



COMESA-EAC-SADC TRIPARTITE

REPORT OF THE 1st MEETING OF THE JOINT COMPETITION AUTHORITY (JCA)

**CRESTA LODGE
GABORONE, BOTSWANA
31st May – 1st June 2011**

A. OPENING (*Agenda item 1*)

1. The 1st meeting of the Tripartite Joint Competition Authority (JCA) took place on the 31st May and 1st June, 2011 at the Cresta Lodge, Gaborone, Botswana. The meeting was preceded by a consultative meeting of the Air Transport experts from COMESA, EAC and SADC Secretariats and TradeMark Southern Africa (TMSA) to prepare draft Terms of Reference for a consultancy for the operationalisation of the JCA.

2. The meeting, chaired by Mr. Nicholas Bodo, Director of Air Transport, Ministry of Transport, Kenya and the Chairperson of the JCA, was attended by JCA members from Malawi, Uganda and Zimbabwe; Air Transport experts from COMESA, EAC and SADC Secretariats and TMSA. The list of participants is attached as **Annex 1**.

3. In his opening remarks, Mr. Amos Marawa, Director of Infrastructure Development, COMESA Secretariat and the Chairperson of the Tripartite Infrastructure Sub Committee, welcomed JCA Members to Gaborone and expressed gratitude for their attendance. He also expressed appreciation to the SADC Secretariat for the preparation and hosting the JCA meeting and the Department for International Development through TMSA for their financial support to the Tripartite and the JCA. He wished the meeting fruitful deliberations.

B. ADOPTION OF THE AGENDA (*Agenda item 2*)

4. The meeting adopted the following agenda:

- i) Opening Remarks
- ii) Adoption of Agenda
- iii) Overview of JCA
- iv) Consideration of the Terms of Reference for the development of a framework for operationalisation of the JCA
- v) Consideration of the Roadmap for the Operationalisation of the JCA
- vi) Any Other Business
- vii) Adoption of Report and Closure of Meeting

C. ACCOUNT OF PROCEEDINGS

Overview of the Joint Competition Authority (JCA) (*Agenda item 3*)

5. The Chairperson of the Tripartite Infrastructure Sub Committee presented an overview on the process that had led to the establishment of the JCA. He noted that in the 1990's African airlines were facing increasing pressure from European airlines and in response African States felt there was need for cooperation at continental level. This culminated into the Yamoussoukro Decision (YD) of 1999 on the liberalization of air transport services, which entered into force in 2000 after the requisite ratifications.

6. He informed the meeting that Ministers of Transport of COMESA, EAC and SADC at their meeting, in Maputo in 2001, noted that multiple memberships in RECs was an impediment to effective implementation of the YD and agreed on common framework for joint implementation of YD. This led to the development of the Competition Regulations which were adopted by the Ministers in 2004. The Competition Regulations provide for the establishment of the Joint Competition Authority to oversee the implementation of the Competition Regulations. Guidelines, Provisions and Procedures for Implementing the Competition Regulations were developed and were adopted in 2007 by the three RECs.

7. He further informed the meeting that the 1st COMESA-EAC-SADC Tripartite Summit that was held on 22 October 2008 in Kampala, Uganda launched the JCA. The JCA comprises seven members, two members each from EAC, COMESA and SADC plus a chairperson on a rotational basis. The Tripartite Summit also decided that the JCA Secretariat would be hosted at the SADC Secretariat and that COMESA would be chair of the JCA.

8. He also informed the meeting of the decision of the Tripartite Task Force to operationalise the JCA in line with the decision of the 1st Tripartite Summit through adoption of a Roadmap. He outlined the components of the roadmap being: the development of the legal and institutional framework to give effect and mandate to the JCA, development of the organisational structure for the JCA Secretariat, development of sustainable mechanisms for funding the JCA and the development of an Air Services Agreement (ASA) template for the implementation of the YD in the Tripartite region.

9. The meeting noted the progress in operationalisation of the JCA and commended the Tripartite Infrastructure Sub Committee for the progress.

Consideration of the Terms of Reference for the development of a framework for operationalisation of the JCA (Agenda Item 4).

10. Mr. Ladislaus Matindi, Principal Civil Aviation Officer, EAC Secretariat, presented the draft TORs for the development of a framework for operationalisation of the JCA.

11. The meeting considered, reviewed and adopted the TORs. The adopted TORs are attached as **Annex 2**.

Consideration of the Roadmap for the operationalisation of the JCA (Agenda Item 5).

12. The meeting considered, reviewed and adopted the Roadmap. The adopted Roadmap is attached as **Annex 3**.

Any Other Business (Agenda Item 6)

13. The meeting discussed the need for all members of the JCA to attend the JCA meetings and the importance of consistency in attendance by the Members in order to ensure continuity and institutional memory. The meeting agreed that the Report of the meeting be forwarded to Members who could not attend and that the COMESA Secretariat should urge them to attend the next meetings of the JCA.

Adoption of the Report and Closure of the Meeting

14. The meeting adopted the Report with amendments.

15. In closing the meeting the Chairperson thanked the Members for their participation and support during the meeting. He expressed satisfaction with the Meeting's decisions and

hoped that the Consultant would produce legal instruments that would facilitate the work of the JCA. He urged Members of the JCA to support the work of the Consultant and encouraged COMESA Secretariat to hasten the process of engaging the Consultant. He then wished the Members safe travel back home.

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**TERMS OF REFERENCE FOR THE DEVELOPMENT OF A
FRAMEWORK FOR OPERATIONALISATION OF THE
COMESA-EAC-SADC JOINT COMPETITION AUTHORITY
(JCA)**

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1.0 PREAMBLE

1.1 The COMESA-EAC-SADC Tripartite Cooperation

In 2005, three Regional Economic Communities (RECs), the Common Market for East and Southern Africa (COMESA), East African Community (EAC) and the Southern Africa Development Community (SADC), established a Tripartite Task Force (TTF) of the CEOs of the Secretariats to spearhead the harmonisation of programs as well as the process for establishing an Institutional framework for cooperation.

This culminated in the COMESA-EAC-SADC Tripartite Summit of Heads of State and Government on 20 October 2008 in Kampala, Uganda that established an institutional framework comprising the Tripartite Summit, Council and Sectoral Ministers through a Memorandum of Understanding (MOU) signed by the Chairpersons of the three RECs.

The Tripartite Summit agreed on a programme of harmonisation of trading arrangements amongst the three RECs, free movement of business persons, joint implementation of inter-regional infrastructure programmes as well as institutional arrangements on the basis of which the three RECs would foster cooperation.

1.2 Background of the project

Yamoussoukro Decision (YD) based on Abuja Treaty, came into force on 12 August 2000 and its primary objective is to pool resources among African States and their airlines with a view to enhancing operation of air services by African airlines through multi-designation of air carriers, deregulation of frequencies, capacity and tariffs, removal of restrictions on traffic rights including 5th Freedom. YD also intends to create a multilateral Executive Agency geared to supervise and enforce liberalization at same time placing responsibility on RECs to implement the principles of YD.

The Joint COMESA/EAC/SADC meeting at Matola, Maputo in 2001 agreed on co-operation in developing Competition Regulations and implementation of YD for their integrated market. The common Regulations for Competition of Air Transport Services within COMESA/EAC/SADC were adopted by the Joint COMESA/EAC/SADC meeting of Ministers of Transport at Pretoria in September 2002. The three RECs adopted the Unified Competition Regulations through their respective policy organs in 2004. The guidelines, provisions and procedures for the implementation of the Competition Regulations and the Joint Competition Authority (JCA) were adopted during the 3rd Joint meeting of

Ministers of transport in Harare in November 2006. The Policy Organs of COMESA, EAC and SADC adopted the Guidelines in 2007.

During the Tripartite Summit of Heads of State and Government on 20 October 2008 in Kampala, Uganda, the JCA was launched to oversee the full implementation of the Yamoussoukro Decision on Air Transport in the three RECs commencing January 2009.

The JCA is charged with the overseeing the full implementation of YD in the three RECs as provided for in the Regulations for Competition in Air Transport Services, 2004, and the Guidelines, Provisions and Procedures for the Implementation of the Regulations for Competition in Air Transport Services within COMESA, EAC and SADC, 2006.

The JCA which comprises seven members, two members each from EAC, COMESA and SADC plus a chairperson on a rotational basis is being established as a joint Committee operating on the authority of the three RECs Councils. The Secretariat to support JCA technical work and administrative processes is hosted at the SADC Secretariat. The Roadmap with key milestones for the operationalisation of the JCA has been prepared and agreed upon.

These Terms of Reference (TORs) have been developed to facilitate the engagement of a consultant to develop a framework for operationalising the JCA.

2.0 OBJECTIVE

The objective of this assignment is to develop a framework for operationalising the JCA in accordance with the Competition Regulations 2004.

3.0 SCOPE OF WORK

The scope of work includes the review of relevant documentation, development of proposals of the legal framework and organization management structure, sustainable funding mechanism and a Air Services Agreement (ASA) template for the exchange of route and traffic rights that complies with the YD.

Specifically, the consultant shall undertake the following tasks:

Task1: Review of documents and preparation of the Inception Report

The Consultant will, amongst others, review and evaluate existing documents such as: Treaties establishing the three RECs; relevant Protocols; Decisions of the First COMESA-EAC-SADC Tripartite Summit, 2008; Regulations for Competition in Air Transport Services, 2004, and the Guidelines, Provisions and Procedures for the Implementation of the Regulations for Competition in Air

Transport Services within COMESA, EAC and SADC, 2006; Decision Relating to the Implementation of the Yamoussoukro Declaration Concerning the Liberalisation of Access to Air Transport Markets In Africa, 1999; the Memorandum of Understanding On Inter Regional Cooperation and Integration Amongst Common Market for East and Southern Africa (COMESA), East African Community (EAC) and the Southern Africa Development Community (SADC); ICAO Convention and the Annexes, other international treaties such as the EU Agreements and Protocols related to air transport and any other relevant documents.

As a result of the documents review, the Consultant shall prepare an Inception Report with a strategy and detailed work plan for fulfilling the TORs.

Task 2: Development of the Legal Framework for the JCA

Under this task the Consultant shall develop an appropriate legal instrument to provide for the establishment of the JCA in accordance with the Regulations for Competition in Air Transport Services, 2004.

Task 3: Development of the organization and management structure of the JCA Secretariat

Under this task the Consultant will develop an appropriate organization management structure and functions of the JCA Secretariat.

Task 4: Development of the Business Plan and Budget

Under this task, the Consultant shall develop a five year business plan and annual budget to implement the activities identified in the business plan for the JCA.

Task 5: Sustainable funding mechanism of the JCA

The Consultant shall study the various options for funding and propose the best option based on the analysis. He/She shall also develop a plan and strategy for its implementation.

Task 6: Development of an Air Services Agreement (ASA) template that complies with the YD

The Consultant shall develop a YD compliant Air Services Agreement template for the COMESA-EAC-SADC Tripartite region.

4.0 REPORTS

- (i) **Inception Report:** The Consultant shall submit and present the Inception Report with a strategy and detailed work plan for fulfilling the TORs. This shall include a comprehensive list of key documents for review, list of stakeholders to consult and a proposed schedule for stakeholder consultations. The Inception Report shall be discussed and approved by the Steering Committee. Fifteen (15) copies shall be submitted to the Contracting Authority. In addition there shall be an electronic version. The inception report shall be delivered in two (2) weeks after signing of contract.
- (ii) **Progress Reports:** The consultant shall prepare and submit monthly progress reports to the Contracting Authority indicating the status of implementation of various tasks under scope of services.
- (iii) **Draft Report:** The draft Report shall include evidence of the completion of all of the tasks set forth in the Terms of Reference and, among other things, include an executive summary, a draft legal instrument to provide for the establishment of the JCA, a draft organization and management structure of the JCA Secretariat, a draft five year business plan and annual budget to implement the activities identified in the business plan, proposed Sustainable funding mechanism of the JCA and a plan and strategy for its implementation, and a draft YD compliant Air Services Agreement template for the COMESA-EAC-SADC Tripartite region .
- (iv) **Final Report:** The Consultant shall submit a Final Report after incorporating all the comments of the Steering Committee. The Final Report shall include an Executive Summary. Fifteen (15) copies shall be submitted to the Contracting Authority. In addition there shall be an electronic version. The report shall be delivered six (6) months after signing of contract.

5.0 DELIVERABLES

The outputs and deliverables of the study shall be:

- a) Relevant reports as detailed in Item 4
- b) Legal instrument for the JCA under task 2;
- c) Organisational and management structure and functions of the JCA Secretariat under task 3;
- d) Business plan and budget under task 4; ,
- e) Sustainable funding mechanism, plan and strategy for its implementation under task 5; and
- f) A YD compliant Air Service Agreement template under task 6.

6.0 PROJECT MANAGEMENT

6.1 Project Steering Committee

The work of the Consultant shall be supervised by a project steering committee comprising the JCA, experts from the three RECs Secretariats and Trade Mark Southern Africa (TMSA).

The Steering Committee shall meet and approve the inception report, draft report and the final report. These meetings shall take place within two weeks of submission of the report by the Consultant.

6.2 Contracting Authority

The COMESA Secretariat shall be the Contracting Authority for the Study and shall be in charge of the day to day administration and financial management of the Contract.

7.0 STAFF REQUIREMENTS

The assignment shall be conducted by a consultant who has good regional knowledge and experience in working in air transport and related projects and programmes.

Specifically, the consultancy team shall include the following key staff:

The Team Leader

The Team Leader shall have at least a Masters degree in Air Law. He/She must have at least fifteen (15) years specific experience in working with International and Regional Organizations and dealing with Air Transport Bilateral and/or Multilateral Agreements/Conventions. As Team Leaders he/she must have experience in managing consultancy teams working on establishment of multinational organizations of a similar nature. Fluency in written and spoken English is mandatory and ability to communicate ideas freely and easily is essential. Regional experience and knowledge of French and Portuguese languages is an added advantage.

Transport Economist

The Transport Economist shall have a Masters degree in transport economics with at least 10 years of cumulative experience in the development of organization business plans. He/She must have working experience in dealing with Bilateral/Multilateral Air Service Agreements (BASAs and MASAs). He/She must be conversant with the provisions of the Chicago Convention

(1944), as amended, and related Agreements and Protocols on air transport economic regulation. Fluency in both written and spoken English is essential.

HR Expert

The expert shall have at least a master's degree in Human Resource Management. He/She shall have extensive experience in designing organizational structures, operating systems, rules and procedures for multinational organizations. He/She must have a minimum of 15 years demonstrated experience in undertaking a similar assignment and familiarity with international laws and regimes. Fluency in both written and spoken English is essential.

Finance Expert

He/She shall be qualified in financial management, with at least a post graduate university degree. He/She must have served on similar position in at least 3 consultancies of similar nature and at least 15 years experience in financial analysis, budgeting, resource mobilization and financial management in multinational organizations. Fluency in both written and spoken English is essential.

8.0 TIME FRAME

The services shall be completed within a period of 6 calendar months from the date of signing the contract (effective date).

The following time frame/schedule (in months) is proposed for the deliverables.

Signing/Effective Date of Contract	M
Submission of the Inception Report	M + 0.5
Submission of the Draft Report	M + 4
Submission of the Final Reports	M + 6

Roadmap for Operationalisation of the Joint Competition Authority (JCA)

No	Activity	Resources Required	Lead	Date
1	Develop Terms of Reference for a Consultancy for the development of a framework for operationalization of JCA including: <ul style="list-style-type: none"> (i) a multilateral air service agreement (MASA) template; (ii) an institutional and legal framework for the JCA and organisational structure; and (iii) propose sustainable funding mechanism and budget for the JCA 	COMESA, EAC, SADC Secretariats (3 Officers), TMSA (Airfares, subsistence allowances, conference package)	EAC	March 10-31, 2011
2	Review Terms of Reference for a Consultancy for the development of the framework for operationalization of JCA	COMESA, EAC, SADC Secretariats (3 Officers), TMSA, JCA Members (7 officers) (Airfares, subsistence allowances, conference package)	COMESA TMSA	April 20 - 22, 2011
3	Issue tender, evaluate tenders and engage a Consultant to develop the framework for operationalization of JCA	COMESA/EAC/SADC/TMSA (4 Officers) Airfares, subsistence allowances, conference package, Consultancy fees	TMSA COMESA/EAC/SADC	June 15 – August 31 2011
4	Review the Consultant Inception Report;	COMESA, EAC, SADC Secretariats (3 Officers), TMSA, JCA Members (7 officers) (Airfares, subsistence allowances, conference package)	COMESA	30 September 2011

5	Review the Consultant draft Report;	COMESA/EAC/SADC/TMSA/ JCA Members (7 officers)/ 2 from each Member State Airfares, subsistence allowances, conference package, Equipment hire, Report production	TMSA	20 January 2012
6	Submission and presentation of the Consultant Final Report;	COMESA/EAC/SADC/TMSA/ JCA Members (7 officers)/ 2 from each Member State Airfares, subsistence allowances, conference package, Equipment hire, Report production	TMSA	20 March 2012
7	Convene Ministers meeting to approve the framework for operationalisation of JCA	COMESA/EAC/SADC/TMSA/ MS (70 Participants) Airfares, subsistence allowances, conference package, Equipment hire, Report production, and translation costs	Member States (MS)/TMSA	April/May 2012