**

1) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

2) An award on agreed terms shall be made in accordance with the provisions of article 32 and shall state that it is an award. Such an award has the same status and effect as any other award on the merits of the case

**ARTICLE 41**

**Form and Contents of Award**

1) The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.

2) The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under article 31.

3) The award shall state its date and the place of arbitration as determined in accordance with article 20 (1). The award shall be deemed to have been made at that place.

4) After the award is made, a copy signed by the arbitrators in accordance with paragraph (1) of this article shall be delivered to each party.

**ARTICLE 42**

**Termination of Proceedings**
1) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with paragraph (2) of this article.

2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when:
   a) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute;
   b) the parties agree on the termination of the proceedings;
   c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

3) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of articles 33 and 34 (4).

ARTICLE 43
Correction and Interpretation of Award; Additional Award

1) Within thirty days of receipt of the award, unless another period of time has been agreed upon by the parties:
   a) a party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature;
   b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

2) If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within thirty days of receipt of the request. The interpretation shall form part of the award.

3) The arbitral tribunal may correct any error of the type referred to in paragraph (1)(a) of this article on its own initiative within thirty days of the date of the award.

4) Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within thirty days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within sixty days.

5) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation or an additional award under paragraph (1) or (3) of this article.

6) The provisions of article 31 shall apply to a correction or interpretation of the award or to an additional award.
CHAPTER VII. RECOUSE AGAINST AWARD

ARTICLE 44

Application for Setting Aside As Exclusive Recourse Against Arbitral Award

1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this article.

2) An arbitral award may be set aside by the court specified in article 6 only if:

   a) the party making the application furnishes proof that:

      i. a party to the arbitration agreement referred to in article 8 was under some incapacity; or the said agreement is not valid under the law by which the parties have subjected it or, failing any indication thereof, under the law of a concerned State; or

      ii. the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

      iii. the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or

      iv. the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of these Regulations from which the parties cannot derogate, or, failing such agreement, was not in accordance with these Regulations; or

   b) the court finds that:

      i. the subject-matter of the dispute is not capable of settlement by arbitration under the applicable law; or

      ii. the award is in conflict with the public policy of the African Union or any concerned State.

3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made under article 33, from the date on which that request had been disposed of by the arbitral tribunal.

4) The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal’s opinion will eliminate the grounds for setting aside.
CHAPTER VIII. RECOGNITION AND ENFORCEMENT OF AWARDS

ARTICLE 45

Recognition And Enforcement

1) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions of this article and of article 36.

2) The party relying on an award or applying for its enforcement shall supply the original award or a copy thereof. If the award is not made in an official language of the State, the court may request the party to supply a translation thereof into such language.

ARTICLE 46

Grounds for Refusing Recognition or Enforcement

1) Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only:

a) at the request of the party against whom it is invoked, if that party furnishes to the competent court where recognition or enforcement is sought proof that:

i. a party to the arbitration agreement referred to in article 8 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

ii. the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

iii. the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

iv. the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

v. the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or
b) if the court finds that:
   i. the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or
   ii. the recognition or enforcement of the award would be contrary to the public policy of the African Unity or the concerned State.

2) If an application for setting aside or suspension of an award has been made to a court referred to in paragraph (1)(a)(v) of this article, the court where recognition or enforcement is sought may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.

Section IX: Costs and Fees

ARTICLE 47
Costs
The arbitral tribunal shall fix the costs of arbitration in its award. The term ‘costs’ includes only:
   a) The fees of the arbitral tribunal;
   b) The travel and other expenses incurred by the arbitrators;
   c) The costs of expert advice and of other assistance required by the arbitral tribunal;
   d) The travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;
   e) Any fees and expenses of the appointing authority as well as the expenses of the Executing Agency.

ARTICLE 48
Fees of Arbitral Tribunal
1) The fees of the arbitral tribunal shall be reasonable in amount, taking into account the complexity of the subject-matter, the time spent by the arbitrators, the amount in dispute, if any, and any other relevant circumstances of the case.
2) When a party so requests, the arbitral tribunal shall fix its fees only after consultation with the Registrar of the African Court of Justice which may make any comment it deems appropriate to the arbitral tribunal concerning the fees.

**Article 49**

**Parties’ Costs and Apportionment**

1) Each party shall bear its own costs of arbitration. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.

2) When the arbitral tribunal issues an order for the termination of the arbitral proceedings or makes an award on agreed terms, it shall fix the costs of arbitration in the text of that order or award.

3) No additional fees may be charged by an arbitral tribunal for interpretation or correction or completion of its award.

**Article 50**

**Deposit of Costs**

1) The Executing Agency following the commencement of the arbitration, may request each party to deposit an equal amount as an advance for the costs referred to above. All amounts deposited by the parties pursuant to this paragraph and paragraph 2 of this article shall be directed to the Executing Agency, and disbursed by it for such costs, including, *inter alia*, fees to the arbitrators, and administration costs of the Executing Agency.

2) During the course of the arbitral proceedings the arbitral tribunal may request supplementary deposits from the parties.

3) If the requested deposits are not paid in full within sixty days after the receipt of the request, the arbitral tribunal shall so inform the parties in order that one or another of them may make the required payment. If such payment is not made, the arbitral tribunal may order the suspension or termination of the arbitral proceedings.

4) After the award has been made, the Executing Agency shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

**Part Three**

**ARTICLE 51**

**Sanctions**
1) Each Member State of the African Union undertake not to allow, in the air space above its territory, the operation of an eligible airline, if the Executing Agency, the Monitoring Body or a Board of Appeal has decided that that airline does not comply with a final decision taken in accordance with the provisions of these Regulations.

2) The Executing Agency may recommend to the Executive Council to impose sanctions on the state concerned.

**ARTICLE 52**

Reports

The Executing Agency of the Yamoussoukro Decision shall prepare each year a special report on disputes settlement, which shall be presented to the African Union’s organs.

**ARTICLE 53**

Amendments and Revision

1) The provisions of these Regulations may be amended or revised by the Assembly of Heads of State and Government of the African Union.

2) However, no amendment shall be applicable to any case under review, except with the unanimous consent of the concerned Parties.

**ARTICLE 54**

Entry into force

These Regulations shall enter into force immediately following their endorsement by the Assembly of Heads of State and Government.