



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

FINAL REPORT – SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

CONTRACTING AUTHORITIES
COMESA

BENEFICIARY
COMESA, EAC, SADC

Service Agreement Number TMSA-SC-12-31



Prepared by **Bilson Henaku Solicitors**



FINAL REPORT – Summary, Conclusions & Recommendations

**Project: A Framework for the Operationalisation of the
COMESA EAC-SADC Joint Competition Authority (JCA)**

Service Agreement No: TMSA-SC-12-31

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LIST OF ABBREVIATIONS

| Acronyms | Definition |
|--------------------|---|
| AA | Aeronautical Authorities |
| AFCAC | African Civil Aviation Commission |
| AFRAA | African Airline Association |
| ASA | Air Service Agreement |
| ATC | Air Traffic Control |
| ATM | Air Traffic Management |
| AU | African Union |
| AUC | African Union Commission |
| BASA | Bilateral Air Service Agreement |
| CAA | Civil Aviation Authority |
| CAC | Civil Aviation Committee (of SADC) |
| DCA | Directors of Civil Aviation |
| Doc. | Document |
| EA | Executing Agency |
| EASA | European Aviation Safety Agency |
| EAYD | Executing Agency of the Yamoussoukro Decision |
| e-bulletin | Electronic news letter |
| ECA or UNECA | United National Economic Commission for Africa |
| EU | European Union |
| FAA | Federal Aviation Administration |
| FE | Financial Expert |
| GHC | Ground Handling Company |
| H/Q | Headquarters |

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| Acronyms | Definition |
|-----------------|--|
| HR | Human Resources Expert |
| IATA | I nternational A ir T ransporters A ssociation |
| ICAO | I nternational C ivil A viation A ssociation |
| IT | I nformation T echnology |
| JCA | J oint C ompetition A uthority |
| MASA | M ultilateral A ir S ervice A greement |
| MIDT | M arketing I nformation D ata T ransfer |
| OAG | O fficial A irline G uide |
| OAU | O rganisation of A frican U nity |
| PM | P roject M anager |
| POL | P olicy A nalyst |
| RECs | R egional E conomic C ommunities |
| SADC | S outhern A frican D evelopment C ommunity |
| SC | S teering C ommittee |
| SG | S ecretary G eneral |
| SPSS | S tatistical P ackage for the S ocial S cientist |
| TE | T ransport E conomist |
| TL | T eam L eaders |
| TOR | T erms o f R eference |
| WASA | W orld A ir S ervice A greements |
| YD | Y amoussoukro D ecision |

1. EXECUTIVE SUMMARY

1.1 Context

TradeMark Southern Africa Service (TMSA) Agreement Number TMSA-SC-12-31 is an agreement concluded between the Secretary General of the Common Market for Eastern and Southern Africa (COMESA) and Bilson Henaku Solicitors (BH Solicitors) for the provision of advisory services on the development of a framework for the operationalisation of the Joint Competition Authority (JCA) established under the Regulations for Competition in Air Transport Services within the Common Market for Eastern and Southern Africa (COMESA), the East African Community (EAC) and Southern African Development Community (SADC) of 2004 (hereafter, Joint Competition Regulations).

The Decision Relating to the Implementation of the Yamoussoukro Declaration Concerning the Liberalization of Access to Air Transport Markets in Africa signed in Yamoussoukro Decision 1999 and which entered into force in 2000 serve as the backbone of this project. The main objectives of the Yamoussoukro Decision (YD) is the facilitation of intra-African connections, liberalization, the development of an improved aviation network on the African continent and increased private sector participation. In 2000 the Organization of African Unity's (OAU) Assembly of Heads of State endorsed the Yamoussoukro Decision (YD) and the OAU's successor, the African Union (AU), gave the Yamoussoukro Decision the necessary legal dimension, which came into force in July 2002.

At the regional level COMESA, EAC and SADC as leaders of the implementation monitoring process signed Joint Competition Regulations in 2002. The Authorities of these institutions approved the rules in 2004. Unfortunately, the operationalisation and execution has been delayed due in part to the absence of an active monitoring institution.

1.2 OPERATIONALISATION AND CAPACITY

In order to ensure the full implementation of the Yamoussoukro Decision it is in the best interest of the Tripartite that the institutional mechanism, the Joint Competition Authority should have adequate capacity; in other words, the ability to monitor and supervise the Air Transport Sector within the regions as a whole.

This mandate requires a proper definition of its legal and institutional framework, a clear definition of its budgetary requirements which it will be free to implement; a sustainable funding mechanism and the human capacity to enable it undertake its activities. Capacity as used here therefore denotes human and financial resources as well as empowerment through an appropriately defined legal and organisational framework.

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A key aspect of liberalisation is the question whether or not bilateral air services agreements are necessary under the Yamoussoukro Decision regime. The study examines and proposes a suitable MASA template for the Tripartite.

1.3 Project Background

Following the adoption of the Competition Regulations by the various regional economic communities in 2004 and the adoption of the attendant implementation regulations in 2007, the Tripartite Summit of 2008 held in Kampala, Uganda endorsed the activities directed at the effective implementation of the Yamoussoukro Decision and called for the operationalisation of the JCA.

It will be recalled that under the theme of 'Towards a Single Market' the Kampala Summit was convened to review and agree a programme of harmonisation of trading arrangements amongst the three RECs, free movement of people, joint implementation of interregional infrastructure programmes as well as institutional arrangements on the basis of which the three RECSs would foster cooperation. It is from this perspective that the JCA was launched as one of the institutional arrangements and most importantly programmes to enable the Summit achieve the stated objective.

Air transport, it is important to note features strongly on the agenda of the first phase of the FTA as is exhibited in the Declaration in June 2011 of the Launch of Negotiations of the Free Trade Area. It plays a major role in expeditious movement of goods and people and is a primary catalyst to integration. Air transport plays a pivotal role in the elimination of non-physical barriers.

Indeed the importance of this subject matter is underscored by the special mention of the MOU between the Tripartite and DFID of 27th January 2010. Paragraph 4.2.1 of the said agreement makes special mention of securing the liberalisation of the sector through the Yamoussoukro Decision and the Competition Regulations.

1.4 Project Objective

The overall objective of the project is to develop a framework for operationalising the JCA in accordance with the Competition Regulations of 2004 and to enable the JCA meet its mandate as provided for in article 9 the Competition rules. The objective can therefore be interpreted as the need to develop a framework to assist the RECs institutionalize the JCA for the purpose of overseeing the full implementation of the Yamoussoukro Decision within the common territory of the Tripartite RECs. This assistance is provided directly to the *JCA Board*, with the objective to:

- a. Defining the Regulation for the operation of the JCA, covering definition of its function and powers, management architecture, relationships to Tripartite RECs and other similar bodies.
- b. Drafting of YD compliant air service agreement template

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- c. Defining human and organisational resources covering an optimal organisational chart of the JCA, staffing levels and recruitment package for the JCA secretariat, job descriptions and a staff salary grading scheme.
- d. Developing a business plan covering a five years duration and a five year budget. The business plan would be based on the JCA’s Regulation, the likely workload involved and the human, financial and organisational resources available.
- e. Identifying sustainable funding mechanisms including an insight into the funding mechanism for each source identified, likely funding streams and the sustainability of each source over time as a means of supporting the financial burden of the JCA; and
- f. Undertaking a stakeholder consultation exercise via a validation workshop

1.5 Project Duration

The project duration in accordance with the Terms of Reference) was set for 4 man months which, taking into consideration holidays translates to five calendar months i.e. From October until March. The project start date was 01.10.2012 and the completion date is 15.03.2013. The services shall be completed within a period of 6 calendar months from the date of signing the contract (effective date).

The actual time frame/schedule (in months) for the deliverables is as follows:

| | Planned | Actual |
|------------------------------------|---------|-----------------|
| Signing/Effective Date of Contract | M | 02.10.2012 |
| Submission of the Inception Report | M + 0.5 | 11.2012 |
| Submission of the Draft Report | M + 4 | 08.02.2013 |
| Validation Workshop | M + 4 | 11 – 12.04.2013 |
| Submission of Comments | | 10.05.2013 |
| Submission of the Final Reports | M + 6 | 31.05.2013 |

Table 1: Time Frame/Schedule

The project suffered delays due to difficulty in securing an appropriate date for the Stakeholder workshop. Subsequently a month was dedicated to obtaining very detailed comments from Member States resulting in a completion of the final draft at the end of May 2013. The last three weeks of May were dedicated to reviewing the comments and amending the report to reflect the comments submitted.

1.6 Summary Findings, Conclusions and Recommendations

The scope of work, specific task for the consultant as defined in the terms of reference as well as summary findings are addressed in this section.

Against the objective of defining the functions of the JCA as envisaged by the mandate of the Heads of States, the Joint Competition Regulations of 2004, Guidelines of 2007 and, by reference, the Yamoussoukro Decision and developing legal instruments, management and secretariat structures to reflect the functions to be performed by the JCA, the consultant analysed the institutional relationships, in particular in relation to complaints procedures and rulemaking structures, assessed the functions of the JCA vis-à-vis the Member States and the other participants.

The analysis resulted as required under the terms of reference of this study on the draft of a legal instrument, namely: a **Regulation establishing the Joint Competition Authority**.

The draft Regulation which was also thoroughly reviewed after the Harare Stakeholders workshop, underscores the sovereignty of states and a number of principles as basic underlying objectives of the Regulation. It provides for a location and establishing, immunity as well as liability of the JCA. The draft Regulation it is important to note re-examines the role assigned by the Tripartite Summit and attempts to extend the mandate of the JCA beyond the confines of managing the Competition Regulation. Consequently certain functions are included such as training, database development, development of rules on liberalisation,. Assisting or supporting states in third party negotiations, undertaking extensive research in support of liberalisation of the air transport sector.

Logically institutions are provided for including the Tripartite institutions, The JCA Board, the Executive Director and his Staff,. The Regulation provides for collaboration between the JCA and other air transport coordinator institutions and most importantly outlines rights and responsibilities of various parties in terms of raising complaints, appealing against decision of the JCA as well as in recommending rules for adoption by Tripartite Institutions.

In relation to dispute settlement, the draft makes provisions for usage of a Board of Appeals as well as an Appeals Tribunal to be constituted by the Tripartite Summit from among the membership of the COMESA and EAC Courts of Justice and the SDADC Tribunal.

One primary recommendation flowing from the analysis and the legal draft is the need to empower the JCA to supervise an eventual multilateral air services agreement.

In examining a **suitable organizational and HR structure for the Secretariat of the JCA**, the consultant conducted an analysis of the 3 Secretariats Transport Departments of COMESA, proposed an organisational structure of the JCA, defined job description of the envisaged key post and outlined Staff and Recruitment Packages for the JCA,

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The analysis of the 3 Secretariats Transport Departments covered the background to the establishment of the three RECs, their Legal mandate, organisation structures, administrative and finance division, Programmes Division, with the later covering the Infrastructure Development Department. It also covered the human resource policies and objectives.

It was observed that although the transport departments in all the three RECS are within the larger and broader Infrastructure Development Departments, they provide an appropriate context within which to construct a JCA Secretariat that will have across the board acceptance with the capacity to effectively carry out its mandate; and that the JCA Secretariat, as far as possible, be the hybrid of the best of the three RECs in terms of policies and benefits, subject to ability to support such proposals.

The organisational structure has been developed to include all the relevant units to ensure that the JCA meets its core functions and mandate as spelled out in the draft JCA Regulation. The structure depicts the internal management hierarchy within the JCA secretariat. It also includes units for the purpose of performing necessary functions of a non-permanent nature, which may be outsourced whenever required in order to render the Board cost- effective.

Job descriptions for the core 14 envisaged positions of the JCA have been developed. Effort has been made to ensure that the job descriptions cover enough details to ensure that the Board efficiently and effectively meets it functions and mandate as spelled out in the draft Regulation.

In this regard, the following 7 positions and salaries have been identified for the **start-up of the JCA**:

| Number | Post Title | Grade | Scale USD |
|---------------|---|--------------|-----------------------|
| 1 | Executive Director | D1 | 114,235.00 |
| 2 | Executive Director Personal Assistant | G5 | 118,985 (Pula) |
| 3 | Competition Lawyer | P4 | 72,373.00 |
| 4 | Air Transport Specialist | P4 | 72,373.00 |
| 5 | Database Expert | P3 | 60,013.00 |
| 6 | HR and General Administration Assistant | G4 | 93687.00 (Pula |
| 7 | Driver/Messenger | G3 | 73192.00(Pula) |

Table 2: Start-up Staff Complement

It is logical that, with the exception of the Executive Director, *all positions could be filled by through secondment of staff from Member States at least for the initial period of its existence as a secretariat.*

The Staff and Recruitment Package has been developed in the form of Staff Rules and Regulations whose objective is to detail and define the fundamental conditions of service, and the basic rights, duties and obligations of the members of staff of the JCA. They also lay down general JCA principles for human resource management which are governed by the

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need to attract and retain staff who meet the highest standards of efficiency, competence and integrity. The Staff Rules and Regulations further outline the JCA's staff compensation scheme.

In defining a **suitable business plan and budget** three draft business plan scenarios for the Joint Competition Authority (JCA) over the 2013-2018 period are presented, representing low-, mid- and high-cost situations. The differences arise largely from different approaches to remuneration of the Board, responsibility for advocacy costs, and payment for accommodation. The results are presented in 2013 constant prices in US\$ at a constant 2012/13 US\$/Pula exchange rate.

These business plan scenarios are postulated as bases for discussion with the authorities of the tripartite regional economic communities (RECs), COMESA, EAC and SADC, as part of a wider study of the operationalisation of the JCA. They are therefore open to amendment to ensure local legal compliance and cost levels.

For each scenario, an estimated organisational plan is presented appropriate to the assumed purpose, functions and duties of the JCA. The JCA is seen as an agency of the tripartite REC grouping, with the essential aim of ensuring the implementation of the Yamoussoukro Decision throughout its area. It is assumed to have administrative, pro-active investigatory, and arbitration dispute management roles and authority.

Estimated cost rates are applied to the organisational plans, giving a set of three draft business plans or budgets, with total capital spending of \$0.4 million over the 2013-2018 period added to the current account spending to give the total cash outflow.

The estimated total cash expenditure (in constant US\$) of the three scenarios at the middle year of the five-year planning period (2016) are:

- Low Cost, with unpaid (seconded) Members of the Board, free hosted accommodation, and recharged legal costs, \$2 million;
- Mid Cost, some fee-paid Members of the Board, rented accommodation, and legal costs absorbed, \$2.6 million; and
- High Cost, some fee-paid and some salaried Members of the Board, rented accommodation, and legal costs absorbed, \$3 million.

Revenue to cover these total cash outgoings could be accessed by recharging them to Tripartite Member States proportionately to their African international traffic, the JCA's main concern. This would result in a charge equivalent to between \$0.14 and \$0.28 (according to scenario and year) per relevant departing airline passenger.

In relation to **start-up cost**, based on the assumption of an initial skeletal operation of 7 persons for a period of 2 years, the budget and business plan also takes this assumption into consideration. Staff cost using the highest costing scenario for the five year period is built as follows:

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Year 1 – USD 388,627.

Year 2 – USD 408,059

Year 3 – USD 1,371,362 (full complement of 23 including Executive Staff starts in Yr. 3

Year 4 – USD 1,439,930

Year 5 – USD 1,511,926

Obviously there is a concomitant effect on operational cost and cash flow. Total cash flow on the high cost assumption for the five year period starts from USD 700,000 and increases in Year 3 to USD 2,946,362 through to just over 3 million.

Additionally, the consultant proposes **suitable financial instruments** needed to fund the activities of the JCA.

The overall objectives for developing the sustainable funding mechanism are to advise the JCA on the suitability and sustainability of potential funding sources and provide clearly identified funding options for the JCA in light of operational and economic constraints.

The review and analysis of a number of options for funding the JCA revealed the organization has a number of sustainable funding options both for the short term – 0-3 years and longer term over 5 years period. The outcome of the sustainable funding options for the JCA is summarized below.

A financially sustainable organisation, is an organisation that can consistently support and deliver its mission, making the most of changing markets and funding environments. To ensure financial sustainability of the JCA, the following four funding options were considered and recommendations made on a combination of suitable funding options for the organisation:

1. Option 1 – Equal contributions by Member States and fee income from services
2. Option 2 - Equal contributions by Member States based on Market Shares
3. Option 3 - Proportional Contributions by Member States based Market Share
4. Option4 - Funding through grants, donations, fees and loans and levies on air tickets

However, due to economic and political challenges, constraints and unsuitability of a number of sources considered for funding the JCA, we concluded that it was best to draw core funding from the member states for operations because the agency is an instrument of the states. This conclusion has the support of a significant majority of member states as the main source of funding whilst, other proportion of JCA funding will be generated from additional sources which has been discussed in more detail in the subsequent sections of this report. Also, it important to note of the options listed above, member states with smaller air traffic market share expressed a preference for funding the JCA on a proportional basis based on market share. This option was discarded as it is not mostly suitable for all member states and the prescribed market bounding could change annually hence creating some degree of inconsistency and annual recalculations.

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It was evident from our analysis of the various options that sustainable funding arrangement for the JCA should be based around key arrangements that are consistent with the statutory mandate of the Yamoussoukro Decision on Air Transport Liberalisation as agreed by the Kampala Summit. As a result, we recommend a combination of funding routes for the organization based on experiences of similar organizations within Europe, Africa and the Tripartite Regions.

The preferred funding option for the JCA will be direct funding through contributions from member states on a fixed equal annual basis. We also recommend that member states should assume full responsibility for funding the JCA based on contributions through each Regional Economic Community. This option will ensure equitable distribution of the costs across member states and would be the cheapest option. This method is in line with the EAC, COMESA and SADC Treaty's provision of equal contribution by member states and it also provides stable income for the JCA. However, this issue of equal contributions may need to be discussed within the Tripartite Regions for consensus and approval.

With an operational budget of \$2.0 million low cost to \$3.0 million high cost, the contribution of each Member State is expected to range between US\$71,500 - \$81,100 per annum under a low cost option to between US\$105,500 - \$120,500 per annum under a high cost option.

In addition, the JCA may consider the option of a combination of contributions for core services and fee income for other services as described above. However, after some deliberations and feedback from the stakeholders group, it was suggested that a phased implementation strategy was adopted. As such, a reduced budget of \$500,000 per year has been recommended for a 7 man team including the executive director. This budget will represent an average of \$18,518 per member state on a fixed annual contribution basis.

Other sources of funding, particularly assistance from development partner and international donor agencies should be actively pursued in addition to member states contributions, services fees and charges as supplementary revenue streams. This option will provide for a more challenging funding model initially for the JCA as services and other fee income will not be easily generated within the initial 24 – 36 months of operation, hence sustainability of the funding model. We recommend that a combination of compulsory and voluntary contributions should be considered as an alternative funding model within this option.

A critical review of the option of funding through levies on air travel tickets on departing passengers proved to be very challenging in application as many airline companies and passenger groups would oppose this levy. A number of regional agencies are facing strong challenges and operational incapacities as a result of adopting this model of funding core activities. It can be argued that better and fairer competition will be good for all within the industry yet many airline companies are generally reluctant to pay these levies in a timely fashion. Although, we will recommend that the JCA considers investigating the possibility of collecting the levies directly from airline companies through established international and regional airline agencies such as IATA etc. on a contractual basis as a form of supplementary income generation option.

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In consideration of the recommended funding options for the JCA, we have undertaken an extensive research of the various funding sources that can be potentially suitable for the organization both at start up and on-going basis. A total of 21 funding sources was reviewed and analysed for suitability and these have been summarised as a financial dossier that should be considered by the JCA for core funding and project activities.

Sustainable funding for regulatory organisations is often very challenging and complex in application due to the various elements discussed above. As highlighted in our analysis of the various funding options and sources of funding, it is evident that dependence on cost recovery exercises through fees and charges will be insufficient source of funding the JCA as most agencies of similar composition across Europe and Africa have not been successful with this model of funding without contributions from government and other sources.

As a result we will recommend that the JCA's core funding should be secured from fixed equal contributions from member states to enable effective establishment and operationalisation of the organisation. However, the management board of the JCA will need to consider generating additional and supplementary income from some of the sources discussed above, mostly through fees, levies and grants from regional and international bodies.

In addition, we will recommend that the Board consider setting up a fund raising team to assist the JCA with the compilation of the proposed funding structures and documentation in establishing the financial frameworks for the JCA.

An essential component of competition regulation in any effort at liberalising air transport and indeed what should rather be considered as a condition sine qua non is the **development and implementation of an Air Services Agreement** that is conducive and is in compliance with the Yamoussoukro Decision.

The Consultants have developed and propose a draft YD compliant MASA template for the COMESA EAC-SADC Tripartite region to be used for the exchange of route and traffic rights. It is drafted as a multilateral agreement and incorporates YD liberalisation principles and provisions particularly as they affect the exchange of traffic rights between member countries. In this way it will be a supervisory tool for facilitating liberalisation and YD implementation in the tripartite region. In a most basic way, its application should enhance harmonisation of air transport policy regulation and coordination of the liberalisation process in the three RECs and provide a yardstick against which YD implementation can be monitored and measured. Specifically the template could have the following purposes:

Specifically the template could have the following purposes:

- a. To provide a YD compliant model Multilateral Air Service Agreement to be used as a basis for exchanging traffic rights between member States.

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- b. To enhance regulatory harmonisation of liberalisation policies and provisions within the region,
- c. To serve as a ‘yardstick’ to measure progress and changes in liberalisation and YD implementation at the regional level.
- d. To provide a framework of harmonised regulation and harmonised national and regional air transport policies in respect to the exchange of market access rights between States in the three Communities.
- e. To provide Member States in the tripartite region, a basic practical supervisory tool to use in facilitating liberalisation and full YD implementation.

The template has been drafted as a Multilateral Air Services Agreement (MASA) and includes wording and provisions normally found in such agreements. It uses the language developed by ICAO over the years on various air services agreements, provisions and language from the YD and instruments used by RECs in their agreements. It consists of a Preamble and twenty one Articles. The YD compliant Articles include the following:

- a) Article 1 –Definitions
- b) Article 2 – Grant of Traffic Rights
- c) Article 3 – Capacity and Frequency
- d) Article 4 – Tariffs
- e) Article 5 – Designation and Authorisation
- f) Article 6 – Withholding and Revocation of Authorisation
- g) Competition Regulations

Provisos contained in the above Articles are to a large extent identical to the relevant Articles in the YD. Most of these provisions are a departure from the traditional BASAs. In particular, Article 5 on Designation and Authorisation as reproduced from Article 6.9 of YD leaves out the traditional “*Substantial Ownership and Effective Control*” criteria for airline designation found in most BASAs. Instead, it opts for other criteria such as effective control, incorporation in and principal place of business and other operational and technical fitness criteria.

This deviation is a source of concern for some States as it opens opportunities for interests outside the continent to exercise control over African airlines through equity participation, thus gaining undue advantage from the liberalisation package which is intended to benefit African carriers and not those from outside the continent. It is to be noted however, the YD criterion in a way creates conducive conditions for private sector participation in the airline industry in Africa.

Other provisions in the template are those normally found in any ASA such as provisions on civil aviation safety and security, competition rules, application of laws/regulations, consultation, settlement of disputes, withholding authorisation, withdrawal, Depository and entry into force. However, Article 13 on Aviation Security has been formulated to take into consideration the Beijing Conventions and Protocols signed in September 2010 while in Article 19, the AU has been named a Depository of the MASA as it is a Supplementary Agreement to YD.

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The role of the Template in YD implementation belongs to a cluster of issues that need clarity as the role it is allowed to play may have a huge bearing on YD implementation. In this regard there is a clear indication as to its role in the terms stating to the effect that the MASA template is for the exchange of route and traffic rights that complies with the YD. The conclusion here is that it is to be used as a basis for exchanging market access rights based on YD provisions contained in the agreement.

In order for it to effectively play this role, the JCA should be allocated a specific function of ensuring compliance by States with the template particularly with YD provisions therein. This suggestion arises from The JCA's general function, as derived from the Communiqué of Tripartite Summit of 2008, to oversee the full implementation of the YD in the 3 RECs. The role of the template and its application could be one of the specific functions of the JCA. A key specific function could therefore be to ensure compliance by member States with YD provisions in the template.

Thus, in addition to monitoring implementation of Competition Regulations, the JCA will also facilitate application of the template by States as a means of overseeing full implementation of YD in the tripartite region.

The other and broader aspect of the MASA could be seen in its role as a strategy in implementing Free Movement of people Programmes of RECs. A liberalised air transport industry brought about by YD implementation will create an environment of that will facilitate the free movement of people, services and goods within and beyond the 3 RECs.

While a strategic plan is an essential component of a business plan, the limitation imposed on this project, financially, meant it was impossible to define a strategic plan. In spite of the financial limitation, as a complementary service to the Tripartite, the Consultant drafted a strategic plan. The rationale of the draft paper is to enable the JCA give consideration as to direction in which the JCA intends to evolve, in terms of its mission, vision, values and strategic goals, in the near future, 5-10 years.

Four thematic areas are proposed: (a) ensuring market access via the full implementation of YD, (b) Ensuring fair competition, (c) Protection of aviation consumers and (d) ensuring good governance of the JCA. The draft paper provides different options for the mission, vision and value statements. It also defines specific objectives per thematic area. The Consultant recommends to the Client to use the elements of the submitted draft strategic plan in order to finalise a strategic plan, pending the adoption of a consensual Regulation for the JCA.

2. Project Context

2.1 General Background

2.1.1 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, and joint implementation of inter-regional infrastructure programmes as well as institutional arrangements on the basis of which the three RECs would foster cooperation.

2.1.2 Project Background

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.

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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 each from EAC, COMESA and SADC plus a chairperson on a rotational basis is being established as a joint Committee operating on the Board 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.

The Consultants BH Solicitors were retained on behalf of a Consortium of Companies and Individuals, via an international call to tender, to carry out the studies for the operationalisation of the JCA. Other original members of the Consortium are:

- ❖ Alan Stratford and Associates, London UK
- ❖ Rhema Consulting Group, London UK
- ❖ Alan Stratford and Associates
- ❖ Mr. Rexter Ndhlovu, Lusaka, Zambia
- ❖ Mr. Geoffrey Moshabesha, Lesotho

2.2 Objective of the Project

The overall objective of the project is to develop a framework for operationalising the JCA in accordance with the Competition Regulations of 2004. The Technical Proposal interprets this objective as to develop a framework to assist the RECs institutionalise the JCA for the purpose of overseeing the full implementation of the Yamoussoukro Decision within the common territory of the RECs. This objective, among other things, translates into:

- Defining the functions (economics, safety and security) of the JCA as envisaged by the mandate of the Heads of States, the Regulations of 2004 and Guidelines of 2008 and the Yamoussoukro Decision of 2000.
- Outlining existing regulatory and institutional structures in air transport and competition and identifying potentially challenging areas for the eventual JCA.
- Developing legal instruments, management and secretariat structures to reflect the functions to be performed by the JCA
- Drafting a multilateral air services agreement

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2.3 Structure of the Report

The report is broken down into 7 separate parts corresponding to the separate issues addressed in this study. The various parts are:

Final Report – Summary, Conclusions and Recommendations

Final Report Part 2 – A Legal Regime Establishing the JCA

Final Report Part 3 - Human Resources and Organisational Plan

Final Report Part 4 – Business Plan and Budget

Final Report Part 5 – Sustainable Funding

Final Report Part 6 – YD Compliant Air Services Agreement

Final Report Part 7 – Strategic Plan

3. FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

This section presents a summarised outcome of the various components of the study.

Each component contains key issues and highlights, conclusions and recommendations.

3.1 A Legal Regime Establishing the Joint Competition Authority

The consultants have drafted a Regulation and an explanatory memorandum. This section addresses the Competition Regulations, the matter of domestication of international economic regulations, deals with the role of the JCA in the institutional setup of the Tripartite and air transportation regulation and summarises provisions of the draft Regulation.

The draft Regulation, its 2 Annexes and a Memorandum can be found in **Final Report Part 2 - A Legal Regime Establishing the JCA.**

3.1.1 Competition Regulations

The Regulations for Competition in Air Transport Services within COMESA, EAC and SADC signed in Pretoria in 2002 and approved by Council of Ministers of SADC in Mauritius in August 2004 and by the Council of COMESA and EAC in December 2004 (Competition Regulations) has the object 'to promote and guarantee free and fair competition in air transport services within the COMESA, EAC and SADC Regions in order to develop the industry and contribute to the welfare of the citizens of Member States' (Article 3(1).

It prohibits any practice, agreement or decision which negates the objective of free and fair competition in air transport services in Article 4, any abuse by a dominant position in Article 5, national legislation or administrative measures that discriminate against the provision of services by undertakings in Article 6, the granting of any subsidy by any Member State which distorts or threatens to distort competition in Article 7.

In terms of the administrative structure, the Competition Regulations in its Article 9 required the establishment of the Joint Competition Authority (hereafter the JCA or the Board) of COMESA, EAC and SADC to monitor the implementation of the Yamoussoukro Decision and the Competition Regulations Article 9 (3).

Pursuant to Article 9 (4), the Joint Competition Authority shall have the function of:

- (a) implementing measures to increase transparency in the air transport sector;
- (b) implementing measures to develop public awareness of the provisions of these Regulations;

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- (c) investigating and evaluating alleged violations of anti-competitive acts, abuse of dominant positions, anti-discriminatory practices and grants of subsidies;
- (d) granting, refusing or revoking exemptions in terms of the grant of subsidy;
- (e) reviewing legislation or administrative measures of Member States in terms of discriminatory measures and legislation;
- (f) reporting to the Council or Committee of Ministers as the case may be, on any matter relating to the application of these Regulations; and
- (g) performing any other function assigned to it under the Competition Regulations.

The Competition Regulations provides for investigatory, complaints and dispute settlement measures in addition to powers to adopt implementing guidelines.

In 2006, Guidelines, Provisions and Procedures for the Implementation of the Regulations for Competition in Air Transport Services within the Common Market for Eastern and Southern Africa (COMESA), the East African Community (EAC) and the Southern African Development Community (SADC) were drafted pursuant to Article 21 of the Competition Regulations. The 3rd Meeting of the Joint COMESA, EAC and SADC Ministers responsible for Transport held in Harare, Zimbabwe, in November 2008 adopted the Guidelines, Provisions and Procedures for the Implementation of Regulations for Competition in Air Transport Services within COMESA, EAC and SADC.

The Competition Regulation was adopted in accordance with the statutory requirement of the RECs. As noted earlier, EAC, SADC and COMESA Councils of Ministers adopted these joint Regulations at their respective levels in 2004.

The adoption of these instruments raise the natural questions of how to implement them in national legislation, how to ensure that implementation is uniform and how to indeed motivate Member States to undertake the obligations enshrined in the legal instruments. Naturally a legal regime can only succeed if there is an institution introduced to make that regime. This last is the bane of the Yamoussoukro Decision in general and the Competition regime in particular. This current exercise is meant to rectify the situation.

3.1.2 Member States Domestication of Economic Regulation

A SADC study of March 2009¹ recommended that Member States should express their commitment to implementing YD by enacting enabling legislation and repealing any laws that are in conflict with YD.

¹ Assessment of Potential Impact of Implementation of the Yamoussoukro Decision on Open Skies Policy in the SADC Region, Rexter Ndhlovu and Andy Ricover, March 2009

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An evaluation in July 2008 of Legal Notice No 2² again addressed the issue of domestication of international legal instruments, and the perception it creates among practitioners that nothing is being done in terms of implementation.

The same challenge were highlighted in a SADC Evaluation in 2009³ which concluded that there was a need to request SADC Ministers of Transport to confirm that they are legally bound by the YD, and, if not, for which reason; and to also request National Competition Authorities in SADC Member States, or where there are no such Authorities, the Ministers responsible for competition matters, to confirm that they and their natural and corporate citizens are bound by the COMESA/EAC/SADC Regulations for Competition in Air Transport Services and the Guidelines, Provisions and Procedures for the Implementation of the Regulations for Competition in Air Transport Services, and, if not, which legislative or regulatory action, if any, is envisaged to remedy this situation.

The above show a similar trend in all regional economic communities and particularly in relation to air transport. This is not unique to air transport. It is a typical challenge facing most integrationist goals. While states are willing to implement regionally agreed regulations, national policies and structures sometimes delay the domestication of such regulations.

In view of the traditional challenge, most regulatory regimes are adopted without specific commitments and often domestication obligation are couched in terms such as, 'Member States shall take all appropriate measures to ensure fulfilment of the obligations arising out of these Regulations or resulting from action taken by the Commission under These Regulations. They shall facilitate the achievement of the objects of the Member States shall abstain from any measure which could jeopardise the attainment of the objectives of these Regulations.'

The Treaties establishing the three regional economic communities have various formulations of state commitment to domestication of the Treaty and or subsidiary legislation.

Any attempt to secure effective implementation of the Yamoussoukro Decision will be based on these obligations of the Member States.

Article 5 of the **COMESA Treaty**, Article 8 of the **EAC Treaty**, and Article 6 of the **SADC Treaty** underscore the general obligations of Member States of the RECs. As general treaties, there is no specific set of obligations requiring Member States to specify actions undertaken in respect of legislation subsidiary to the Treaties. Member States obligations are stated in generalities. Protocols implementing specific segments of the Treaties do.

Thus nothing prevents the RECs from specifying specific commitments in respect to domestication of regional integrative rules adopted by their respective Council. In other words, if the Council of Each REC is to specify clear actions relating to adoption of subsidiary

² Study on the Evaluation of Legal Notice No. 2 of 1999 on the COMESA Regulations for the Implementation of the Liberalised Air Transport Industry, Rexter R. Ndhlovu

³ Evaluation of Southern African Development Community (SADC) Member States' Compliance in Implementing the Yamoussoukro Decision (YD), Request No . 2009/202993

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legislation, such a requirement may not be in breach of the Treaties of the RECs unless such specific action is considered unreasonable or in breach of the Constitutions of the Member States.

Indeed financial, customs, taxation, agricultural and insurance regulations of the RECs have largely provided for specific commitments of Ministers and subsidiary institutions in respect of adoption at national level of regulations or of specific acts in regulations. The specification of commitments particularly in customs treaties have meant that States have supplied community institutions with details of required actions. Such notifications required in regulations on integration have by and large resulted in much better coordination or at least much clearer evaluation of commitments.

3.1.2.1 *General Lack of specification of Commitments in the Air Transport Sector*

The air transport sector has by and large based itself on general statements. COMESA's Legal Notice No. 2 contains no specific commitments for Civil Aviation Authorities to provide information on the domestication of the Notice. The Notice contains very many specific obligations in relation to air carriers which normally would have required Civil Aviation Authorities to notify a central organisation of activities being undertaken in each state.

The same situation applies to the Yamoussoukro Decision and the Competition Regulations, with the slight exception of 3 declarations on commitment in Annexes 1 (a), (b) and (c). Declaration 1 (a) applies to State Parties that are not parties to the Abuja Treaty and wish to be parties to the Decision. 1(b) applied to States that are not parties to the Abuja Treaty and wish to be parties to the Decision with limitation of their commitment, and 1(c) applied to States that are parties to the Abuja Treaty who wish to limit the extent of their commitment.

The Yamoussoukro Decision contains a considerable number of situations requiring notification of action by Civil Aviation Authorities, to the Monitoring Body and the Executing Agency. A major challenge to whether the Decision is being implemented or not is the lack of an authoritative compelling data source of commitments.

Unfortunately, the Joint Competition Regulations adopted by COMESA, EAC and SDADC contain the same shortfall. The only times where some form of commitment or notification or application is required of states are in relation to:

- Application by states in respect exemptions – Article 8
- Complaints lodged by states – Article 10 (1)
- The JCA may request for information Article 15 (2)

There is no commitment for notification regarding domestication of the Competition Regulations. Thus the assumption will always be that subject to the terms of the Treaties as reviewed above, the Competition Regulations are binding on the States. The reality though is that this does not answer the essential question whether or not the Competition Regulations (1) have been domesticated –irrespective of whether or not it is required- and (2) whether or

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not any effect is being given to the Regulation in question. A negative commitment not to undertake any measure to defeat the Treaty obligations, of which the Competition Regulation is a part, does not suffice.

| No | Article | Content |
|----|-----------|---|
| 1 | 2 | Declaration of Acceptance of YD precedence |
| 2 | 2 | Declaration of Agreements in compliance with YD |
| 3 | 2 | Declaration of Agreements not in compliance with YD and notification of date of compliance |
| 4 | 2 | Statement of compliance re future Agreements and individual notification of compliant or non-compliant agreements |
| 5 | 3.1 | Notification of exchanges of freedoms of the air including parties |
| 6 | 3.1 | List of eligible airlines operating under 3.1 |
| 7 | 3.2 (a) | Declaration of limitation of commitment under 10.1 |
| 8 | 3 (2) (b) | Declaration of limitation |

Table 3: Matrix of Commitments under the YD - Selection

As can be seen above, just 2 provisions of the YD would require at least 8 forms of regular or irregular statements or notifications to a centralised mechanism under the Decision. The challenge in air transportation is not just the absence of commitments to be bound by Treaties but in understanding various obligations and identifying compelling declarations, statements or notifications that are needed to ensure continuous implementation of the Treaties or Regulations.

It is extremely important that the Joint Competition Authority be granted the Board not merely to request but where necessary demand, on pain of some form of agreed penalties, information to enable the system work.

It is proposed that the draft legal instrument establishing the JCA be worded in much clearer terms expressing the commitment obligations of the various parties and indeed imposing an obligation on the management of the JCA to identify specific commitments and design implementation strategy regarding those commitments.

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3.1.3 The JCA and the Tripartite Institutional Framework

3.1.3.1 JCA Precedence

The Tripartite Summit of 2008 launched the JCA to oversee the full implementation of the Yamoussoukro Decision within the Tripartite Region.

Essentially the JCA provided for under the Competition Regulations was assigned a much broader role by the Tripartite, namely: to oversee the implementation of the YD. While the Competition Regulation referred to the YD implementation, the role assigned the JCA was to monitor implementation. This terminology is a more coordinatory role. The more specific language in the Competition Regulation related to the Competition rules.

Following the 2008 Communique therefore the JCA has become the single organisation charged within the three regions with implementing the Competition Regulations and overseeing the implementation of the YD. It is our view that the role assigned to the JCA overshadows the activities of any institution appointed by any of the RECs on their own. It is suggested that *any institution established by any of the 3 RECS to oversee the implementation of the YD will have to report to the JCA or be recognised as operating in a subsidiary position*. Indeed nothing prevents the JCA from establishing regional chapters to enable it undertake its assignment effectively. Any such delegation should be within the mandate of the Tripartite Communique of 2008 and the Competition Regulations of 2004.

It is important that no such duplication exist at any material time. The elimination of such duplication is indeed what is sought to be achieved by the Tripartite and approved in the Competition Regulations.

3.1.4 The JCA, the Tripartite Structure and Air Transport Institutions

While the JCA was created by the Competition Regulations, its status was enhanced when it was launched by the Tripartite Summit.

Article 6 of the Tripartite MOU established an institutional framework of the Tripartite, namely the Summit, the Council of Ministers, the Sectoral Ministerial Committee, the Tripartite Committee of Senior Officials and Experts (COSOE) and the Taskforce of Secretariats. *It is our view that the Joint Competition Authority falls to be considered as a Committee of Senior Officials and Experts answerable directly to the Sectoral Ministerial Committee on Infrastructure.*

Figure 1 below compares the institutional framework in the Competition Regulation 2004 with the Tripartite MOU.

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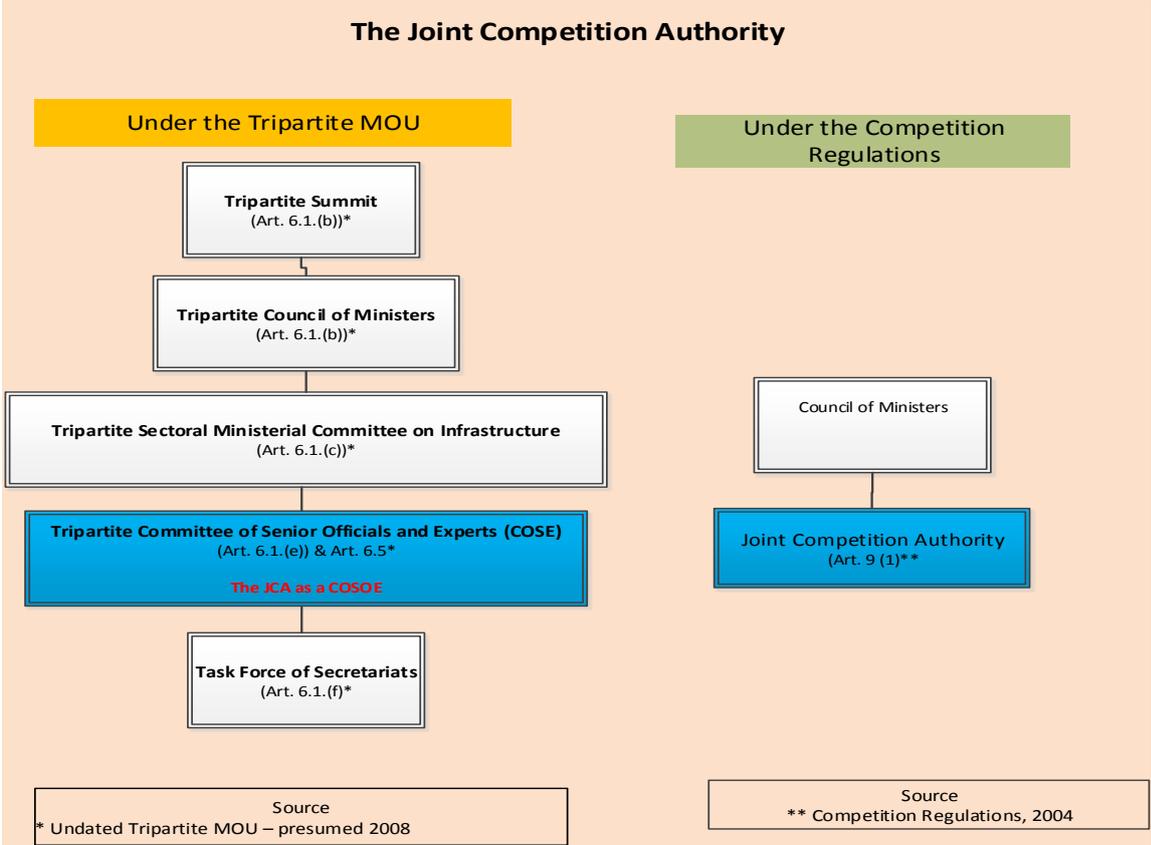


Figure 1: The JCA within the Tripartite

3.1.4.1 *The JCA and Technical Coordinating Bodies*

The three RECs have standing committees of Aeronautical Authorities that have been coordinating activities in technical, economic, safety and other aspects of air transport.

COMESA has the Meeting of Directors of Civil Aviation and Aeronautical Authorities (DCAAA), EAC has the Meeting of Heads of Civil Aviation and Airport Authorities (HCAAA) while SADC has the Meeting of the Civil Aviation Committee (CAC)⁴.

These organs of the RECS have subsidiary committees coordinating economic regulation and in particular the implementation of the YD. The current state of the organisational framework is as depicted in figure below.

⁴ Article 13.6 (1) d , SADC Protocol on Transport Communications and Meteorology

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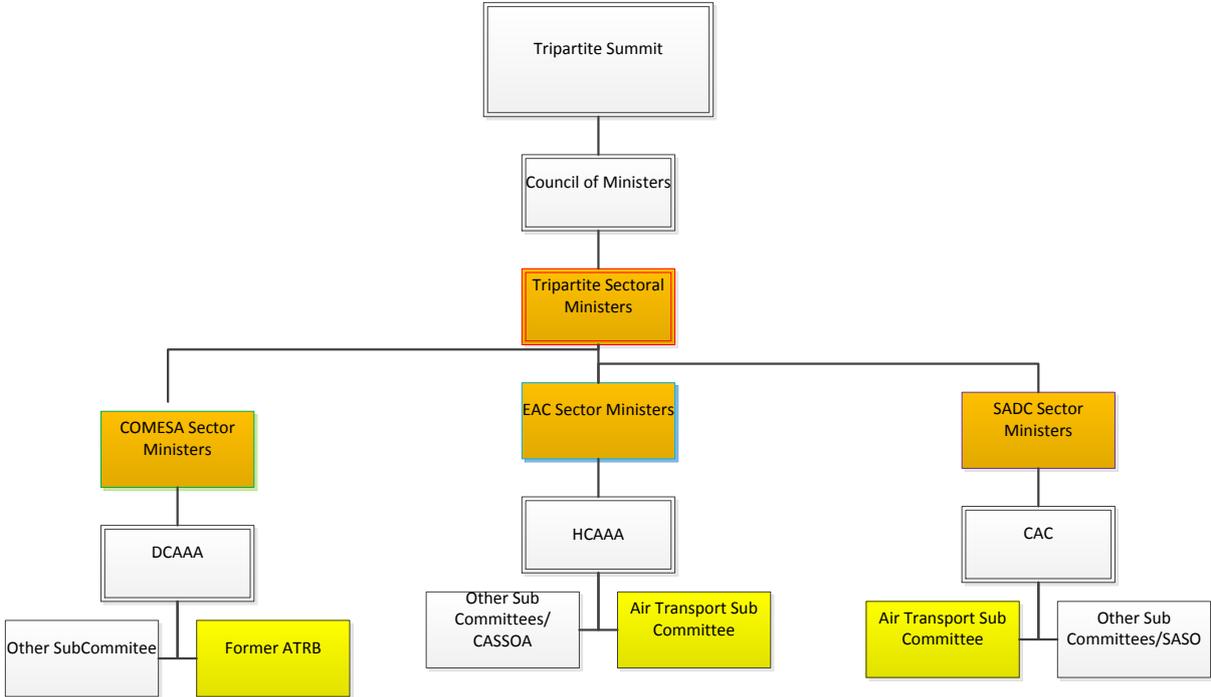


Figure 2: Dynamics of Air Transport Integration

3.1.5 Alternative Structures

In view of the statutory character of these institutions, the operation of the JCA, be it in regulating competition or the implementation of the YD, will have to take them into consideration. The question then is how does the JCA fit into the scheme of structures and how is it the structure to be harmonised?

3 alternative structures have been examined. The first structure presents the JCA as a subsidiary of the air transport sub-committees. In this model, it reports to the air transport sub-committees.

3.1.5.1 *JCA as a subsidiary to the Air Transport Sub Committees*

Clearly this structure is different from the reality where some air transport sub-committees such as the COMESA ATRB has long been dissolved in anticipation of the JCA or the SADC YD Implementation Group also held in abeyance. This in reality will also be in breach of the provisions of the Competition Regulations.

Figure 3 depicts this scenario. The challenges to be faced by this model will include:

- Having to re-establish 3 air transport sub committees
- Defeating the object sought to be achieved in the Tripartite
- Breaching the Tripartite MOU
- Introducing additional cost structures

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In view however of the existence of the EAC Air Transport Sub Committee, a solution will have to be found.

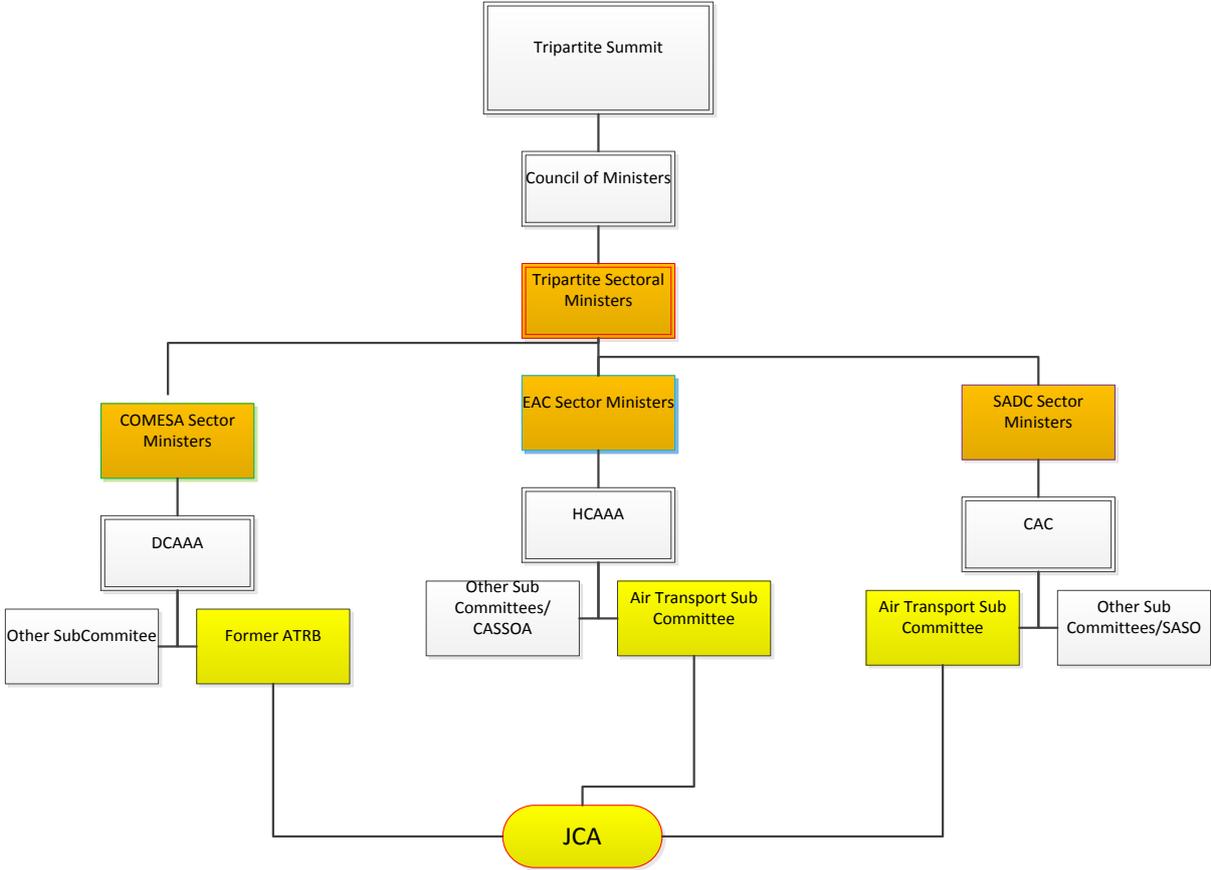


Figure 3: JCA as subsidiary to Air Transport Sub-Committees

3.1.5.2 The JCA as a replacement of the Air Transport Sub-Committees

In this model, the JCA serves as a replacement of the 3 air transport sub-committees. Thus in this model, all three subcommittees are dissolved and amalgamated into the 7 - person Joint Competition Authority. Figure 4 below depicts this scenario

While this model, is a better alternative to the first, its operations is subjected to the say of the three Director level organisations. Thus the JCA will have to operate to suit the colours of each of the three RECS organs individually and not jointly.

The disadvantages will be:

- Escalating cost of meeting the requirements of all three
- Potential conflicting instructions
- Lack of independence

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- Breach of the Tripartite objectives

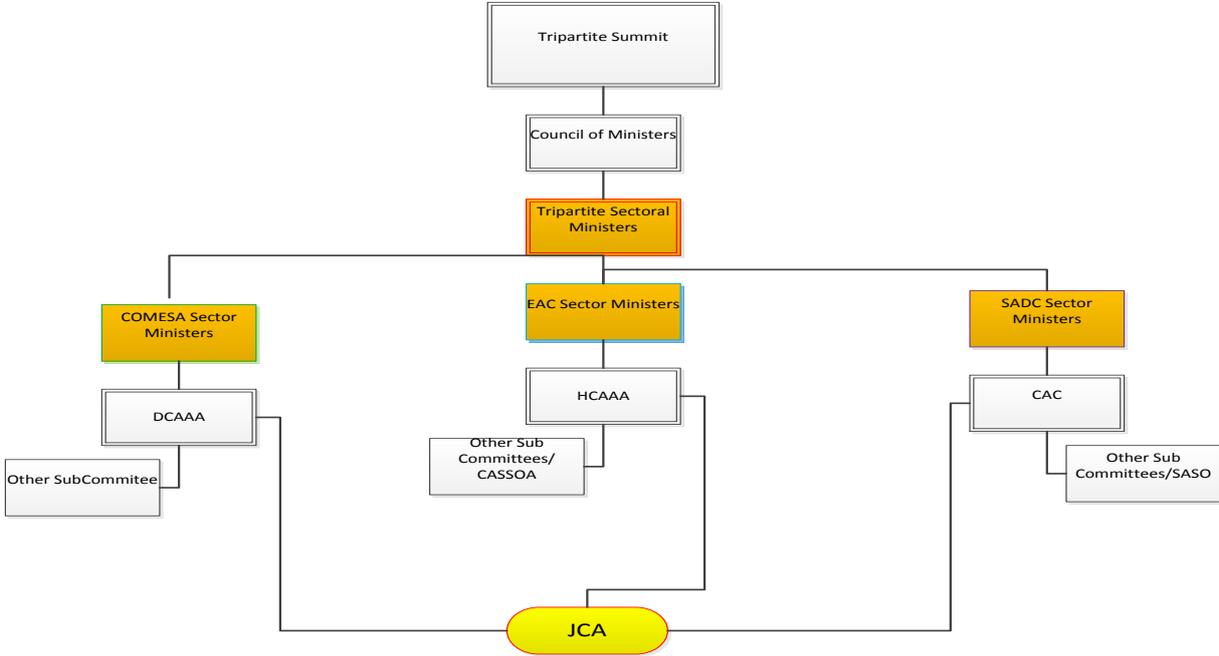


Figure 4: JCA - A replacement of Air Transport Sub-Committees

3.1.5.3 *An Independent JCA*

In this model, the JCA owes its inception to nominations from the DCA level. But it operates independently of the DCA's as individual organs. As the effective economic regulatory coordinator, it can be seen as having been delegated by the DCAs to deal with all matters economic regulatory. Indeed this is clearly in line with the 2008 Tripartite Communique and the Competition Regulations.

It is proposed that nominations be made at the DCA level and approved by the Sector Ministers. Nominees must be named persons and provided with named alternatives. In other words, at the DCA level the states nominated will propose candidates for the position as well as their alternates. The candidates should be vetted by the DCA to ensure that the JCA is not merely hollow. The nominated candidates should then be forwarded to a joint meeting of Tripartite Transport Ministers to approve.

In relation to its operations, it is also recommended that the JCA attempts to organise a joint DCA level consultation thus enabling the DCA level to serve as some form of an advisory Council to the JCA. Indeed the advisory Council could be composed of a finite group of Directors of Civil Aviation whose term may be linked to the terms of the service of members of the JCA Board.

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The advisory council could thus be composed of or organised around a troika system where past representatives still serving in DCA capacity could be used as well as potential representatives This structure is available within the SADC Treaty.

While the JCA will operate independently of the DCA’s, checks and balances are assured through prior approval of the members of the Board. While the Advisory Council of Directors of Civil Aviation may not have the power of dismissing the JCA, *the Directors as a collective should be afforded the power to recommend the withdrawal of a member of the JCA in its extreme, the entire Authority.* While this is recommended it is not made part of the draft Regulation. The DCA level organisations report directly to the Ministers anyway. They therefore have an already existing channel to effect this recommendation.

The JCA shall report to the Sector Ministers of Transport. The same body should approve its budget and annual plans.

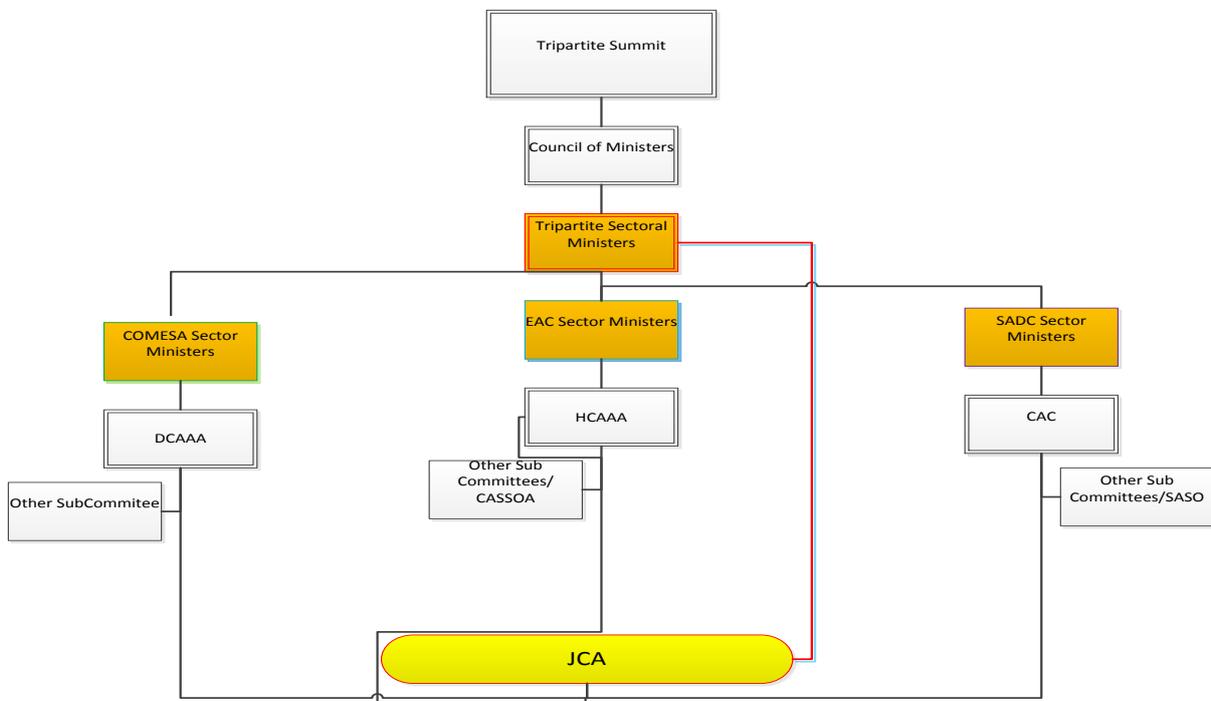


Figure 5: An Independently Collaboratory JCA

Advisory Councils are essential in an effective operationalisation of the JCA. It is proposed that the JCA be given the power and budget to set up advisory councils or working groups, whether adhoc or stand-by. This is provided for in the draft Regulation. The JCA may therefore utilise the power to recommend what is being proposed here to the Council of Ministers.

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3.1.6 The Proposed Legal Instrument and Proposed Mode of Adoption

The terms of reference of this study required the Consultant to 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. This sub-section (a) outlines and justifies the choice of legal instrument and (b) highlights key provisions of the legal instrument proposed.

3.1.6.1 *An Appropriate Legal Instrument*

The choice for an appropriate legal instrument for the establishment of the JCA under the terms of the Competition Regulation and the Communiqué of 2008 is quite an interesting one that needs to be made with a view of the current situation regarding the legal framework of the 3 RECS, the Yamoussoukro Decision and the Abuja Treaty in mind while looking toward to a future under the proposed Free Trade Area of the Tripartite.

The legal instrument must be acceptable under the current regime and be able to be co-opted into any future regime. In other words, each of the regional economic communities must be able to adopt the instruments under draft instruments to suit a particular REC.

The choice is also dictated by the primary instrument dictating the necessity of the Joint Competition Authority, namely; the Competition Regulations.

It is proposed that the Regulation as a legal instrument enables the regional economic communities to adopt it within their corpus of law.

3.1.7 Provisions of the Regulation

The draft Regulation has been completely revised in line with Comments received from the RECs and some member states. First the type of instrument has been changed from Charter to Regulation. This is similar to the instrument utilised to establish the primary document, the Competition Regulations 2004. Secondly, the draft Regulation has been split from the two issues of Appeals Board and the Rulemaking Procedure. These have been made Annexes to the draft Regulation.

The draft Regulation contains 37 Articles broken down in 4 parts.

Part One deals with the Establishment of the JCA. Part two covers Complaints and Dispute Settlement. Part Three contains provisions on a proposed Boards of Appeal and Part Four deals with proposed rulemaking procedures.

The following section identifies the Article and highlights the title in **bold type face**. Where necessary some comments are attached.

Article 1: Citation

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Article 2: Definitions: This provision provides defines of key terms in the draft Regulation.

Article 3: Objective and Scope of Application: The draft Regulation has its scope the liberalisation of air transport in the Tripartite Region and the full implementation of the Yamoussoukro Decision. It applies to Member States and air transport service providers. The term air transport service providers is used in the draft Regulation to include airlines, air navigation service providers, airports, ground handling companies and all other service providers.

The regional **regulation** of the liberalisation of the air transport cover all relevant stakeholders. While the Yamoussoukro Decision focuses on airlines, it is quite essential that any full liberalisation involves the other players. Liberalisation does not only involve eligible carriers. Indeed air navigation service providers, airports and other service providers have key roles in changing the environment of market access. While airlines will be the key stakeholders other stakeholders such as airports and ground handling companies will have to be considered as essential partners in the liberalisation initiative.

In a previous draft, the Multilateral Air Services Agreement was brought within the Ambit of this draft instrument. Upon further reflection that reference has been removed pending agreement on the text of the MASA. The draft MASA however provides for a structure of JCA oversight anyway so its specific mention in this draft text prior to its acceptance is not needed, if at least to enable general acceptance of this draft Regulation while thinking on the MASA continues.

Article 4: Basic Principles: Article 4 underscores the key principles underlying the liberalisation of air transportation within the region, namely: (a) achieving smooth, safe, comfortable, affordable and efficient intra-African travel; (b) conducting air transport in the interest of the consumer and whose interests shall be considered as protected; (c) encouraging air transport service providers to operate profitably preferably utilising all logical fifth freedom routes and identifying potentially attractive routes; (d) utilising airport slots and airports infrastructure and services to the maximum; (e) considering liberalised routes as a public good held for the use of and interest of the citizens; (f) operating consistently with the objectives of the Treaties of COMESA, EAC and SADC; JCA holding regular joint consultations with the Secretariats of the Tripartite RECs to review performance of programmes and projects and in particular with a view to eliminating duplication of efforts; and (g) recognising that national aviation authorities retain primary responsibility over the regulation of air transport within their territories.

These principles are essentially to guide all activities of all parties involved in one way or the other with the liberalisation of air transport within the region and ensuring free movement of people and goods within the region.

Article 5: Establishment of the Joint Competition Authority: This Article establishes the JCA previously endorsed by the Tripartite Summit following the Competition Regulations. The JCA is an institution independent of Member States and the RECs but established to serve them.

The institution and its staff are granted immunity in the territory of the member states.

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Article 6: Location of the Joint Competition Authority: In the previous text Article 4 located the JCA within the premises of the SADC Secretariat as previously agreed. Having reviewed comments of RECs and a number of member states, we have neutralised the location and left it to be determined by the Summit. This can for instance be declared at the time of the adoption of this instrument. It also leaves the JCA with the freedom to propose another member country as host.

Article 7: External Relations: Article 6 provides the Agency with powers in external relations. In order to effectively manage the liberalisation of air transport within the region, an external competence is necessary either to enable the JCA interact with the African Union, the Monitoring Body, the Executing Agency or other regional economic communities or their agents such as the JCA. Importantly the JCA is also accorded external relations powers to support and assist the Member States in their negotiations on air services agreements. The extent of the JCA's external relations is firstly dependent on the graces of the member state. It is hoped that external competence will be developed gradually.

Article 8: Liability: Article 7 provides for **contractual** liability of the JCA. In relation to employment rights of JCA staff this provision subjects the JCA to the Staff Rules.

Article 9: Functions of the Joint Competition Authority: Article 8 provides for the functions of the JCA.

The key to a successful Joint Competition Authority managing the regulation of the air transport sector within the Tripartite region is to understand the functioning of that institution.

To start with, the institution of the Joint Competition Authority is not in a supranational relation with the states. States have the primary regulatory responsibility under the Yamoussoukro Decision and that remains unchanged. In recognition of the primary role of the states, the JCA's role is to guide, administer, manage and supervise economic regulatory activities of the states into one homogeneous whole with the objective of regional integration.

In this vein, the JCA as an overseer of the full implementation of the Yamoussoukro Decision not merely assist the states but guide them and where necessary superintend their activities. The level of intrusion is nowhere near a supranational organisation.

From looking at the typical synonyms of the word oversee (*administer, administrate, carry on, control, direct, govern, guide, handle, keep, manage, operate, overlook, conduct, preside (over), regulate, run, steward, superintend, supervise*) one may observe the JCA as a co-regulator or a primus among regulators playing a more centralising role managing and shepherding the team of regulators.

From that perspective and given that it has no absolute power over the regulators, it has to manage the delicate balance through a recognition of the primary authority of the Member States and collaborating with other institutions to enable it achieve its objective of full implementation of the YD.

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The JCA is assigned key functions necessary to manage the liberalisation and assist States implement the Yamoussoukro Decision. Given that the Board is being established to primarily implement the Competition Regulations and the Decision, Article 9 (1) provides that the JCA shall:

- a. Perform all functions assigned to it under Article 9 of the Competition Regulations and any functions directly related to the performance of such tasks;
- b. Manage and supervise the full, equal and transparent implementation of the Yamoussoukro Decision within the Tripartite Region;
- c. Support States to improve their economic regulatory framework and assist them with their implementation of the Yamoussoukro Decision, the Competition Regulations and this Regulation;

Against this background specific functions are provided and include taking effective measures on tariff notification, frequency and capacity, designation and authorization of eligible airlines; developing and enforcing eligibility criteria for eligibility.

Additionally, the JCA is required to prepare and submit annual reports on the state of the industry, conduct studies and analysis among others into air transport economics, competition issues, and encourage the establishment of institutions of advanced studies into such matters; monitor and ensure the protection of consumers; design and facilitate the deployment of air transport related database; liaise with the RSOO's to ensure that air transport service providers meet ICAO safety and security standards; undertake such studies and propose actions, advice and support the Member States; define, set and monitor measurement criteria; implement measures to achieve enhanced convergence of interpretation and application of the relevant statutes.

Article 10: Powers of the Joint Competition Authority: Article 10 provides the JCA with sufficient powers to undertake the above functions. It provides among others for the power enforce relevant decisions, resolutions and regulations, formulate opinions, make decisions, adopt guidelines and guidance materials, apply to the Tribunal and Court, request and accept specific commitments, notifications and actions, including commitments on compliance, make recommendations to the Tripartite Council of Ministers, impose sanctions on air transport service providers etc.

The powers provided enable the Joint Competition Authority to perform all the functions imposed on it in the Competition Regulations, the Regulation and the draft Multilateral Air Services Agreement.

Article 11: Acts of the Joint Competition Authority: The JCA is required to make **recommendations**, issue **opinions** and take appropriate **decisions** for the application of this Regulation and the Competition Regulations. It is also empowered in this Article to issue guidelines to Member States and service providers.

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Article 12: Training and Research: Article 12 empowers the JCA to encourage, develop, finance and undertake research in areas of its competence, maintain a database of training facilities and courses and establish measures for the funding of and organisation of sponsorship for training.

Article 13: Monitoring: Article 13 provides for the JCA to monitor the application of the Yamoussoukro Decision and the Competition Regulations by national aviation authorities and air transport service providers and submit annual reports on implementation of the Decision and the Competition Regulations and sanctions imposed on service providers to the Summit. The JCA is empowered to conduct regular investigations, carry out evaluations, request for and review national aviation regulations, publish comprehensive state report on each State every 3 years.

Article 14: Annual Planning: Article 14 provides that the JCA submits annual work plan and list of proposed regulatory activities within 6 months of entry into force of the Regulation.

Article 15: Database, Website, Privacy and Publication: Article 15 establishes the need for the JCA to utilise information communications technology to conduct its affairs and requires that the JCA and stakeholders exchange information among themselves using the most secure, expeditious, efficient and cost effective means of communication. The Article also provides for the maintenance of a central database of air transport activities and maintenance of data integrity and privacy of stakeholders.

Article 16 Investigation of Member States: Article 16 provides for the JCA monitoring of the implementation of the Competition regulations and the YD by conducting planned review visits and engaging in consultations with civil aviation authorities of Member States. This provision subjects monitoring activities to the consent of the member states.

Article 17 Investigation of Air Transport Service Providers: This provision empowers the JCA to conduct inspections into the affairs of air transport service providers.

Article 18: Imposition of Sanctions: This provision empowers the JCA to impose appropriate sanctions and propose regulations and recommendations on sanctions against Member States on breach of the Regulation and Competition Regulations.

Procedures for development of opinions, procedures and plans: Article 19 provides that the JCA shall establish a procedure for consulting the Member States and other stakeholders when developing opinions, procedures, plans, specifications for endorsement of eligible air transport service providers, and guidance material. Rules according to this provision are to be adopted rules through the procedure of Notification of Proposed Rulemaking provided for in Part Four of the Regulation.

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Article 20: Procedures for taking enforcement decisions: Article 20 provides that the JCA shall establish transparent procedures for taking decisions. The procedures are required to ensure that Member States have been given ample time to remedy the cause of the eventual decision and that such an enforcement decision is based on a directive of the Council of Ministers. If they are intended to affect service providers, such procedures are required to ensure a hearing of the service providers to be addressed in the decision and of any other party with a direct and individual interest provide for prior notification of a decision to the service provider and provide for information to the service provider in question to whom a decision is addressed.

Articles 21; 22; 23, 24 and 25: Structure, Composition, Meetings, Voting and Management of the Joint Competition Authority:

These provisions provide for the Structure of the Joint Competition Authority in Article 21, Composition and Chair, Meetings, Voting and Management of the Board in Articles 22, 23, 24 and 25 respectively.

The 7 member Board, constituted by representatives of the 3 regional economic communities is instituted here. The Sectoral Ministers are assigned the responsibility of approving the members of the Board. Article 22 provides for the members of the Board to be nominated by the DCA's of the RECs and encourages alternatives to be provided. It also contains provisions for Chair and deputy chairpersons from the different RECs.

Management functions for the Board in Article 25 includes among others adopting reports and annual procedures and approving notices for rulemaking procedures, appoint board of appeal, making recommendation for sanctions and approving sanctions imposed by the Executive Director.

Articles 26 and 27: The Executive Director; Functions and Powers of the Executive Director

These Articles provide for the Executive Director and provides for functions to be performed. The Executive Director is to prepare and submit quarterly reports to the Board, approve the measures of the Joint Competition Authority, liaise to ensure the acceptance of harmonised rules necessary to ensure the liberalisation of air transport, decide on investigations and inspections; represent the Secretariat at meetings of the Board; adopt internal administrative instructions, prepare reports of the JCA; draw up and submit estimates of the revenues and expenditure and implement the approved budget.

Financial Provisions

Articles 29, 30 and 31: Budget; Implementation and Control of the budget; Fees and Charges:

Article 29 provides for the budget of the JCA and provides that the revenues shall consist of contribution from the regional economic communities and from each Tripartite country, the fees paid by applicants for, and holders of, licenses, certificates and approvals issued by the

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Joint Competition Authority, loans and grants approved by the Council of Ministers and charges for publications, training and any other services provided by the Joint Competition Authority.

Article 30 provides that the Executive Director shall implement the budget and whose accounts will be audited by the Auditors of SADC. Article 31 requires that the JCA provide within 90 days of the entry of this Regulation submit a draft regulation on fees and charges which shall determine in particular the matters for which fees and charges are due, the amount of the fees and charges and the way in which they are to be paid.

Complaints and Dispute Settlement

Article 32 and 33 - Complaints Procedure, Powers of the Courts,

Article 32 of the Regulation provides that Member States, air transport service providers, regional economic communities, legal and natural persons may raise complaints and settle disputes in accordance with the provisions of the Competition Regulations. Relevant provisions of Chapter of the Competition Regulations are:

- Article 10 Complaints
- Article 11 Investigation and Procedural Fairness
- Article 12 Hearing of the Parties Concerned
- Article 13 Outcome of Complaint
- Article 14 Provisional Measures
- Article 15 Cooperation with Member State Authorities and Access to Information
- Article 16 Penalties
- Article 17 Review by the Court of Justice and Tribunal
- Article 18 Dispute Settlement
- Article 19 Professional secrecy

Article 17 of the Competition Regulations refers to a review by a Court of Justice or Tribunal. This refers to the COMESA and EAC Court as well as the SADC Tribunal. Following a critical review of the draft and on the recommendation by Kenya and SADC Secretariat, a new provision has been introduced that refers to an Appeals Tribunal to be established under Article 33 of this Regulation. The reason for deferring to an Appeals Tribunal is to prevent forum shopping or to even prevent a situation where none of the Supreme Justices consider themselves competent to handle a matter by the mere fact that the one of the other party does not accept their jurisdiction.

It is anticipated that the Tribunal will solve this matter eventually. In anticipation, it has been proposed in Article 33 for the establishment for a Permanent Tribunal to be constituted from among Justices of the three Courts.

Article 32 (2) retains the idea of an internal Appeal to expedite dispute settlement. The details on how the Bard of Appeal will be constituted and operate are dealt with in Annex 1 to this Regulation.

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Member States Obligations

Article 34 provides for Member States to take all appropriate measures to ensure fulfilment of their obligations. It requires Member States to abstain from taking any measure which could jeopardise the attainment of the objectives of this Regulation.

Article 34 also provides that the Executive Director shall within 60 days of this Regulation submit to the Board procedures for declaration, expression of commitments and notifications in relation to provisions of this Regulation, the MASA, the Competition Regulations and any relevant instrument to be adopted under Part Four of this Regulation or as the Council may deem it fit to be adopted.

3.2 Business Environment Assessment and detailed scope of JCA

Activities

3.2.1 Business Environment Assessment

The JCA Member States cover an area with a population of 500 million persons and 52% of countries that make up the African Union. The Consultants have carried out a business environment scope of the tripartite REC area as it relates to civil aviation. The main concern of the business environment scope is to identify the market for passenger and cargo traffic between States in the tripartite REC area. In considering traffic-related funding sources for the JCA, any funding source arrangement based on traffic share needs a comprehensive review of intra-JCA traffic. Indeed any funding source arrangements based on traffic share would need to provide for periodic review, cognizance that such shares can change almost overnight in the light of airline failures or extraneous influences. The paper on the business environment also assesses airport hub polarisation, airline alliance and code sharing, airline ownership and globalisation, low cost carriers and progress in YD implementations (competition, state aid, airport infrastructure, ATM, Safety and Security and Environment concerns).

3.2.1.1 Market Assessment

The main findings regarding the market assessment are:

- a. Where States have embraced application of the Yamoussoukro Decision, air traffic has tended to flourish with liberalisation. Where they have been slow to implement the YD, and there are examples of reluctance to grant traffic rights, this may be due to:
 - differences in perceived implementation of perceived safety deficiencies - their elimination is an integral YD necessity; or
 - ‘protectionism’, perhaps better expressed as States’ fear that their strategic air links will fall under the control of a dominant foreign carrier - this is understandable, as there has been a high degree of polarisation at powerful hubs in the JCA area.

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- b. It seems not to be necessarily proven whether route development would have happened anyway without such liberalisation as has occurred on an African international scale - if not due to actual competition and privatisation, then to the 'internationally commercial' rather than 'national asset' philosophy of successful State-owned airlines' managements.
- c. Competition spurred growth in South Africa for a time, domestically and on intercontinental and African international routes, but the airline has reportedly been unprofitable recently.
- In Kenya, where the designated airline is (just) profitable, perhaps foreign investment in the airline (as in the Seychelles) and/or its choice of alliance were the catalysts for expansion and hub development.
 - Ethiopia (also profitable despite inroads of high fuel costs), with its airline's long history of cumulating third, fourth and fifth freedom traffic to develop thin multi-sector routes, shows a clear example of the practical application of YD principles.
 - Paradoxically, Egypt, the biggest player in the JRA, has the lowest number of African routes, and is a special case at present for non-aviation reasons.
- d. The total passenger market in the JCA area is estimated at 63.8 million in 2011 airline passengers (96.9 million airport passenger movements):
- 30.7 million intercontinental airline passengers (30.7 million airport passenger movements in the JCA area), with JCA generally involved only when multiple African points are served;
 - 12.2 million African international airline passengers (24.4 million airport passenger movements in the JCA area), of which:
 - 7.9 million fly within the one or other of the three JECs;
 - 3.1 million fly between the three JECs; and
 - 1.2 million are the JCA area "share" of 2.4 million passengers between the JCA area and "other Africa"; and
 - 20.9 million domestic airline passengers (41.8 million passenger movements at airports in the JCA area).

These markets are expected to continue to grow long term by between 4.8% and 6.9% per annum, including 6.2% for traffic within Africa.

- (e) To enable the JCA to operate effectively in this environment, and to make accurate quantitative as well as qualitative judgements (in its funding as well as its operations), it is strongly recommended that the Member States be persuaded to collect, analyse and publish comprehensive, and accurate traffic statistics for airports and airlines, in a timely and consistent manner.

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(f) Further study than is appropriate to this overview is required into the organisation and implementation of this requirement; as it is into the collation of declared airport facility capacities and condition reports, as well as navigation/surveillance equipment inventories.

(g) Cargo Traffic: Air cargo is certainly important to the airlines and economies of Africa, for instance in overcoming the continent’s long distances and sometimes less than ideal surface transport infrastructure. Cargo identified in published statistics⁵ as handled at its airports in 2009, the latest year for which consistent figures were located, totalled:

| REC | Tonnes |
|----------------------|----------------|
| COMESA Member States | 695,000 tonnes |
| EAC Member States | 370,000 tonnes |
| SADC Member States | 435,000 tonnes |

Table 4: Cargo

⁵ COMESA website 4.2 Air transport : Commercial air freight traffic; EAC Statistics portal : table 2.8c, Access to air transport; and FlightGlobal airport statistics for the main airports in SADC.

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| States | REC Membership | | | 2011 | | 2011 | 2011 | 2011 | % |
|-----------------|----------------|-----|------|----------------------|-----------------------|----------|--------|------------|-------|
| | | | | Africa International | | | | Africa Int | |
| | | | | Internatio nal | Internation al | Domestic | Totals | | |
| Member States | | | | Within JCA | JCA/"Other Africa" | | | | |
| Angola | | | SADC | 456 | | 962 | 1,890 | 456 | 1.9% |
| Botswana | | | SADC | 411 | | 194 | 604 | 411 | 1.7% |
| Burundi | COMESA | EAC | | 248 | | - | 254 | 248 | 1.0% |
| Comoros | COMESA | | | 117 | | 89 | 476 | 117 | 0.5% |
| D R Congo | COMESA | | SADC | 441 | | 263 | 859 | 441 | 1.8% |
| Djibouti | COMESA | | | 286 | | - | 504 | 286 | 1.2% |
| Egypt | COMESA | | | 1,274 | 503 | 4,781 | 19,210 | 1,777 | 7.3% |
| Eritrea | COMESA | | | 84 | | 76 | 374 | 84 | 0.3% |
| Ethiopia | COMESA | | | 802 | 929 | 585 | 3,922 | 1,731 | 7.1% |
| Kenya | COMESA | EAC | | 2,406 | 558 | 1,680 | 6,850 | 2,963 | 12.1% |
| Lesotho | | | SADC | 81 | | - | 81 | 81 | 0.3% |
| Libya | COMESA | | | 1,212 | | 1,968 | 4,624 | 1,212 | 5.0% |
| Madagascar | COMESA | | SADC | 265 | | 1,036 | 1,761 | 265 | 1.1% |
| Malawi | COMESA | | SADC | 410 | | 134 | 547 | 410 | 1.7% |
| Mauritius | COMESA | | SADC | 513 | | 403 | 2,707 | 513 | 2.1% |
| Mozambique | | | SADC | 549 | | 918 | 1,541 | 549 | 2.2% |
| Namibia | | | SADC | 827 | | 68 | 1,089 | 827 | 3.4% |
| Rwanda | COMESA | EAC | | 440 | | - | 455 | 440 | 1.8% |
| Seychelles | COMESA | | SADC | 133 | | 572 | 1,044 | 133 | 0.5% |
| South Africa | | | SADC | 5,463 | 488 | 25,489 | 37,613 | 5,950 | 24.4% |
| Sudan & S Sudan | COMESA | | | 864 | | 490 | 2,613 | 864 | 3.5% |
| Swaziland | COMESA | | SADC | 133 | | - | 133 | 133 | 0.5% |
| Tanzania | | EAC | SADC | 1,198 | | 1,501 | 3,168 | 1,198 | 4.9% |
| Uganda | COMESA | EAC | | 922 | | 57 | 1,374 | 922 | 3.8% |
| Zambia | COMESA | | SADC | 1,376 | | 351 | 1,817 | 1,376 | 5.6% |
| Zimbabwe | COMESA | | SADC | 1,046 | | 191 | 1,383 | 1,046 | 4.3% |
| COMESA TOTAL | | | | 12,971 | 1,991 | 12,675 | 50,910 | 14,962 | 61.2% |
| EAC TOTAL | | | | 5,214 | 558 | 3,238 | 12,102 | 5,771 | 23.6% |
| SADC TOTAL | | | | 13,301 | 488 | 32,083 | 56,240 | 13,789 | 56.4% |
| TOTAL | | | | 21,956 | 2,478 | 41,808 | 96,897 | 24,434 | ##### |

Table 5: Detailed Pax Traffic Estimates 2011 (Thousands of Airport Pax Throughput)

3.2.1.2 SWOT Analysis of the JCA

In undertaking this study, the Consultants also completed a SWOT analysis of the JCA in line with the current situation in the COMESA-SADC-EAC Air Transport and competition arrangement. The objective of the SWOT analysis was to establish the following:

- The assessment and exploitation of funding opportunities
- The minimization of impact from threats, competition and liberalisation

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- The provision of actions to convert weaknesses into strengths
- The promotion of the strengths of the JCA regulatory procedures within the regions
- The outcome of the SWOT Analysis is dovetailed into the development of a sustainable funding Plan as well as the strategic Business Plan for the organisation.

The following table describes the summary of the SWOT analysis:

| Strengths | Weaknesses |
|---|---|
| <ul style="list-style-type: none"> • Political will of member states • High traffic zone in Africa • Environment with highly knowledgeable experts in aviation • Existence of pro-YD airlines in region (KQ, ET, Egypt Air, SA, etc) • JCA already existing since 2009 • Competition rules already adopted by member states • Available office infrastructure at start-up • Single competition authority across 3 economic regions • Representing 48% of African States in by size | <ul style="list-style-type: none"> • New regulatory organisation • The JCA needs to be made operational • Has no legalised source of funding • SADC office connectivity to the capitals of member states • Inter-relation to other organisations such as AFCAC, AFRAA • Challenge to its powers from some airlines, service providers or CAAs • Complex scope and responsibilities with little experience of similar task • Several functional challenges including poor reporting of aviation data in the region • Potential challenges with enforcement powers |
| Opportunities | Threats |
| <ul style="list-style-type: none"> • Would be the largest economic regulatory Agency after AFCAC; • Positive results will enhance the image of the JCA and give it an important role in African aviation; • Able to influence the evolution of air transport liberation in the zone into an open skies area. • Approval of free movement of business person as part of the integration effort • COMESA vast experience on integration matters • Mainstreaming competitiveness & good practice • Income generation from service provision & projects • International collaborations and joint ventures | <ul style="list-style-type: none"> • Likely Political instability in some of the member states • Lack of sustainable core funding • Change in political agendas of member states • Co-location office could hinder development & independence • The impact of non-tripartite airlines and non African airlines • Legal challenges to its decisions • Lack of improvement of safety and security of the aviation industry in the region • Sustainable financial support for the org |

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| | |
|---|---|
| <ul style="list-style-type: none"> • Pioneer innovative ideas in African air travel competition regulation | <ul style="list-style-type: none"> • Organisational capacity to manage growth in activities • Complexity of competition negotiations & conflict resolutions |
|---|---|

Table 6: SWOT Analysis

An analysis of the strengths, weaknesses, opportunities and threats of the Joint Competition Authority within the regions highlight the fact that there is a significant need for the organisation to be established with full mandate from the Council of Ministers and Head of States to ensure equitable and fair competition across the common markets for the liberalisation of the air transport sector.

Key strengths include political support by member states, environment with highly skilled aviation experts and competition rules already adopted by member states, a major Opportunity is the potential ability to influence the evolution of air transport liberation in the regions into an open skies area, despite the slight weakness of being a new regulatory organisation within the regions, and it has a clear mandate and political support. However, the JCA faces some slight threats from other civil aviation and regulatory organisation established across the same regions for core funding and contributions from member states.

The findings of the SWOT analysis were taken into consideration in the sustainable funding mechanism and business plan reports..

3.3 Definition of Human Resources and organisation plan

The Consultant has completed the four key deliverables under the Human Resource Plan:

- an Analysis of the 3 Secretariats Transport Departments
- An Organistaional structure of the JCA
- Job Description of the envisaged key post
- Staff and Recruitment Packages

The set of documents are pushed as **Final Report Part Three - Human Resources and Organisational Plan**

3.3.1 An analysis of the 3 Secretariats Transport Departments

In developing an appropriate organisation management structure and functions of the JCA Secretariat, the Consultants completed an assessment of the three Secretariat Transport Departments. The elaborated report covers the background to the establishment of the three RECs, their Legal mandate, organisation structures, administrative and finance division,

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Programmes Division, with the later covering the Infrastructure Development Department. The report also covers the human resource policies and objectives of the RECs. The conclusions of this assessment are:

- (a) The transport departments in all the three RECS are within the larger and broader Infrastructure Development Departments.
- (b) The departments are small and thinly staffed in relation to the volume of activities and work. However, the work of the professional staff in the departments is to a very large extent supported by Consultants and other short term experts. In fact supervision of Consultants forms a big part of the work of the professional staff in the departments.
- (c) The departments are also supported by sectoral bodies from the region and beyond. Another major activity involves arranging, preparing and implementing decisions of relevant transport committees and organs of the RECs. This includes Regulatory bodies such as the ATRB in COMESA.
- (d) **Relationship with JCA Secretariat:** As to the possible relationship with the JCA Secretariat, it can be assumed that most of the aviation work done by the Secretariats particularly as it pertains to economic regulation of air transport will be transferred to the JCA Secretariat. It is therefore possible and in fact recommended that the JCA consider using personnel in the existing transport structures in the 3 RECs. This will facilitate continuity and institutional memory retention.

It is therefore recommended that:

1. *The overall structures and legal mandates of the three Secretariats provide an appropriate context within which to construct a JCA Secretariat that will have across the board acceptance with the capacity to effectively carry out its mandate.*
2. *Currently, the Transport Departments of the 3 RECs have been performing the basic functions assigned to the JCA. The departments will therefore provide a foundation or springboard and a basis for the future development of the JCA Secretariat. There will always, of course, be the risk of overlapping of responsibilities and ‘stepping on each other’s toes.’*
3. *Personnel policies and benefits of the RECs that supplied sufficient data on the matter provide an indication of what the JCA could offer to attract suitably qualified members of staff.*
4. *In light of the above, the JCA Secretariat, as far as possible, be the hybrid of the best of the three RECs in terms of policies and benefits, subject to ability to support such proposals.*

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3.3.2 Organisational Structure:

The organisational structure has been developed to include all the relevant units to ensure that the JCA meets its core functions and mandate as spelled out in the draft Regulation. Figure 9 below shows the internal (and external) management hierarchy within the JCA secretariat. It also includes units for the purpose of performing necessary functions of a non-permanent nature, which may be outsourced whenever required in order to render the Board cost-effective.

A reporting line to the Board which, in turn, has linkages of relationships with external bodies such as the Ministers Responsible for Civil Aviation, Tripartite Council of Ministers, Tripartite Summit, RECs secretariats, RECs YD implementations groups, Member States and AFCAC has been illustrated. The relationship between the units and bodies shown on the organisational structure are spelled out in principle in the draft Regulation. Detailed working procedures and relationships are proposed to be developed as the JCA comes into operation.

Bodies identified with linkages include the following types of bodies:

- Tripartite Chain of Command – Council of Ministers and Summit
- External Supervisory/Coordination Bodies – AFCAC, Courts and Tribunals
- External Quasi Independent Supervision – Boards of Appeal, Technical Advisory Boards
- Internal Units
- Member States

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JCA ORGANISATIONAL STRUCTURE

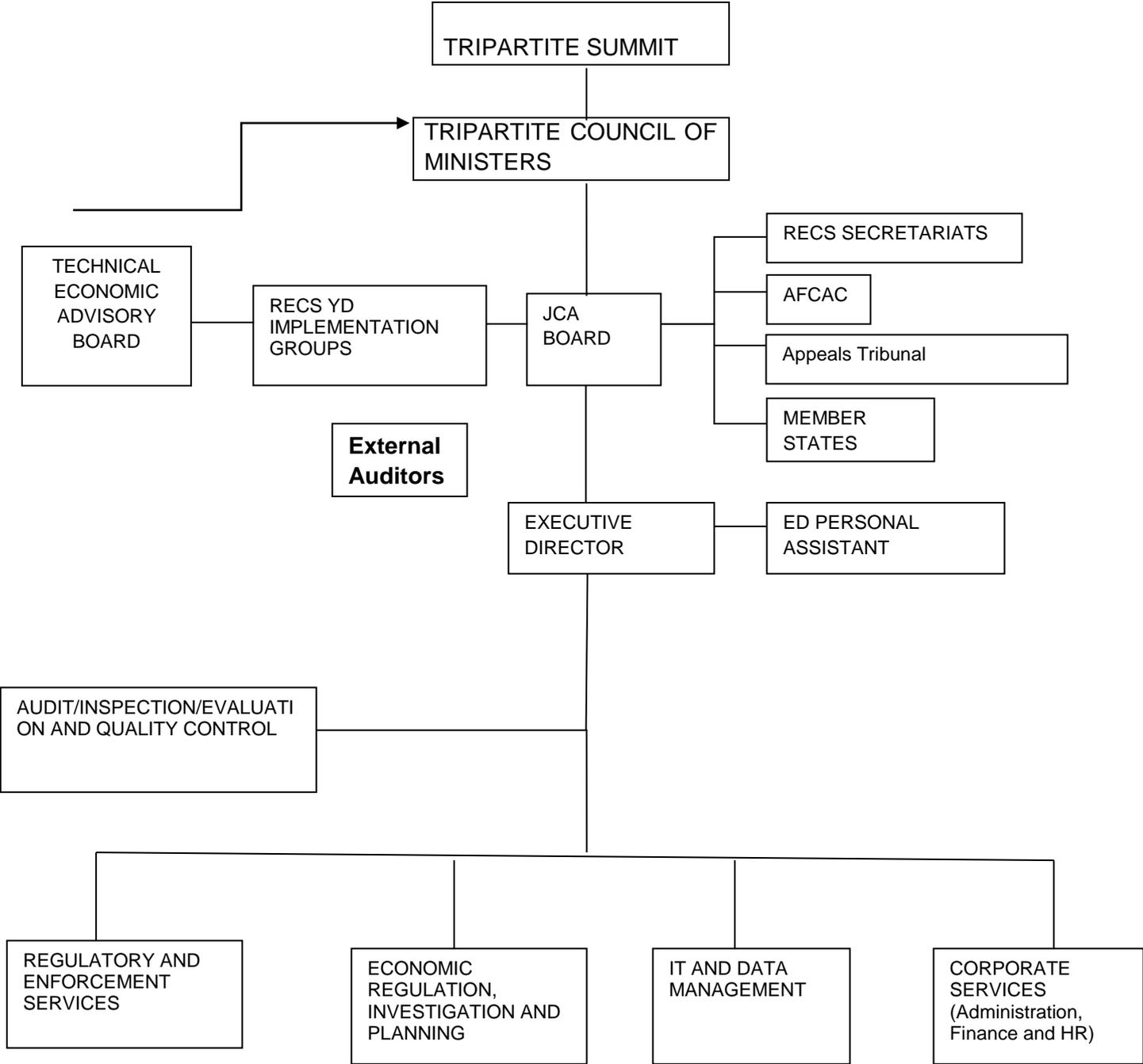


Figure 6: Integrated JCA Organisational Structure

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3.3.3 Job Description of Core Posts

Job descriptions for the core positions of the JCA have been developed. Effort has been made to ensure that the job descriptions cover enough details to ensure that the Board efficiently and effectively meets its functions and mandate as spelled out in the draft Regulation.

In the initial stages, only a minimum number of positions have been identified. In other cases, a combination of functions is assigned to individual positions in order to cover the whole spectrum of the functions of the Board. It is envisaged that the optimum number of positions will be dictated by the workload following the operationalization of the JCA.

The job description cover the name of the post, main functions, reporting line, duties, qualification, skills and competence requirements. It is estimated that the total manpower for the organisation at full strength will equal 23 staff.

Initially it is proposed that a start-up complement of 7 be engaged for a period of 2 years. This number can be increased as the JCA sees fit. The initial team is proposed to be composed of the following:

- The Executive Director
- PA to the Executive Director
- Competition Lawyer
- Air Transport Specialist
- Database Expert
- HR and General Administration Assistant, and
- Driver/Messenger

The detailed Job description is included in the Part Three of the Report and covers the following position:

| Position | Main Functions |
|--|--|
| 1. Executive Director | The overall management and administration of the functions of the JCA to ensure that it meets its obligations as prescribed in the Regulation; and also responsible for the expected outcomes of the JCA, in particular assuring the full implementation of the YD within the Tripartite member states |
| 2. Executive Director Personal Assistant | To provide an efficient and responsive administrative, organizational and logistical service to the Executive Director, helping him/her to manage and prioritise his/her time. |
| 3. Data Base Expert | Plan and manage the implementation of JCA Information Communication Technology (ICT) system, including data |

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| Position | Main Functions |
|---|--|
| | development; system security; inter/intranet development; systems integration; computer operations; hardware and network operations; and user support, policy and procedure development. |
| 4. Quality Control Manager | Plans, coordinates, and directs research, audits, inspections and quality Control functions in order to ensure the full, equal and transparent implementation of the Yamoussoukro Decision within the Tripartite Region. |
| 5. Consumer Protection Manager | Conduct studies and monitor the activities of the JCA in order to ensure the protection of the consumers of air transport in the Tripartite Region and also communicate related information to all concerned. Also deal with protocol and external communications. |
| 6. Head of Legal Department | Supervise and manage the implementation of the Yamoussoukro Decision, in particular give effect to the Competition Regulation, and manage complaints and appeals.. |
| 7. Competition Enforcement Officer (Competition Lawyer) | Harmonise theregulations on competition, consumer protection, market access, conflict resolution and licence approval, including the standardisation of the application of eligibility criteria. |
| 8. Chief Air Transport Services | Support States to enhance their economic regulatory framework and assist them with their implementation of the YD. Carryout economic investigations and studies with regards to YD and Competition rules |
| 9. Air Transport Specialist | Support States to enhance their economic regulatory framework and assist them with their implementation of the Decision. |
| 10. Head of Administration and Finance | Responsible for the planning, coordination and managementofthe administrative and financial services of the JCA. |
| 11. Finance Officer | Manage the operational activities of the financial services of the JCA. |
| 12. HR and General Administrative Officer | Management the operational activities of the administrative services of the JCA. |
| 13. External Auditors | Provide an independent third-party review of the JCA's |

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| Position | Main Functions |
|---------------------|---|
| | financial, management and operational activities. |
| 14.Driver/Messenger | Responsible for operating the JCA vehicle to provide effective transport facilitation to the JCA staff in order to attain the objectives of the Authority |

Table 7: Summary of Job Description - Core Positions

3.3.4 Staff Rules and Regulations

The Staff and Recruitment Package as required in the Technical Proposal has been developed in the form of Staff Rules and Regulations the objective of which is to detail and define the fundamental conditions of service, and the basic rights, duties and obligations of the members of staff of the JCA.

They also lay down general JCA principles for human resource management which are governed by the need to attract and retain staff who meet the highest standards of efficiency, competence and integrity. The Staff Rules and Regulations further outline the JCA's staff compensation scheme.

| Number | Post Title | Grade | Scale USD |
|--------|--|-------|----------------|
| 1 | Executive Director | D1 | 114,235.00 |
| 2 | Head Legal Department | P5 | 86,791.00 |
| 3 | Chief Air Transport Services | P5 | 86,791.00 |
| 4 | Head of Administration and Finance | P5 | 86,791.00 |
| 5 | IT Manager | P4 | 72,373.00 |
| 6 | Quality Control Manager | P4 | 72,373.00 |
| 7 | Consumer Protection Manager | P4 | 72,373.00 |
| 8 | Competition Lawyer | P4 | 72,373.00 |
| 9 | Air Transport Specialist | P4 | 72,373.00 |
| 10 | Accounting Officer | P3 | 60,013.00 |
| 11 | HR and General Administration Officer | P3 | 60,013.00 |
| 12 | Executive Director Personal Assistant | G5 | 118,985 (Pula) |
| 13 | HR and General Administration Assistant | G4 | 93687.00(Pula) |
| 14 | Driver/Messenger | G3 | 73192.00(Pula) |

Table 8: Proposed JCA Salary Structure

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In addition to these basic salary costs, the budget assumes that a further 15% will be required to cover all on-costs and an additional 10% for travel and other staff-associated expenditure.

In developing the Staff Rules and Regulations, a review of a more detailed nature was particularly done in relation to the subsidiary organizations within EAC and SADC, noting that none of such organizations exist in COMESA. This was carried out in order to make a comparative analysis and build on those models. In addition, the Staff Rules and Regulations of some United Nations agencies were reviewed and some elements of the best practices were adopted.

With regard to the grading of posts, it has been done in line with the prevailing situation in the three RECs. An analysis of the salary structure and grading in the Tripartite Region indicated that the UN system is generally adopted. This is also in relation to subsidiary organizations.

3.4 Development of Business Plan and Budget covering 5 years

3.4.1 Expenditure Budget

Three business plan scenarios for the Joint Competition Authority (JCA) over a five year period are presented, representing low-, mid- and high-cost situations. The differences arise largely from different approaches to remuneration of the Board, responsibility for advocacy costs, and payment for accommodation. The results are presented in 2013 constant prices in US\$ at a constant 2012/13 US\$/Pula exchange rate.

For each scenario, an estimated **organisational plan** is presented appropriate to the assumed purpose, functions and duties of the JCA. The JCA is seen as an agency of the tripartite REC grouping, with the essential aim of ensuring the implementation of the Yamoussoukro Decision throughout its area. It is assumed to have administrative, pro-active investigatory, and arbitration dispute management roles and authority.

Estimated cost rates are applied to the organisational plans, giving a set of three **business plans** or budgets, with total capital spending over the five year period added to the current account spending to give the total cash outflow.

In Years 1 and 2, it is assumed under all three scenarios that the agency will start with a skeleton staff of seven employees. In Years 3, 4 and 5 this is assumed to increase to a total of 23 employees.

In Years 3, 4 and 5, the estimated total annual cash expenditure (in constant US\$) of the three scenarios is approximately

- Low Cost, \$2 million pa;

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- Mid Cost, \$2.5 million pa; and
- High Cost, \$3 million pa.

The various assumptions and cost implications to the expenditure budget are indicated in the tables below.

All figures shown are rounded to the nearest US\$000.

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| | Scenario | | | |
|---|--|---|--|----------|
| Item | Low | Mid | High Scenario | Comments |
| Member of Authority | 7 members are seconded, on 36 formal meetings days p/a with no fees/salaries | Chairperson and three members from State authorities are seconded whilst the other three are industry experts | Chairperson and 3 members nominated from the RECs+ three Experts employed by the JCA as part of the management | |
| Payment of Authority members | JCA responsible for out-of-pocket cost. | Only the three experts per meeting + expenses. The others get out of pocket –cost allowances | The chairperson and 3 members are paid fees whilst the 3 Staff Expert are on Salary | |
| Organisation Plan | | | | |
| Years 1 & 2 | 4 executive and 3 administration staff in Years 1 & 2 plus 5% annual increments | 4 executive and 3 administration staff in Years 1 & 2 plus 5% annual increments | 4 executive and 3 administration staff in Years 1 & 2 plus 5% annual increments | |
| Years 3,4 & 5 | 11 executive and 12 administration staff in Years 1 & 2 plus 5% annual increments | 11 executive and 12 administration staff in Years 1 & 2 plus 5% annual increments | 11 executive and 12 administration staff in Years 1 & 2 plus 5% annual increments | |
| Sub-contractors For advocacy, representations, special studies, audits, etc | US\$150,000 for legal and consultancy fees in Years 1 & 2 rising to US\$275,000 in Years 3,4 and 5 | US\$150,000 for legal and consultancy fees in Years 1 & 2 rising to US\$300,000 in Years 3,4 and 5 | US\$150,000 for legal and consultancy fees in Years 1 & 2 rising to US\$300,000 in Years 3,4 and 5 | |

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| | Scenario | | | |
|--------------------------------------|---|---|---|----------|
| Item | Low | Mid | High Scenario | Comments |
| Administrative Operating Cost | <p>This covers general administrative costs including:</p> <ul style="list-style-type: none"> Recruitment and training Utilities Insurance IT/Communications Printing/Stationery Marketing & Promotion Subscriptions Financial charges Other miscellaneous expenditure <p>It is assumed that SADC’s premises will be used free of charge</p> | <p>This covers general administrative costs including:</p> <ul style="list-style-type: none"> Recruitment and training Utilities Insurance IT/Communications Printing/Stationery Marketing & Promotion Subscriptions Financial charges Other miscellaneous expenditure <p>It is assumed that SADC’s premises will be used free of charge</p> | <p>This covers general administrative costs including:</p> <ul style="list-style-type: none"> Recruitment and training Utilities Insurance IT/Communications Printing/Stationery Marketing & Promotion Subscriptions Financial charges Other miscellaneous expenditure <p>It is assumed that SADC’s premises will be used free of charge</p> | |
| Capital Expenditure | Covers office furniture, PCs, software costs etc | Covers office furniture, PCs, software costs etc | Covers office furniture, PCs, software costs etc | |

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| | | Scenario | | | |
|---------------------------------|--|---|---|---------------------------------|--|
| Item | Low | Mid | High Scenario | Comments | |
| Schedule of Depreciation | Predominately IT etc. Assume 25% pa. | Predominately IT etc. Assume 25% pa | Predominately IT etc. Assume 25% pa | Not essential to cash outflows. | |
| <i>Total Expenditure Budget</i> | <ul style="list-style-type: none"> • Low Cost, with unpaid (seconded) Members of the Authority, free hosted accommodation, and recharged legal costs, \$2.0 million pa; | <ul style="list-style-type: none"> • Mid Cost, some fee-paid Members of the Authority, rented accommodation, and legal costs absorbed, \$2.5 million pa; | <ul style="list-style-type: none"> • High Cost, some fee-paid and some salaried Members of the Authority, rented accommodation, and legal costs absorbed, \$3.0 million pa | | |

Table 9: basic Assumptions and Plans

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| JCA IMPLEMENTING AGENCY - FIVE YEAR PLAN - LOW COST SCENARIO - US\$ | | | | | |
|--|----------------|----------------|------------------|------------------|------------------|
| | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 |
| JCA Board Costs (Expenses only) | 40,000 | 40,000 | 80,000 | 80,000 | 80,000 |
| Core Team | | | | | |
| Executive Director | 114,000 | 119,000 | 125,000 | 132,000 | 138,000 |
| Executive Director Personal Assistant | 14,000 | 14,000 | 15,000 | 16,000 | 17,000 |
| Competition Lawyer | 72,000 | 75,000 | 79,000 | 83,000 | 87,000 |
| Air Transport Specialist | 72,000 | 75,000 | 79,000 | 83,000 | 87,000 |
| Database Expert | 60,000 | 63,000 | 66,000 | 69,000 | 72,000 |
| HR and General Administration Assistant | 11,000 | 11,000 | 12,000 | 13,000 | 13,000 |
| Driver | 8,000 | 9,000 | 9,000 | 10,000 | 10,000 |
| Total Salaries | 353,000 | 370,000 | 389,000 | 408,000 | 429,000 |
| Pensions and other staff costs | 35,000 | 37,000 | 38,000 | 40,000 | 42,000 |
| Total Core Team Costs | 388,000 | 408,000 | 428,000 | 449,000 | 472,000 |
| Additional Team (Year 3 onwards) | | | | | |
| Executive Staff | - | - | 350,000 | 367,000 | 385,000 |
| Admin Staff | - | - | 99,000 | 103,000 | 109,000 |
| Total Salaries | - | - | 449,000 | 471,000 | 495,000 |
| Pensions and other staff costs | - | - | 44,000 | 47,000 | 49,000 |
| Total Additional Team Costs | - | - | 942,000 | 990,000 | 1,039,000 |
| Total Staff Costs | 388,000 | 408,000 | 1,371,000 | 1,439,000 | 1,511,000 |
| Admin Costs | 100,000 | 100,000 | 175,000 | 175,000 | 175,000 |
| Legal/consultancy | 150,000 | 150,000 | 275,000 | 275,000 | 275,000 |
| TOTAL RECURRENT EXPENDITURE | 678,000 | 698,000 | 1,901,000 | 1,969,000 | 2,041,000 |
| CAPITAL EXPENDITURE | 25,000 | - | 75,000 | 10,000 | 10,000 |
| TOTAL CASH FLOW | 703,000 | 698,000 | 1,976,000 | 1,979,000 | 2,051,000 |
| CAPITAL DEPRECIATION | - | 6,000 | 6,000 | 25,000 | 27,000 |

Table 10: Low Cost Scenario

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| JCA IMPLEMENTING AGENCY - FIVE YEAR PLAN - MID-COST SCENARIO | | | | | |
|---|----------------|----------------|------------------|------------------|------------------|
| | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 |
| JCA Board Costs (Part salaries/expenses only) | 40,000 | 40,000 | 475,000 | 498,000 | 523,000 |
| Core Team | | | | | |
| Executive Director | 114,000 | 119,000 | 125,000 | 132,000 | 138,000 |
| Executive Director Personal Assistant | 14,000 | 14,000 | 15,000 | 16,000 | 17,000 |
| Competition Lawyer | 72,000 | 75,000 | 79,000 | 83,000 | 87,000 |
| Air Transport Specialist | 72,000 | 75,000 | 79,000 | 83,000 | 87,000 |
| Database Expert | 60,000 | 63,000 | 66,000 | 69,000 | 72,000 |
| HR and General Administration Assistant | 11,000 | 11,000 | 12,000 | 13,000 | 13,000 |
| Driver | 8,000 | 9,000 | 9,000 | 10,000 | 10,000 |
| Total Salaries | 353,000 | 370,000 | 389,000 | 408,000 | 429,000 |
| Pension etc | 35,000 | 37,000 | 38,000 | 40,000 | 42,000 |
| Total Core Team Costs | 388,000 | 408,000 | 428,000 | 449,000 | 472,000 |
| Additional Team (Year 3 onwards) | | | | | |
| Executive Staff | - | - | 350,000 | 367,000 | 385,000 |
| Admin Staff | - | - | 99,000 | 103,000 | 109,000 |
| Total Salaries | - | - | 449,000 | 471,000 | 495,000 |
| Pension etc | - | - | 44,000 | 47,000 | 49,000 |
| Total Additional Team Costs | - | - | 942,000 | 990,000 | 1,039,000 |
| Total Staff Costs | 388,000 | 408,000 | 1,371,000 | 1,439,000 | 1,511,000 |
| Admin Costs | 100,000 | 100,000 | 200,000 | 200,000 | 200,000 |
| Legal/consultancy | 150,000 | 150,000 | 300,000 | 300,000 | 300,000 |
| TOTAL RECURRENT EXPENDITURE | 678,000 | 698,000 | 2,346,000 | 2,438,000 | 2,535,000 |
| CAPITAL EXPENDITURE | 25,000 | - | 100,000 | 20,000 | 20,000 |
| TOTAL CASH FLOW | 703,000 | 698,000 | 2,446,000 | 2,458,000 | 2,555,000 |
| CAPITAL DEPRECIATION | - | 6,000 | 6,000 | 31,000 | 36,000 |

Table 11: Mid Cost Scenario

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| JCA IMPLEMENTING AGENCY - FIVE YEAR PLAN - HIGH COST SCENARIO - US\$ | | | | | |
|---|----------------|----------------|------------------|------------------|------------------|
| | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 |
| JCA Board Costs (Full salaries/expenses) | 40,000 | 40,000 | 975,000 | 1,023,750 | 1,074,938 |
| Core Team | | | | | |
| Executive Director | 114,235 | 119,947 | 125,944 | 132,241 | 138,853 |
| Executive Director Personal Assistant | 14,278 | 14,992 | 15,742 | 16,529 | 17,355 |
| Competition Lawyer | 72,373 | 75,992 | 79,791 | 83,781 | 87,970 |
| Air Transport Specialist | 72,373 | 75,992 | 79,791 | 83,781 | 87,970 |
| Database Expert | 60,013 | 63,014 | 66,164 | 69,473 | 72,946 |
| HR and General Administration Assistant | 11,242 | 11,805 | 12,395 | 13,015 | 13,665 |
| Driver | 8,783 | 9,222 | 9,683 | 10,167 | 10,676 |
| | | | - | - | - |
| Total Salaries | 353,298 | 370,963 | 389,511 | 408,986 | 429,436 |
| Pension etc | 35,330 | 37,096 | 38,951 | 40,899 | 42,944 |
| | | | - | - | - |
| Total Core Team Costs | 388,627 | 408,059 | 428,462 | 449,885 | 472,379 |
| Additional Team (Year 3 onwards) | | | | | |
| Executive Staff | - | - | 350,000 | 367,500 | 385,875 |
| Admin Staff | - | - | 99,000 | 103,950 | 109,148 |
| | | | - | - | - |
| Total Salaries | - | - | 449,000 | 471,450 | 495,023 |
| Pension etc | - | - | 44,900 | 47,145 | 49,502 |
| | | | - | - | - |
| Total Additional Team Costs | - | - | 942,900 | 990,045 | 1,039,547 |
| | | | | | |
| Total Staff Costs | 388,627 | 408,059 | 1,371,362 | 1,439,930 | 1,511,926 |
| Admin Costs | 100,000 | 100,000 | 200,000 | 200,000 | 200,000 |
| Legal/consultancy | 150,000 | 150,000 | 300,000 | 300,000 | 300,000 |
| TOTAL RECURRENT EXPENDITURE | 678,627 | 698,059 | 2,846,362 | 2,963,680 | 3,086,864 |
| CAPITAL EXPENDITURE | 25,000 | - | 100,000 | 20,000 | 20,000 |
| TOTAL CASH FLOW | 703,627 | 698,059 | 2,946,362 | 2,983,680 | 3,106,864 |
| CAPITAL DEPRECIATION | - | 6,250 | 6,250 | 31,250 | 36,250 |

Table 12: High-Cost Scenario

3.5 Sustainable Funding Mechanism for the JCA

The overall objectives for developing the sustainable funding mechanism for the JCA are to advise the JCA on the suitability and sustainability of potential funding sources and provide clearly identified funding options for the JCA in light of operational and economic constraints. The Consultants full report on the sustainable funding mechanism is published as **Final Report Part Five- Sustainable Funding**

3.5.1 Sustainable Funding Mechanism :

A financially sustainable organisation, is an organisation that can consistently support and deliver its mission, making the most of changing markets and funding environments. To ensure financial sustainability of the JCA, the following structured six point approach to managing the finances and funding options of the organisation are recommended:

- (a) Strategic Funding Approach:** ensuring that core organizational funding are established and raised through an agreed format from the member states on an annual basis and develop a mixture of supplementary funding from other sources to support the JCA overall mission.
- (b) Sustainable Income Generation:** consider an appropriate mix of funding sources including grants, donor funding and earned income from activities.
- (c) Effective Financial Management:** establish effective financial managements systems with clear audit trails to provide clear systems for understanding and managing costs, income and risk. Providing value for money and appropriate additionality to funding generated by the agency.
- (d) Systems for Communicating Success:** the JCA should be able to clearly communicate with all stakeholders and provide detailed analysis of how the organisation is making a difference across the regions in promoting effective competition, most importantly with case studies of successes etc.
- (e) External Positioning & Marketing:** the organization should have clear procedures for establishing its reputation within the wider African communities and internationally, knowing where you fit within the Air Transport industry, highlighting through on-going publicity how you are different from other similar agencies and how to communicate this with people through your publications, research, reports etc. It means establishing your position as a leading voice in ensuring fair trading and competitiveness within the sector
- (f) Relationship Building:** the organization need to continue to establish new relationships with funding agencies and develop existing relationships and partnerships with funders and others that you need to achieve your mission both regionally and internationally.

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3.5.2 Sustainable Funding Mechanism, Options and Strategy

The Consultant assessed how competition agencies and other regulatory agencies are funded across Europe and Africa. It is evident that most of the agencies/authorities obtain their core funding from statutory contributions for government/treasury/ministry and other elements of their funding are generated from services. Table 7 below summaries some of these agencies and their source of funding. Based on a review of a number of funding and financing options for ensuring sustainability of the JCA, we recommend a combination of funding routes for the organization based on experiences of similar organizations within Europe, Africa and the Tripartite Regions. The following briefly summarises the analysis of the various funding options considered for the JCA in line with relevant guidelines and operational appropriateness.

3.5.2.1 Contribution from Member States

Member States within the common economic communities currently finance their own regulatory activities through fees and charges subsidised by revenues from other aviation activities and direct funding from central governments. Operational costs for regulatory agencies varies in terms of size and regional complexities, however as the JCA develops its capacity to regulate and enforce fair competition across the Tripartite regions, it is expected that funding for individual aviation competition within each states CAA will be reduced or removed over time.

Member states REC's are contributing to the JCA and providing funding in kind through co-location and service of the current JCA Secretariat in SADC offices. It is therefore recommended that member states continue to contribute to the JCA depending on an agreed model of funding as described in the section on funding options below.

Also the UN funding model by member states through compulsory and voluntary contributions could be considered by the JCA. The size of each state's compulsory contribution will depend mainly on its economic strength and air traffic activities, though the state of development and debt situation are also taken into account.

This rate will be applied on an annual basis. Over and above their compulsory contributions, member states should also make voluntary contributions to:

- The Specialized activities/projects of the JCA such as the Educational, Technical Training, Competition Regulations Workshops, Research and Development, Dissemination of Good Practices etc.

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- JCA Programmes and Funds such as joint governance programmes, working capital fund, and technical infrastructure programmes etc.

3.5.2.2 Regulatory Fees and Charges

Our analysis identified that it is possible for the JCA to also generate revenues from its regulatory activities as provided in the Regulation establishing the JCA. The issue of charging fees by member states are standard procedures for regulatory activities as the existing CAA's charge fees. However, as indicated above these fees do not fully cover the costs of regulatory services provided and government subsidies are provided to cover all recurring operational costs. Although the JCA may be able to charge these fees, it is however not advisable to solely depend on this form of revenue due to the many challenges of double charging the service providers and users.

3.5.2.3 Contributions from Grants, Donations and Loans

Generating revenue from this source should only be considered as an additional funding source to any of the above sources. The JCA cannot depend fully on supporting core operational activities from these sources due to various funding timelines and challenges of monitoring and continuity funding beyond a number of years. Most regional and international funding agencies would also demand sustainability for their funding prior to signing funding agreement.

Although, medium term funding of up to 3 years could be obtained for core services it is not sustainable in the longer term if the JCA is unable to replace such funding. However, there are various opportunities for joint initiatives and public-private partnerships with international agencies for project funding which might include core funding of specific project posts. Consideration for loans and other form of debt financing of the JCA is possible but the overall costs and impact on the economic sustainability of the JCA should be appraised.

3.5.3 Analysis of Strategy & Implementation Plan of Funding

Based on the indicated sources above, the following four funding options are recommended:

- Option 1 – Equal contributions by Member States and fee income from services
- Option 2 - Equal contributions by Member States based on Market Shares
- Option 3 - Proportional Contributions by Member States based Market Share
- Option 4 - Funding through grants, donations, fees and loans

Each of these options is described in more detail below.

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3.5.3.1 Option 1 – Equal/Fixed Contributions:

JCA to be fully funded through contributions from member states for core operations and services on an equal level payment per annum by each member state. The JCA is a statutory regulatory institution and should be primarily supported by member states to be institutionalized for the purpose of overseeing the full implementation of the Yamoussoukro Decision within the common territories of the Regional Economic Communities as a single competition regulatory authority. This will protect their anonymity in driving effective competition policies within their region. This option seems most equitable for all and average contribution by member states will be between \$71,500-81.100 per annum under a low cost scenario, between \$89,900-101,500 per annum under a mid-cost scenario and between \$105,500-120,500 under a high cost scenario.

Alternatively, the JCA can be funded through a combination of core funding from member states (80%) and (20%) from fees, taxes/levies, subsidies and pay as you earn surcharges, remuneration for services, fuel/passenger surcharges and fees for regulatory activities including penalties and levies. This option is only viable in the medium to longer term basis e.g. after the initial 2 years of operations. The JCA will need between about USD2.0-3.0M per annum minimum to operate effectively. With this funding option, contributions can be on a reducing sliding scale (until 60:40 ratios is reached). After the second year of operation, the organization will be able to start generating fee income from services, levies, penalties and other charges. However, overall core funding will remain funded by member states as compulsory contributions. This option is not sustainable within the first 24 months of operation of the JCA but could be a major source of funding after 24 – 36 months.

3.5.3.2 Option 2 – Equal Contributions within a Band:

JCA to be funded through equal contributions by member states within the same country band based on the following model assuming a \$2.0m budget (the low cost option):

1. Band 1 – 35% of operating budget – a total of \$700,000 by 6 countries
2. Band 2 – 30% of operating budget – a total of \$600,000 by 7 countries
3. Band 3 – 20% of operating budget – a total of \$400,000 by 7 countries
4. Band 4 – 15% of operating budget - a total of \$300,000 by 7 countries

This option will ensure equitable contributions by member states based on the size of their intra-JCA market share. However, countries in band 1 will have to contribute more than others as an equal proportion of the total annual budget. Average annual contributions by member states will be \$117,000 for countries in Band 1, \$85,700 for countries in Band 2, \$57,000 for countries in Band 3 and \$42,800 for countries in band 4.

Proportionately higher figures apply under a mid-cost (US\$2.5m pa) and high cost (US\$3.0m pa) budget options

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3.5.3.3 Option 3 – Proportional contributions

JCA to be funded through proportionate contributions by member states based on total market share of the air passenger traffic within the regions. This option will be very attractive to countries with small market share within the JCA and the financial burden of supporting the JCA will be heavily on the 3 countries in Band 1 and 2 above. This option of funding will represent the following contribution levels assuming a budget of \$2.0m:

1. Band 1 – 61.5% of operating budget – a total of \$1,230,000 by 6 countries
2. Band 2 – 24.0% of operating budget – a total of \$480,000 by 7 countries
3. Band 3 – 11.2% of operating budget – a total of \$224,000 by 7 countries
4. Band 4 – 3.4% of operating budget - a total of \$68,000 by 7 countries

This model of funding the JCA could be less desirable to all and could be seen as penalising the countries in Band 1 and 2 for their growth and market share as countries in band 4 will only have to pay very little, an average of \$9,700 per annum towards the administration of the JCA.

This will not be sustainable in the longer term for the JCA as any delays or failure to pay annual contribution by any member states within Band 1 and 2 could cause considerable operational lapses for the organisation. One might argue that we use a formula of compulsory and voluntary contributions similar to how the United Nations is funded by member states regardless of size or activities. Richer nations will be encourage to contribute more and also engage in voluntary contributions to projects and JCA activities either in cash or kind.

Again, propoprionately higher figures apply under mid and high cost budget options.

3.5.3.4 Option 4 – Funding through grants, fees & donations:

JCA to be funded through grants, donations and loans from regional and international agencies. This option may be technically viable due to existing arrangements, e.g. the JCA secretariat is currently hosted within SADC offices and the Tripartite Task Force have existing funding and support arrangement with United Kingdom Department for International Development (DFID). The existing MOU with DFID can be fully exploited to cover substantial funding for the establishment of the institution.

This option is very desirable and recommended for the medium to longer term basis only. Most organisation of similar composition within Africa and internationally uses a combination of both contributions and revenues from grants, donations and financing options through loans, equity participations and rental incomes on assets. However, since the JCA secretariat is a new statutory regulatory organisation, it is advisable to concentrate on fixed contribution at the commencement of the organisation for sustainability within the initial 24 – 36 months of operations.

However, sustainability of the organization can only be assured if core regulatory functions are funded on a longer term basis by member states. This suggestion was also echoed at the Steering Group meeting in Bujumbura in December 2012 that Member States are responsible for regulatory functions and hence the need for them to ensure that the JCA is

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appropriately funded. The estimated annual budget identified by the consultancy team for the JCA is ranging from the lowest point of USD 2.0m to USD 3.0m per annum.

3.5.3.5 Additional Funding Through Airline Ticket Levies

The JCA can also consider additional funding or totally recharging the operational budget to levies on departing passengers from member states. Based on the initial computation of the operational budget, it is estimated that it will cost an average of \$0.14 to \$0.28 on a budget of \$2.0m low cost - \$3.0 high cost.

However, this figure will be significantly reduced if the JCA operationalisation plan were phased-in over the 5 year period. Assuming an annual operational budget of \$1.0 million low cost, \$1.5 million mid cost and \$2.0 million high cost. This will give an average of \$0.07 - \$0.12 (low – high cost).

Although, this option seems desirable and equitable, it comes with a number of challenges which might significantly increase the cost of operation in the longer term due to cost of compliance, delays in receipt of payments from airline companies or agreed intermediary and not to mention other legal challenges to the viability of the option as a source of funding by other local, regional and international agencies already using this option for funding activities ranging from health, aid to Africa to climate change and carbon emissions.

A detailed analysis of this option revealed that similar organizations in Africa have failed to use this funding option due to strong oppositions from passenger groups and airline companies. A good example of this failure and on-going challenges with airline ticket levy is the demand by CASSOA for a \$0.70 US cents per ticket coupon levy to finance operations which did not go down well with airlines, passengers and member states. This option was strongly opposed by Kenya and Tanzania, which led to a change of plan by the East African Civil Aviation Safety and Security Oversight Agency and 'reduced' their demands to reportedly 30 US cents to appease the member countries and finally secure a funding approval, the absence of which, according to a CASSOA staff, 'makes our life a bit difficult'.

The following extract was taken from an article in the eTN Global Travel News bulletin published by Dr Wolfgang H. Thome, ETN Uganda April 2013

“CASSOA was supposed to make life easier as a one stop centre for East Africa wide approvals, licences and permits. This has NOT happened. National regulators still make airlines file multiple applications if they want to operate in the member states other than where they are registered. Why should passenger have to pay for another layer of bureaucracy which failed to meet its objective’ commented a domestic airline operator in Uganda while a commercial airline sales staff said: ‘The charges on tickets in Uganda, in fact the entire EAC, is already very high. Let me be blunt, government milks aviation and tourism and put too little back into the sector. Fares charged by airlines are often nearly tripled by charges and fees and taxes when flying in East Africa or on international routes. This is not

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right. That money rarely makes its way back to meet sectoral needs.”

“CASSOA is headquartered in Entebbe but maintains liaisons with the national civil aviation regulators in all the five EAC member states, and supposed to be funded with equitable contributions from the member states, based on the number of flight movements, passengers and number of aircraft registered, but since its inception has the agency struggled to get adequate funds. Yet, disputes among member states over the level of a levy on tickets as well as their national share have made it impossible to reach consensus so far, endangering the agency’s functionality. East African spirit, certainly NOT flying high.”

With this type of challenges in mind, we know from experiences that it would be very difficult for the JCA to successfully use this funding option and as such we recommend that the option is only considered in addition to other sources of funding and not as a standalone source of funding to avoid similar problems CASSOA is currently experiencing. Additional information and analysis is provided in the table below in comparison to other funding options

Table 7 below presents the option in more detail and provides a comparative assessment:

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| COMPARATIVE ANALYSIS OF FUNDING OPTIONS | | | | |
|--|--|---|--|---|
| KEY ELEMENTS | OPTION 1 FUNDING FROM MEMBERS CONTRIBUTIONS ONLY & COMBINATION OF FEES & CONTRIBUTIONS (80:20) | OPTION 2 FUNDED THROUGH EQUAL CONTRIBUTIONS WITHIN COUNTRY BANDS | OPTION 3 FUNDED THROUGH PROPORTIONAL CONTRIBUTIONS BY MEMBER STATES | OPTION 4 FUNDED THROUGH GRANTS & DONATIONS & LOANS |
| Overall characteristics & Scope of funding option | <ul style="list-style-type: none"> • Equal level of contribution by each member state • Reliable core funding source for JCA • Commitment and stronger regulatory presence • Ownership and support for sustainability and stability of JCA • Ideal for statutory organization to provide regulatory & technical services • Fixed and voluntary contributions by member | <ul style="list-style-type: none"> • Equal contributions by members states based on air passenger market share • Countries are grouped into 4 Bands based on air traffic activities • Equitable distribution of financial burden of supporting the JCA • Core funding will be secured for the JCA • Equitable contributions by member states based agreed format | <ul style="list-style-type: none"> • Proportional level of contribution by member states based on market share • Countries are grouped into 4 Bands based on air traffic activities • Economically viable and active countries in Band 1 contributes 64% of the total costs • Core funding secured by contributions from few countries | <ul style="list-style-type: none"> • No core funding at all from member states • Entirely dependent on grants and donor funding • Possible loans and finance from international financial institutions • Existing links and agreements with donor agencies • Regional grants from COMESA, SADC, EAC, TMSA, CAA, AFCAC etc • Powerful policy instruments, by which |

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| | states based on economic strength and air traffic activities | | | governments may influence the activity in any particular sector. <ul style="list-style-type: none"> • Opportunities to attract domestic and foreign investors to provide appropriate services |
| Combination of Fees and Contributions | <ul style="list-style-type: none"> • Core funding from member states – approx 80% of total funding • Opportunity to raise more funding and deliver competitive services • Highly political funding routes and economic challenges • Opportunities to undertake more activities based on performance | <ul style="list-style-type: none"> • Same | <ul style="list-style-type: none"> • same | <ul style="list-style-type: none"> • N/a |
| Funding through levies from Airline tickets etc. | <ul style="list-style-type: none"> • Proportional funding based on levy on departing airline passengers from member states. | <ul style="list-style-type: none"> • | <ul style="list-style-type: none"> • | <ul style="list-style-type: none"> • |

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| | <ul style="list-style-type: none"> • Additional funding from fees generated from taxation, surcharges, subsidies, , penalties etc 20% • | | | |
| Operating Budgets (average per annum 2013-2018 at 5% annual increases) | \$2.0 million | \$2.0 million | \$2.5 million | \$2.5 million |
| Full time equivalent staff (average per annum 2013-2018) | 12 | 12 | 17 | 12 |
| Challenges/Risks | <ul style="list-style-type: none"> • Highly dependent on the good will of member states contributions • Rechargeable levies on departing airline passengers at an average of \$0.14c - \$0.28c (low to high cost scenario) based on the above budgets. This will be significantly reduced on a phased operational budget • Opposition by airline companies and passengers on airline ticket levies and | <ul style="list-style-type: none"> • Depends on economic sustainability of the air transport industry in the regions to cover contributions • Level of contributions needs to be equitable or proportionately levied • Constant computation of market share statistics and adjustments of country bands • Argument about computation | <ul style="list-style-type: none"> • Regulatory powers of JCA could be controlled by dominant positions of member state • Delays in payment of annual contributions could affect operational effectiveness • Potential difficulty in predicting future allocations with any certainty beyond the annual budget planning process | <ul style="list-style-type: none"> • Very difficult to maintain stability of funding on an annual basis • Failure to raise required funding from donor agencies or grants compliance issues will affect JCA effectiveness • Risky option for such an important agency but very attractive to be funded as a start-up |

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| | <p>problems with payment and compliance by member states</p> <ul style="list-style-type: none"> • Airline levies are not necessarily equitable as vibrant airlines and member states will have to pay more for the privilege. • Increase costs of airline tickets and challenges by the airline companies on providing competitive prices etc. • Cash flow problems may lead to loss of operational effectiveness • Most member states currently funds their own regulatory activities from fees and charges subsidized from aviation activities • Delays by JCA to develop and generate fee income from services provided and | <p>of both domestic and intra-JCA air traffic figures for calculating level of contributions</p> <ul style="list-style-type: none"> • Accruing funding deficit from member states will have an impact on the effective implementation of the agency's strategic plan | <ul style="list-style-type: none"> • Detrimental impact of countries with high market share contributing considerably more than others • A less attractive option for all member states, in particular those in Band 1 and 2 • Payment of fees and surcharges on passengers embarking within member states could be considered as detrimental to member states with higher air travel trades as they will have to pay more than those with less air travel vibrancy • Creation of different levels of participation and possibly support by staff of JCA | <ul style="list-style-type: none"> • Continuity funding is highly unlikely through grants – all time limited funding • Tight deadlines for applications and technical ability of staff team to fundraise effectively on an ongoing basis • Inability to generate enough funding private funds, grants from donor countries and other international agencies would limit the capacity of the JCA to run some core operational activities. |
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| | <p>obtain agreement for surcharges, levies of all kinds for activities and non-compliance.</p> <ul style="list-style-type: none"> • Competition and tariff policy challenges could make funding difficult to manage • Possible conflicts of interests in both aeronautical and non-aeronautical revenue streams • Operating costs and staff compliments will have to be high to cope with the wider range of activities and supported roles in addition to core activities • Pay as you Earn surcharges on passengers embarking within member states could be considered as detrimental to member states with higher air travel trades as they will have to pay more than those with less air travel vibrancy • Non- equitable surcharges may result into non-payment | | | |
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| | <p>or delays in payment, yet it is considered to be one of the most suitable way of funding air transport regulatory authorities</p> <ul style="list-style-type: none"> • Failure to generate income from other sources identified in the strategic business plan due to organisational capacity or economic conditions. | | | |
| <p>Sustainability & recommendations</p> | <ul style="list-style-type: none"> • Fixed funding will make the JCA more stable with organizational capacity to deliver effective services • A fixed rate of allocation to member states with an agreed percentage increase in line with inflation rate would be recommended • Fixed contribution will provide economic and financial viability of the JCA. Services will be financially sustained in the long term • Fixed contribution option is | <ul style="list-style-type: none"> • It is recommended that the JCA adopts a more structured funding option to address its financial obligations in line with operationalisation mandate. • Fairly equitable distribution of financial burden amongst member states • A fixed level of contribution for 5 years with exponential increases could be agreed • A combination of fixed and voluntary level contribution by member states according to the country bands could be | <ul style="list-style-type: none"> • Ideal only if contributions by countries in Band 1 are willing to comply with rates of contributions • Less empowering to countries in Band 4 as their contributions will only account for 4% of the total with an average fee of \$4,600 per year • Less desirable option for funding the JCA • This option should only be considered after extensive consultations with all | <ul style="list-style-type: none"> • Grant and donor funding is good but only if they are long term commitment (5-10 yrs funding of core and project activities) • Most regional and international grants/donor agencies could be weary of long term sustainability funding • Agencies like COMESA can advise and assist the JCA since they have existing financing arrangement with AFDB for \$8.6m and other |

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| | <p>the preferred choice of funding the JCA at least for the initial 5 years of operation to allow the organization to be fully established with a strong identify of enforcing competition rules with the regions</p> <ul style="list-style-type: none"> • A combination of core funding from member states and a mixture of fees, levies and charges would ensure long term sustainability. • In general, the taxation system represents an important part of the institutional and economic framework within which the aviation industry, or any other trade, must operate. • It is important for the JCA to also consider the above elements for sustainability funding in addition to statutory grants/contributions for core activities from | <p>deployed</p> <ul style="list-style-type: none"> • This option is highly recommended as a 2nd choice option because it also provide equitable contributions by member states | <p>stakeholders on the long term viability of the contribution model</p> | <p>international agencies</p> <ul style="list-style-type: none"> • This option should be considered alongside any agreed model of funding as the JCA will inevitably have to raise grants, donations etc from these bodies by way of partnership working or project funding • There are many local, regional and international funding opportunities for the JCA and it will be financially sustainable as additional funding/financing source for the JCA • Opportunity to engage in Public –Private Partnerships for projects – infrastructure or capacity building programmes |
|--|--|--|--|---|

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| | <p>member states.</p> <ul style="list-style-type: none"> • Therefore, we recommend that the JCA undertakes a review of the duties, charges, subsidies, fuel surcharges and tax rules of aviation sector. • However, a general discussion of the corporate taxation systems of the COMESA, EAC and SADC countries would be required and that is far beyond the scope of this report but essential in establishing the fee charges and other levies on member states. | | | |
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Table 13: [Comparative Analysis of Funding Options](#)

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| NO | COUNTRY | TYPE OF AUTHORITY | FUNDING SOURCES | COMMENTS |
|-----|--|--|---|--|
| 1a. | United Kingdom | The Office of Fair Trading (OFT) Is the UK consumer and competition authority | <ul style="list-style-type: none"> Funded mainly by HM Treasury Fee income from licenses and activities | <ul style="list-style-type: none"> OFT cover civil aviation competition & advises the CAA Broad remit but stable funding despite reducing budgets due to cuts in public spending |
| 1b. | United Kingdom | Civil Aviation Authority | <ul style="list-style-type: none"> Revenue is primarily derived from 12 statutory charges schemes approved by the Secretary of State for Transport under section 11 of the Civil Aviation Act 1982. The charges are published on the CAA website and are normally for a period of one year | <ul style="list-style-type: none"> Other income streams includes, charges for services, rental income, pension administration, interests/dividend & finance |
| 2. | Ireland | <ul style="list-style-type: none"> The Irish Aviation Authority – semi state owned company The Irish Competition Authority | <ul style="list-style-type: none"> Funded mainly through fee charges to airlines Annual grants from the state Fee income from services | <ul style="list-style-type: none"> Stable funding from current sources |
| 3. | Nordic Countries – Denmark, Sweden, Norway, Finland, Iceland | Civil Aviation Competition Authorities across the Nordic Region | <ul style="list-style-type: none"> Mostly funded through government grants and fees from competition services – mergers & acquisition fees, subscriptions etc. | <ul style="list-style-type: none"> Diverse regions and competition authorities activities is gradually formalising |
| 4. | EAC - CASSOA | Civil Aviation Safety & Security Oversight Agency | <ul style="list-style-type: none"> Mainly contribution from member states | <ul style="list-style-type: none"> The agency is considering increasing contributions from |

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| NO | COUNTRY | TYPE OF AUTHORITY | FUNDING SOURCES | COMMENTS |
|----|----------------|--|---|---|
| | | | <ul style="list-style-type: none"> Other sources considered | member states |
| 6. | European Union | European Competition Authorities (ECA) Statutory body established in 2001 as a working group. ECA set up an Air Traffic Working Group in April 2002 in order to improve cooperation between them in relation to their dealings with the airline industry and to seek to enhance the present degree of competition in this sector. | <ul style="list-style-type: none"> Statutory Funding from the EU and member states | <ul style="list-style-type: none"> General purpose authorities with specific competition working groups with the commission. |

Table 14: Comparison of Civil Aviation & Competition Authorities in Europe & Africa

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3.5.4 Financial Operational Plan and Recommendations

3.5.4.1 *Recommended Approach*

The Consultants recommend that the JCA adopt a variety of funding options to address its financial requirements in line with the operationalisation mandate to fully implement the Yamoussoukro Decision. However, the preferred funding option for the JCA will be direct funding through contributions from member states on a fixed equal annual basis. We also recommend that member states should assume full responsibility for funding the JCA based on contributions through each Regional Economic Community. Other sources of funding, particularly assistance from development partner and international donor agencies should be actively pursued in addition to member states contributions, services fees and charges as supplementary revenue streams.

There are several workable options available to addressing the contributions required by the JCA to ensure operational effectiveness. Of the four options considered, only two options are recommended as sustainable over the next 5 years of operations. It is expected that the Steering Committee will select the best option or a combination of options that offer the optimal solution for funding the organisation and recommend to the Tripartite Council of Ministers for approval.

These options are described in more detail below with appropriate financial projections and recommendations.

3.5.4.2 *Fixed Equal Contributions by Member States*

This option is most preferred as it ensures equitable distribution of the costs across member states and would be the cheapest options for the states. This option proposes that each member state contributes equally to funding JCA's activities through their REC's or even directly as member states. This method is in line with the EAC, COMESA and SADC Treaty's provision of equal contribution by member states and it also provides stable income for the JCA. However, this issue of equal contributions may need to be discussed within the Tripartite Regions for consensus and approval. The contributions of each Member State ranges between US\$71,500-81,100 per annum under a low cost option to between US\$105,500-120,500 per annum under a high cost option .In addition, the JCA may consider the option of a combination of contributions for core services and fee income for other services as described above. This option will provide for a more challenging funding model initially for the JCA as services and other fee income will not be easily generated within the initial 24 – 36 months of operation, hence sustainability of the funding model. Also a combination of compulsory and voluntary contributions could be considered as an alternative funding model within this option.

3.5.4.3 *Equal Contributions by Member States within a Market Share Band*

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This funding option is based on equal contributions from member states based on the size of market share and bands within the region. We have assumed 4 bands with market share statistics grouped as follows:

- 1. Band 1** – countries with market share of 5.1% and above. There are only 6 countries within this band: Egypt, Ethiopia, Kenya, Libya, South Africa and Zambia. This group of countries represent a total of 61.5% of the current market share and it is recommended that they are responsible for 35% of the total costs of JCA core funding. This means an average of \$117,000 per annum contribution by member states in band 1 in Year 1 – assuming a low cost budget option of US\$2.0m per annum. .
- 2. Band 2-** countries with market share of 2.1% - 5.0%. There are 7 countries within this band: Mauritius, Mozambique, Namibia, Sudan, Tanzania, Uganda, and Zimbabwe. This group represents a total of 11.2% of the current market share and it is recommended that they contribute 20% of the total cost of JCA core funding. Each member state within the band will contribute an average \$85,714 per annum with an operating budget of \$2.0 million.
- 3. Band 3** – countries with market share of 1.1% -2.0%. There are 7 countries within this band: Angola, Rwanda, Botswana, DR Congo, Djibouti, Madagascar and Malawi. This group represents a total of 11.2% of the current market share and it is recommended that they contribute 20% of the total cost of JCA core funding. Each member state within this band will contribute an average of \$57,143 per annum with an initial JCA budget of \$2.0m in 2013/2014.
- 4. Band 4** – countries with market share of 0.0% - 1.0%. There are 7 countries within this band: Burundi, Comoros, Eritrea, Lesotho, Seychelles, Swaziland and South Sudan. This group represents a total of 3.4% of the market share and it is recommended that they contribute 15% of the total cost of JCA core funding. Each member state within this band will contribute a total of \$42,857 per annum.

These contribution levels are based on the low cost budget option of US\$2.0m pa. These contributions would be proportionately higher under a mid cost budget option of US\$2.5m pa or a high cost budget option of US\$3.0m pa.

This option of grouping the countries into bands based on their market share seems equitable and it is recommended that the Steering Committee considers this option in more detail as it will enable each country to contribute equal payment regardless of the actual size of their air passenger's traffic within the bands. This will ensure sustainability of the JCA and also provide a standard formula for contributions by member states.

*FINAL REPORT – Summary, Conclusions & Recommendations*3.5.4.4 *Proportional Level of Contribution by Member States*

Band 1 Table: A breakdown of contributions by market share – 5.1% and above, based on proportional contributions on market share

| Band 1 Member States | Current % Share of Total | 2014 | 2015 | 2016 | 2017 | 2018 |
|----------------------|--------------------------|-----------|-----------|-----------|-----------|-----------|
| JCA Annual | | 2,003,200 | 2,005,200 | 2,051,300 | 2,171,400 | 2,270,300 |
| Egypt | 7.3% | 146,200 | 146,400 | 149,700 | 158,500 | 165,700 |
| Kenya | 12.1% | 242,400 | 242,600 | 248,200 | 262,700 | 274,700 |
| Libya | 5.0% | 100,200 | 100,300 | 102,600 | 108,600 | 113,500 |
| South Africa | 24.4% | 488,800 | 489,300 | 500,500 | 529,800 | 554,000 |
| Zambia | 5.6% | 112,200 | 112,300 | 114,900 | 121,600 | 127,100 |
| Ethiopia | 7.1% | 142,200 | 142,400 | 145,600 | 154,200 | 161,200 |
| Total | 61.5% | 1,231,900 | 1,233,200 | 1,261,600 | 1,335,400 | 1,396,200 |

Table 15: Band 1 Table

With this option, the 7 countries within Band 1 will contribute a total of 61.5% of the cost of operations in line with their individual proportion of the intra-JCA air passenger's market share. Countries like Kenya and South Africa will have to contribute considerably more than everyone else at a minimum of \$242,000 per year and \$488,000 per year respectively. An average contribution by member states in this band is approximately \$205,000 per annum.

Band 2 Table: A breakdown of *projected* contributions by Market Share – 2.1% - 5.0% based on proportional contribution on market share.

| Band 2 Member State | Current % Share of Total | 2014 | 2015 | 2016 | 2017 | 2018 |
|---------------------|--------------------------|--------|--------|--------|--------|--------|
| Mauritius | 2.1% | 42,100 | 42,100 | 43,100 | 45,600 | 47,700 |
| Mozambique | 2.2% | 44,100 | 44,100 | 45,100 | 47,800 | 49,900 |
| Namibia | 3.4% | 68,100 | 68,200 | 69,700 | 73,800 | 77,200 |
| Sudan | 3.3% | | | | | |

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|--------------|--------------|----------------|----------------|----------------|----------------|----------------|
| | | 66,100 | 66,200 | 67,700 | 71,700 | 74,900 |
| Uganda | 3.8% | 76,100 | 76,200 | 78,000 | 82,500 | 86,300 |
| Zimbabwe | 4.3% | 86,100 | 86,200 | 88,200 | 93,400 | 97,600 |
| Tanzania | 4.9% | 98,200 | 98,300 | 100,500 | 106,400 | 111,200 |
| Total | 24.0% | 480,800 | 481,300 | 492,300 | 521,100 | 544,900 |

Table 16: Band 2 Table

There are 7 countries within this Band representing a total of 24% of the market share. Contributions within this Band are more equitable as average contribution by member states is \$68,686.

Band 3 Table: A breakdown of *projected* contributions by Market Share – 1.1% - 2.0% based on proportional contribution on market share.

| Band 3 Member States | Current % Share of Total Traffic | 2014 | 2015 | 2016 | 2017 | 2018 |
|----------------------|----------------------------------|----------------|----------------|----------------|----------------|----------------|
| Angola | 1.9% | 38,100 | 38,100 | 39,000 | 41,300 | 43,100 |
| Rwanda | 1.8% | 36,100 | 36,100 | 36,900 | 39,100 | 40,900 |
| Botswana | 1.7% | 34,100 | 34,100 | 34,900 | 36,900 | 38,600 |
| DR Congo | 1.8% | 36,100 | 36,100 | 36,900 | 39,100 | 40,900 |
| Djibouti | 1.2% | 24,000 | 24,100 | 24,600 | 26,100 | 27,200 |
| Madagascar | 1.1% | 22,000 | 22,100 | 22,600 | 23,900 | 25,000 |
| Malawi | 1.7% | 34,100 | 34,100 | 34,900 | 36,900 | 38,600 |
| Total | 11.2% | 224,400 | 224,600 | 229,700 | 243,200 | 254,300 |

Table 17: Band 3 Table

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Band 3 – countries with market share of 1.1% -2.0%. There are 7 countries within this band. This group represents a total of 11.2% of the current market share and it is recommended that their contributions are proportionate to the size of their market share. Each member state within this band will contribute an average of \$32,000 approx per annum with a budget of \$2.0m minimum. The countries within this band will enjoy a more equitable contribution level with this model to the disadvantage of other countries.

Band 4 Table: A breakdown of *projected* contributions by Market Share – 0.0% - 1.0% based on proportional contribution on market share.

| Band 4 Member States | Current % Share of Total | 2014 | 2015 | 2016 | 2017 | 2018 |
|----------------------|--------------------------|---------------|---------------|---------------|---------------|---------------|
| Burundi | 1.0% | 20,000 | 20,100 | 20,500 | 21,700 | 22,700 |
| Comoros | 0.5% | 10,000 | 10,000 | 10,300 | 10,900 | 11,400 |
| Eritrea | 0.3% | 6,000 | 6,000 | 6,200 | 6,500 | 6,800 |
| Lesotho | 0.3% | 6,000 | 6,000 | 6,200 | 6,500 | 6,800 |
| Seychelles | 0.5% | 10,000 | 10,000 | 10,300 | 10,900 | 11,400 |
| Swaziland | 0.5% | 10,000 | 10,000 | 10,300 | 10,900 | 11,400 |
| South Sudan(Est) | 0.2% | 4,000 | 4,000 | 4,100 | 4,300 | 4,500 |
| Total | 3.3% | 66,100 | 66,200 | 67,700 | 71,700 | 74,900 |

Table 18: Band 4 Table

Band 4 – countries with market share of 0.0% - 1.0%. There are 7 countries within this band. This group represents a total of 3.4% of the market share and it is recommended that they contribute proportionally to their individual market shares. Each member state within this band will contribute significantly lower annual contributions due to the size of their air traffic activities within intra-JCA. This will represent an average contribution of \$9,714 per country assuming a budget of \$2.0m per year. This is highly unlikely to be acceptable by other member states as the issue of competition affects all more so the countries within this band.

This option is very desirable and recommended for the medium to longer term basis only. Most organisation of similar composition within Africa and Europe uses a combination of both member states contributions and revenues from grants, donations and financing options

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through loans, equity participations and rental incomes on assets. However, since the JCA secretariat is a new regulatory organisation; it is advisable to concentrate on fixed contributions from member states at commencement of the organisation to ensure sustainability.

Overall, we will consider this option of proportional contributions less favourable due to the various options that can be considered to be more equitable for all countries involved in the tripartite region and of course less risky for the operationalisation of the JCA.

3.5.5 Analysis of Potential Funding Sources

The Consultants have undertaken an extensive research of the various funding sources that can be potentially suitable for the organization both at start up and on-going basis. A detailed table of potential funding sources and financiers has been provided in the task report. It is provided as a guide and should be considered in line with our recommendations on the sustainability of funding the JCA as an organization and not in isolation due to the fact that some core activities of the JCA do not fully meet the specific criteria for funding from some of these financial institutions and donor organisations. An abridged version of the identified sources is tabulated below, including the names of the institution, relevant financial instruments, targeted clients (public or private) the applicant, funding criteria and contact, and recommendation on suitability. Based on the outcome of our analysis of the funding options for the JCA, we will not recommend any consideration of the financial instruments such as loans, debts finance or equity at the early stages of the JCA as these instruments will have a detrimental effect on the ability of the JCA to operate effectively without the burden of debt within the first 5 years operation.

Table 19: Recommended Potential Funding Sources

| NO | FUNDING AGENCY | TYPE OF FUNDING | CRITERIA & CONTACT | COMMENT & RECOMMENDATION |
|--|---|----------------------------------|--|--|
| STABLE CORE FUNDING SOURCES | | | | |
| 1. | Contributions from Member States | Grants (fees and contributions) | Contributions from the 26 members states as per agreed formula for core funding | Best option for the JCA and should be considered as the most suitable for sustainability |
| 2. | Ministries of Finance from Africa member states | Grants | Application is normally through the AU relevant council of ministers. | AU is committed to implementing the YD and JCA is an instrument of the Council of Ministers. Potential source of funding but political task for Steering Committee due to possible duplications with direct contributions by member states above. |
| GRANTS & DONOR FUNDING INSTITUTIONS | | | | |
| 3. | United Nations | Project Funding | Many opportunities for funding of initiatives and partnerships for development under a number of programmes. All year round funding opportunities. Grants for mainly public institutions and project based initiatives. | Mostly suitable for specific projects and should be considered at bilateral level arrangement only. Funding is not sustainable for longer term due to nature of the programmes and funding regimes. Only to be considered for specific projects such as strengthening governance structures, capital, capacity building etc. |
| 4. | The Africa-EU Infrastructure Trust Fund | Grants | (Trust Fund is managed by EIB & chaired by EC) Grants available for private & PPP projects/promoters. Grants of 5-35% available as: Direct grants | A potential funding source for the JCA. Not suitable for start up phase operations but could be considered in the future for infrastructure projects. |

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| | | | | |
|----|--------------------------------|--|---|---|
| | | | <p>Interest rate subsidy</p> <p>Insurance premia</p> <p>Technical assistance</p> <p>Application procedure via ITF associated Project Financiers.</p> <p>Contacts:</p> <p>EIB Project Financier: Alistair Wray</p> <p>Email: a.wray@eib.org</p> <p>PIDG Project financier: John Hodges</p> <p>Email: johnwilliamhodges@gmail.com</p> | |
| 5. | InfoDev (Agency of World Bank) | Grants and Technical Advisory Support | <p>Provides funding to public and private agencies.</p> <p>Focus on partnership funding programmes for technology (themes: Innovate, Connect & Transform)</p> | <p>Good source for special technology driven projects.</p> <p>Not a potential funding source for the JCA now but could be considered in future years for specific projects.</p> |
| 6. | European Union - EC | A combination of grants, debt and equity funding | <p>European Development Fund.</p> <p>Focus on funding or financing private entities only or government agencies with private status.</p> <p>Grants for development actions in the framework of Cotonou agreement between the ACP countries and the EU member States. European funding granted to promote the economic, cultural and social development of the ACP States (i.e. the African, Caribbean and Pacific countries party to the Cotonou agreement) with a view to contributing to peace and security</p> | <p>Not a potential funding source for the JCA now.</p> <p>Could be considered in future years as partnership funding for specific projects.</p> |

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| | | | and promoting a stable and democratic political environment. Current global budget is 22.7 billion euro. | |
| 7. | Development Grant Facility (World Bank) | Grant | Funding for private promoters of projects. Aimed at providing seed capital for innovative global partnerships. Max finance of 15% of project CAPEX. Contact: Head of Africa Transport Unit: Ms. Supee Teravaninthorn Email: Teravaninthorn@worldbank.org Tel: +12024734981 | Potential source for JCA but not ideal. |
| 8. | Sub-Saharan Transportation Policy Programme (World Bank) | Grant for general Advice | Funding for public bodies to develop transport policy and partnerships. The SSATP is a unique partnership of 36 African countries, 8 regional economic communities, 3 African institutions and many national & international development partners. Funding is based on proposal and the agreed development plan for Africa. Contact: Africa Transport Unit World Bank Head of Sub-Saharan Transportation Program: Ms. Zeina Samara Email: Zsamara@worldbank.org Tel: +120 2473 4981 | Possible potential funding source for the JCA. The JCA's 3 REC – COMESA, EAC, SADC are current members of the SSATP. |

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| 9. | Infrastructure for Development (ORIO Facility from Netherlands) | Grant and Debts | <p>Grants of 35% - 50% CAPEX aimed at single country infra projects, eligible sectors differ per country.</p> <p>The transaction amount, excluding the grant, is limited to € 15 m. The limit per country is € 50 m (for "micro-states" € 10 m).</p> <p>The maximum repayment period is 10 years. Application through Agentschap NL.</p> | <p>Not a suitable funding source.</p> <p>Given that these transactions are concluded with the public sector, they must meet the concessionality requirements applying to the country concerned, as agreed by OECD countries to promote sustainable lending practices.</p> |
| 10. | UK Department for International Development (DFID) | Trade Advocacy Fund (TAF) | <p>The Trade Advocacy Fund offers short-term support to the poorest developing countries to help them to engage in crucial trade negotiations. TAF support will be available to governments from Least Developed Countries (LDCs), Low Income Countries (LICs), Lower-Middle Income Countries (LMICs), and their representative membership organisations (e.g. Regional Economic Communities).</p> <p><u>Applications</u> for TAF support can be made at any time. TAF support will be available until September 2015. For more information please contact the fund manager via <u>our contact form</u> or email us at info@tradeadvocacyfund.com</p> | <p>Potential funding source.</p> <p>DFID is already funding Trademark East & Southern Africa from this funding programme and more likely to support JCA programme</p> |
| 11. | UK Department for International Development (DFID) | <p>Debt finance</p> <p>The Emerging Africa Infrastructure Fund (EAIF)</p> | <p>Fund Aims: The EAIF (a public-private partnership) was established in January 2002 to address the lack of long-term foreign currency debt finance for infrastructure projects in sub-Saharan Africa.</p> <p>Fund Objectives: EAIF intends to make a lasting positive impact on the infrastructure of sub-Saharan Africa. This will facilitate economic growth and contribute to poverty reduction in the region.</p> <p>The EAIF provides US\$10 million to US\$ 36.5 million to projects across a range of sectors including telecoms,</p> | <p>Not a suitable funding source.</p> <p>DFID already has a working relationship with the Tripartite Task Force and this should be explored for project level funding.</p> <p>This is purely debt financing for projects and should be only considered once fully operational for key</p> |

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| | | | transport, water and power. Contact: same as above | infrastructure projects if required. |
| 12. | UN Economic Commission for Africa | Grants and partnership working | <p>Various programmes of intervention and funding under these programmes:</p> <p>EC and NEPAD</p> <p>Regional Integration, Infrastructure and Trade, Sub-regional activities for Development</p> <p>Contact:</p> <p>Ms Beatrice Kiraso, Director</p> <p>United Nations Economic Commission For Africa</p> <p>Southern Africa Office</p> <p>P.O.Box 30647</p> <p>Plot 2392 Longo Longo Road</p> <p>Lusaka, Zambia</p> <p>Tel: 260 -211 228 502/2</p> <p>Fax: 260 -211 236 949/234757</p> <p>Email: srdcsa.uneca@un.org</p> | <p>Potential funding partner for specific projects and partnerships.</p> <p>Important source of advice for trade integration and data, research and reports.</p> <p>Not recommended for funding purposes but for partnership working.</p> |
| 13. | Trust Africa | Grants | Trust for Africa provides major grants for collaborative projects, ranging from US\$25,000 to more than US\$500,000, typically combine multiple strategies (like research, advocacy, dialogue, or creativity) and connect institutions from different countries and regions. | <p>Potential funding source for the JCA.</p> <p>This source is ideal for both start up phase and project</p> |

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| | | | <p>Also provides small grants for capacity building to help African organizations develop the institutional skills necessary to do their work effectively. Usually in the range of US\$5,000 to US\$10,000, this support is aimed at fostering sound management, transparent governance, fruitful collaboration, effective communication, and sustainable results. It may be used, for example, to pay for staff exchanges, consultant's fees, study tours, board training, the preparation of videos and other communications tools, and the establishment of specific management systems.</p> <p>Contact:</p> <p>TrustAfrica Lot 87, Sacré Coeur 3 Pyrotechnie x VDN BP 45 435 Dakar–Fann, Sénégal</p> <p>Tél.: +221 33 869 46 86 Fax: +221 33 824 15 67 info@trustafrica.org www.trustafrica.org</p> | <p>funding on an ongoing basis.</p> <p>Recommended as one of the sources to be considered for project funding.</p> |
| FEES & SURCHARGES FROM SERVICES | | | | |
| 14. | Pay As You Earn | Surcharge per passenger embarking in countries | <p>A fixed amount of surcharge paid by the air line companies per passengers as a levy or tax on behalf of the relevant agency. Current models range from \$0.60 to \$5.0 in some countries in Europe and Asia.</p> <p>Contact:</p> <p>Civil Aviation Authorities and REC's across the JCA regions.</p> | <p>A potential source of income for the JCA.</p> <p>This needs regular contracting and agreement on the statistics collated for payment. Desirable but highly political.</p> |

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| 16. | Direct Fees & Charges | General fees for JCA services | <p>This is dependent on the JCA establishing a range of services and costing them appropriately. This could either be a standard charge for applications, research, report, data, disputes etc. Just along the lines of general administrative charges for government departments across the regions.</p> <p>A cost plus model could also be used for calculating the exact cost per unit of services provided.</p> | <p>A potential funding source for the JCA both in the short and long term.</p> <p>Not a sustainable source of income but could be used to generate some level of income for the agency.</p> <p>However, a combination of fees and charges would ensure long term sustainability.</p> |
| 17. | Penalties & Levies | Charge for Non-compliance | <p>A combination of fixed scales of charges and penalties to be levied at countries for non-compliance to the rule of competition within the regions.</p> | <p>Good for income generation.</p> <p>This potential source of income is highly dependent on successes of compliance cases and a long process of arbitrations, dispute resolution and payment could be protracted.</p> <p>Political risks and delays in payment are potential risks of this source.</p> |
| 18. | Duties & Taxes | Government Duties, Subsidies & Taxes | <p>The criteria for collecting duties, taxes and providing subsidies need to be agreed across the regions for the purpose of harmonization.</p> <p>Taxation & duties system represents an important part of the institutional and economic framework within which the aviation industry, or any other trade, must operate.</p> | <p>A potential income generation source for both short and long term.</p> <p>Not a fully sustainable source in the short term but highly desirable for longer term consistent income source.</p> <p>Therefore, we recommend that the JCA undertakes a review of the duties, charges, subsidies, fuel surcharges and tax rules of aviation sector.</p> |

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| MULTILATERAL DEVELOPMENT BANKS & INSTITUTIONS | | | | |
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| 19. | African Development Bank (AfDB) | Equity, Debt, Guarantees, Grants | <p>The African Development Fund (AfDB) provides project financing options to the private and public sector companies. The bank also provides both equity and part grants to qualifying institutions.</p> <p>The criteria for lending, grants, guarantees varies and depending on the project and sustainability element of the project, either sovereign or no-sovereign entities making the application.</p> <p>Contacts:</p> <p>Public Sector: Salieu Jack</p> <p>Email: s.jack@afdb.org</p> <p>NEPAD, RIT: Ralph Olaye</p> <p>Email: R.Olaye@afdb.org</p> | <p>Potential source of financing major capital projects.</p> <p>COMESA has current facility of \$8.6m with the AfDB.</p> |
| 20. | International Finance Corporation (IFC) (World Bank Agency) | Equity and Debt | <p>The International Finance Corporation (IFC) is a member of the World Bank Group. It promotes sustainable private sector investment in developing countries as a way to reduce poverty and improve people's lives.</p> <p>There is no standard application form for IFC financing. A company or entrepreneur, foreign or domestic, seeking to establish a new venture or expand an existing enterprise can approach IFC directly.</p> <p>Lending is up to a max of 50% CAPEX but mostly 25% of total project costs is guaranteed threshold for lending.</p> | <p>Not suitable for JCA</p> <p>IFC operates on a commercial basis. It invests exclusively in for-profit projects and charges market rates for its products and services, which cover three broad areas:</p> |

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| 21. | European Investment Bank | Debt, Equity and Guarantees | EIB funds up to a max of 50% on individual loans for project cost (larger than EUR25 million) | Not a potential funding source EIB also manages Africa –EU Infra Trust Fund which is analysed in point (4) above as a potential funding source in the future. |
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Table 20: Risk Analysis of Sustainable Funding Options

In addition the comparative analysis of the various challenges and risks of each of the funding options in table 1.2 above, the following potential risks will be eminent in an organisation of this nature and these should be considered carefully by the Steering Committee:

| FUNDING OPTIONS | RISK | PROBABILITY | IMPACT | MITIGATION | IMPACT AFTER MITIGATION |
|---|--|-------------|--------|--|-------------------------|
| Option 1 – based on equal contributions & fee income | The potential risks of insufficient funding and late payment of contribution and fees/tariffs by member states due to inherent delays in the government's budgeting and approval process | Medium | High | Fixed compulsory and equal contributions by member states agreed and defrayed annually in advance | Low |
| | The risk of delays in operation leading to inefficient and ineffective use of resources | Medium | Medium | Ensure at least 60% of operating budget is secured by end of 1 st quarter of each year if not 100% | Low |
| | The high level of operating costs and other contingencies such as high salary costs, benefits package, cost of engaging with the communities | Medium | Medium | We recommend a Lean organisational structure at commencement of the JCA. The current proposal is for 11 staff members at different grading | Low |

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| | etc. | | | | |
| | The capacity to mobilise additional or diverse funding through subsidies and investment plans which rely almost entirely on government budgets may be weak. This could lead to organisational ineffectiveness and over reliant on voluntary contributions may not be sustainable | Medium | Low | We recommend a combination of fixed and voluntary contributions by member states | Low |
| | Possible risk of extraneous factors affecting the proposed JCA budget (e.g. high inflation rates, cost of operation etc) | Medium | Low | These factors are highly likely to impact on costs and contingency plans initiated in the funding strategy to mitigate budgetary impact on project. | Low |
| Option 2 – based on equal contributions by member states within same band | Potential difficulty in predicting future allocations with any certainty beyond the annual budget planning process will be a continuous challenge for the JCA and contributions based on group bands that are likely to change yearly would be risky for stability of funding. | Medium | Low | A fixed rate with an agreed percentage increase in line with inflation rate and changes in market shares would be recommended as protection against fluctuations in funding levels. | Low |
| | Accruing funding deficit from member states will have an impact on the effective implementation of the agency's strategic plan, affecting mainly the development of the capacity of the agency in implementing the planned activities. | High | Medium | Ensure at least 60% of operating budget is secured by end of 1 st quarter of each year if not 100%. Establish a working capital fund in addition to fees generated from other sources. | |

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| | This option equitably distribute the financial burden of funding the JCA on economic vibrancy of the countries, it has the potential to be detrimental to countries within Bands 1 and 2 as they will have to contribute more for the privilege and failure or delays in payment would significantly hinder the operations of the JCA. | High | Medium | Ensure commitment from these countries and work in partnership to reduce the risk of late payment | Low |
| Option 3 – proportional contribution by member states based on market share within a band | The top 3 countries in band 1 by current market share positions – Egypt 7.3%, Kenya 12% and South Africa 24.4% stands to contribute a significant proportion of the total annual budget of the organisation. This could be seen as detrimental and means the JCA will have to depend fully on the timely contributions of these countries to be sustainable. | High | Medium | Challenging situation for the JCA using this option but ensuring appropriate systems for collection of contributions annually or quarterly might help reduce burden. | Medium |
| | A significant majority – 7 countries within the JCA will contribute significantly less (3.4%) to the organisation through this model as a result of their combined current market share and making it less desirable to others in higher bands. | Low | Low | Ensure effective communication with other member states on the decision to use this model of financing. However, growth in market shares will continuously change the countries grouping annually. | Low |

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| | Likely to be very controversial as discussions on the implementation of the YD and remit of JCA jurisdiction on only intra-JCA air travel data will be of a major concern to many in the higher bands. | Low | Low | Ensure effective consultations and communications with member states on the funding model. This option has its merits but is less preferred in comparisons to other funding options available to the JCA. | Low |
| Option 4 – contribution from grants, donations, fees and loans | Inability of the organisation to generate sufficient funding through private funds, grants from regional and international agencies, and other donor countries would limit the capacity of the JCA to run effectively and efficiently as a regulatory body. | High | High | Highly risky option for the JCA to depend fully on grants, fees for services and donations from regional and international agencies. Need to establish a stable base of funding and gradually increase proportions of these funding over time. Hence our recommendations to defer for up to 36 months minimum. | Medium |
| | Failure to generate revenue or delays in funding approval from key sources would have considerable impact on the ability of the organisation to function effectively. | High | Medium | Highly dependent on the ability to raise the funding and availability of appropriate funding for the JCA from these sources. | Medium |
| | Contribution from Pay as you Earn surcharges on passengers embarking within member states could be difficult to collect on a regular basis and may be seen as not equitable and result into non- | High | Medium | Need to establish a charging formula for the PAYE surcharges from outset and agree cooperation model with all parties. E.g. 0.50ct per passenger. | Medium |

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| | <p>payment or delays in payment</p> <p>Levies on airline tickets per passenger</p> | High | High | <p>Considered to be one of the most suitable ways of funding air transport regulatory authorities. But faces a number of challenges in application and oppositions from airline companies and passenger groups.</p> | Medium |
| | <p>Sustainability of generating revenues from domestic and foreign investors in the air travel sector on an ongoing basis for the organisation will be challenging annually and could have detrimental effect on the ability of the JCA to meet its obligations.</p> | High | High | <p>Need to develop attractive projects and programmes to attract Joint investments from investors. E.g. infrastructure projects, education, tourism etc. Although, there are existing relationships within the EAC, SADC and COMESA regions that the JCA could seriously benefit from but the relevance of these funding streams to the activities of the JCA are questionable including the ability of the JCA to maintain anonymity within the region.</p> | Medium |
| | | | | | |

3.6 Development of YD Compliant MASA

The Consultants have accomplished the following deliverables:

- *The draft YD compliant MASA*
- *A draft YD compliant BASA*
- *Concept paper on the YD compliant Templates*

The draft MASA, BASA and the Concept Paper can be found in **Final Report Part 7 - A YD Compliant Air Services Agreement**

3.6.1 Concept of the Template:

The Consultants have proposed a YD compliant Air Service Agreement template for the COMESA EAC-SADC Tripartite region to be used for the exchange of route and traffic rights. It is drafted as a multilateral agreement covering all aspects normally found in such an agreement. The template also incorporates YD liberalisation principles particularly as they affect the exchange of traffic rights between member countries. In this way it will be a supervisory tool for facilitating liberalisation and YD implementation in the tripartite region. In a most basic way, its application should enhance harmonisation of air transport policy regulation and coordination of the liberalisation process in the three RECs and provide a yardstick against which YD implementation can be monitored and measured. Specifically the template could have the following purposes:

- a) To provide a YD compliant model Multilateral Air Service Agreement to be used as a basis for exchanging traffic rights between member States.
- b) To enhance regulatory harmonisation of liberalisation policies and provisions within the region,
- c) To serve as a 'yardstick' to measure progress and changes in liberalisation and YD implementation at the regional level.
- d) To provide a framework of harmonised regulation and harmonised national and regional air transport policies in respect to the exchange of market access rights between States in the three Communities.
- e) To provide Member States in the tripartite region, a basic practical supervisory tool to use in facilitating liberalisation and full YD implementation.

3.6.2 Contents of Template:

The template has been drafted as a MASA and includes wording and provisions normally found in such agreements. It uses the language developed by ICAO over the years on various air services agreements, provision and language from the YD and instruments used by RECs in their agreements. The template covers the following provisions :

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Preamble: The Preamble introduces the Template as part of implementation of inter-regional institutional arrangements to foster co-operation in the three regions; it recognises that efficient and competitive international air services are important to develop trade, benefit consumers, and promote economic growth; the preamble also expresses the desire to complement the other transport facilitation and liberalisation efforts of the Tripartite Region.

Article 1 – Definitions: Definitions in Article 1 of YD have been adopted wherever possible in Article 1 of the template. The rest are standard ICAO definitions.

ARTICLE 2 - Grant of Traffic Rights: Article 2 of the template on traffic rights provides for each Member State to grant each other Member State free exercise of the first, second, third, fourth and fifth freedoms of the air on scheduled and non-scheduled passenger, cargo and/or mail flights performed by an Eligible Airline of a member State. This provision is consistent with Article 3.1 of YD which provides for the free exercise of these freedoms including unrestricted the 5th freedom which is not always granted. In fact difficulties in implementing YD have largely been because of reluctance by States to grant this right.

This Article can therefore be considered as the crux of the matter in as far as YD implementation is concerned. It is more or less what YD is all about, namely; removal of restrictions on traffic rights including the fifth freedom rights. Level of compliance by States with this Article will to a large extent determine the course and direction of full implementation of YD. Close monitoring of its implementation will be required to also gauge its impact on operations of airlines in the tripartite region.

Article 3 – Capacity and Frequency: Article 3 incorporates YD Article 5 provisions on capacity and frequency and prohibits a Member State from imposing any limit on the number of frequencies or capacity or type of aircraft offered on air services linking any city pair combinations between Member States concerned. The Article allows each designated airline to determine capacity to be offered without government approval or intervention, subject only to competition regulations. A State however retains the right to vary capacity to be offered on the grounds of environment, safety, technical or other special considerations.

Article 4 – Tariffs: Under Article 4 of the template and in line with Article 4 of YD, no government approval is required in the case of tariff increases by designated airlines except that the airlines shall be required to file such tariffs 30 days before entering into force. On the other hand, no notice is required in the case of lowering the tariff and any such tariff shall take immediate effect. However, the airlines practices with respect to tariffs will be subject to Competition Regulations referred to in Article 7 of the Template. Any increase or decrease not in compliance with these Regulations shall be deemed ineffective.

Article 5 – Designation and Authorisation of Airlines:

Article 5 of the MASA reflects, without deviation, the exact provisions and intentions of Article 6 of YD on Designation and Authorisation. It specifies conditions for designation including number of airlines to be designated and the criteria for designation as explained below.

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- a) **Number of Airlines to be designated** - With regard to the number of airline to be designated, Member States have the right to multiple designations as the Article does not limit the number of airlines to be designated. Each Member State can therefore designate any number of airlines to operate intra-regional services provided that such airlines meet the eligibility criteria. Designation has to be notified to the other State in writing through diplomatic channels. In the event that the airline designated does not meet the eligibility criteria, the State concerned may refuse authorisation to that airline.
- b) **Eligibility Criteria and Ownership** - The eligibility criteria set in paragraph 4 of Article 5 of the proposed MASA, as adopted from Article 6.9 of YD, reads as follows:

To be eligible, an airline should:

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

The above YD compliant designation criteria is a departure from the long established traditional rule found in most BASAs, including those between member States in the tripartite region, that an airline must be substantially owned and effectively controlled by the designating State or its nationals as criterion for designation. Instead, it opts for other criteria such as effective control, incorporation in and principal place of business and other operational and technical fitness criteria.

The departure from this long established tradition has to be viewed in the context of changed business environment in which the industry operates. The national ownership and control provision operated successfully for decades largely in the environment of state-owned and fully funded national airlines. However, a change in national policies, trends towards liberalisation and regional integration programmes has resulted, among other things, in the dwindling and in some cases outright withdrawal of State funding to national airlines. In this regard, a number of governments including some in the tripartite region have disbanded national airlines, inviting instead the private sector to invest in and establish airlines in their respective countries to enable them participate more effectively in international air transport. This was to be by way of creating an enabling and conducive environment that would attract

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private sector capital investment in the industry. However, there exist considerable challenges in raising sufficient capital to invest in airlines from within national borders and across Africa. The advantage of the YD criteria therefore lies in the opportunities it creates for increased access to international and foreign equity participation. It possibly also facilitates the restructuring and strengthening of airlines through cross border capital injection.

The deviation from the established tradition is understandably a source of concern for some States as it opens opportunities for interests outside the continent to exercise control over African airlines through equity participation, thus gaining undue advantage from the liberalisation package which is intended to benefit African carriers and not those from outside the continent. This raises the question as to whether such African carriers with part foreign ownership and or control should be considered eligible for designation to operate intra-regional services. A related question is whether subsidiaries of non African airlines established in a member State should be allowed to operate intra-regional services. The YD criteria seems to suggest that such airlines could be allowed to so.

The absence of the substantial ownership provision does not however, alter the underlying national legislation governing foreign ownership levels in the airlines. Each Member State will continue to set the permissible level of foreign ownership based on its national policies on inward foreign investments. In this respect some States place no limit on the level of foreign investments but have to continue to participate in regional or international air transport. For example Uganda does not place any limit on foreign investment. Air Uganda which has majority foreign shareholding has been licensed to operate domestic services and designated to operate intra-East African services into Kenya and Tanzania.

In addition, the YD criterion does not abandon the need for genuine link with the designating State. The conditions of eligibility are cumulative and the absence or lack of one of the elements can constitute the legal basis for denying authorisation to operate the services. For example, if the receiving State concludes that the designating State does not exercise effective control over the airline as defined in Article 1 of YD and of the proposed MASA, it can deny authorisation even if all other conditions of eligibility are met.

It is clear that there is no readily available answer to the complex and vexing question of airlines with substantial non-African shareholding. The complexity mainly lies in the fact that on one hand, States in the exercise of their sovereignty have the right to determine the level of foreign investments in airlines established within their jurisdiction. On the other hand, where such airlines are overwhelmingly controlled by foreign interests they are and could be viewed non-African and therefore cannot be considered eligible to operate services under YD which was and is intended for the benefit of African carriers.

Our view and suggestion is to seek a possible compromise in the context of the concept of “Effective Control”. To be eligible an airline must be effectively controlled by a State Party, or by nationals of the country where it is based. An agreed objective and creative interpretation and application of this concept could help to clarify and put in proper perspective the

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eligibility of airlines with substantial foreign shareholding and or control. The key criteria in the concept of “effective control” is who actually exercises a decisive influence on the airline, in particular (a) the right to use all or part of the assets of the airline (**financial test**) and (b) on the composition, voting or decision making powers in the governing bodies of the airline, the management and the running of the airline (**the management test**). An interpretation of this concept based on these elements could assist in determining whether the airline in question is effectively controlled by the State Party concerned.

To conclude, the eligibility criteria specified in Article 5 of the proposed MASA does not in any way deviate from or relax that set by Article 6 of YD. However, it leaves out the traditional “*Substantial Ownership and Effective Control*” requirement found in most BASAs. In addition, each State retains the sovereign right to determine the permissible level of foreign ownership. The two factors have given rise to concerns about the eligibility, under YD, of airlines with substantial non-African shareholding. It is suggested in this regard that an objective interpretation of the concept of “effective control” could assist in determining the eligibility of such airlines. Lastly, the criteria in paragraph 4 of Article 5 of the MASA, retains genuine link with designating State while the conditions are cumulative.

Article 6 – Withholding Revocation of Authorisation : Article 6 grants the right to a member State to revoke, suspend or limit the operating authorisation of a designated airline on the grounds of failure to meet any of the eligibility criteria set out in Article 5 paragraph 4 of the Template. Other bases for revocation are broader in scope and are covered by cross reference to the requirements to comply with the provisions on safety, security and the laws and regulations of that Party.

Article 7 – Competition Regulations : Article 7 of the Template is about compliance with the Regulations for competition in Air Transport Services within COMESA, EAC and SADC adopted in 2004 which also established the JCA. The Regulations give detail to Article 7 of YD, a wide-ranging provision which imposes an obligation on parties to ensure fair opportunity for designated airlines on a non-discriminatory basis to effectively compete in providing air transport services. Various rules related to competition in a number of YD Articles (5.2, 10.4 and 10.5) are also brought together under one Article of the Template.

In particular, each Member State undertakes to implement within its territory the Regulations for competition in air transport services within COMESA, EAC, and SADC of 2004 to promote and guarantee free and fair competition within the three RECs. The regulations provide for:

- a) The regulation of anti-competitive behaviour
- b) Regulation of abuse of dominant position
- c) Regulating subsidies, discriminatory behaviour, and complaints mechanism
- d) An institutional mechanism to manage the effective implementation of the Competition regime and the full implementation of the YD

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In a sense Competition Regulations are at the heart of the matter as effective implementation of YD will largely depend on the management of the competition regime whose substructure are the Regulations.

Article 8 –Commercial Opportunities: This is standard ‘doing business’ activities provision derived from Article 11 of YD.

Other Provisions: Other provisions in the template are those normally found in any ASA such as provisions on civil aviation safety and security, competition rules, application of laws/regulations, consultation, settlement of disputes, withholding authorisation, withdrawal, deposit and entry into force.

3.6.3 Role of template in YD implementation

The role of the Template in YD implementation belongs to a cluster of issues that need clarity as the role it is allowed to play may have a huge bearing on YD implementation. Thus, after establishing the general purpose of the template the next question to consider is its specific role in full implementation of YD. In this regard, the only clear indication as to its role is found in the ‘Scope of Work’ item in the terms of reference which states, among others, that the scope of work includes “the development an Air Services Agreement (ASA) template for the exchange of route and traffic rights that complies with the YD.”It follows from this that the intention is to use it as a basis for exchanging market access rights based on YD provisions as contained in the template. The next step is to consider modalities of ensuring that the template is allowed to effectively play this role.

Our submission in this respect is, that the JCA should be allocated a specific function of ensuring compliance by States with the template particularly with YD provisions therein. This suggestion arises from The JCA’s general function, as derived from the Communiqué of Tripartite Summit of 2008, to oversee the full implementation of the YD for and on behalf of the three separate regional economic communities. As observed in earlier comments, this general function may be broader even deeper than specific cases and possibly involve intervention of the JCA in the activities of one or more States in order to ensure the full implementation of the YD. In which case, the JCA will need to be assigned specific functions and legal mandate to facilitate such interventions. The role of the template and its application could therefore be reflected in some of these specific functions adding up to performing this JCA’s general function. A key specific function of the JCA could therefore be to ensure compliance by member States with YD provisions in the template.

There will also be need to develop to some detail other relevant specific functions necessary to ensure full implementation of the YD and the specific role that the template could to play to fulfil this objective. This could be done by first defining and outlining guidelines for full YD implementation against which implementation is to be measured. In

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this regard, essential principles of YD which are the framework for the liberalisation process would form the basis of the guidelines.

It will be recalled that YD sets the principles with which to govern the exchange of traffic rights, fixation of tariffs, capacity and frequency, designation of airlines and criteria for their eligibility. It establishes organs for the supervision, follow-up and implementation of the Decision as well as a permanent regulatory body, the Air Transport Executing Agency, to supervise the liberalised sector and to formulate and enforce rules of fair competition and consumer protection.

These principles are also reflected in the guidelines issued by African Ministers responsible for transport at their meeting in 2005 in South Africa for evaluating YD compliance. They have also been incorporated as provisions in the proposed template for the tripartite region. Technically, the status of implementation by each State in the tripartite region could therefore be assessed from the perspective of compliance with these key YD based provisions in the template, which to a certain degree are the “pillars” of liberalisation.

Other functions could include reviewing implementation of the provisions of YD particularly with regard to impact on the operations of airlines in member States and recommending appropriate action resulting from such reviews. In summary the role of template will be to assist the JCA in monitoring YD implementation and proposing remedial action to address any adverse impact resulting from implementation of any specific provision of the template. In this regard, specific functions of the JCA relating to YD implementation could include the following:

1. Ensuring compliance of YD provisions in the template.
2. Defining and setting measurement criteria for full implementation of YD
3. Developing and refining rules clarifying YD interpretation
4. Implementing measures to achieve enhanced convergence of interpretation and application of the Decision
5. Regularly reviewing implementation of template in general and specific YD provisions in particular.
6. Ensure compatibility of national regulations
7. Assessing net impacts (including costs and benefits) of liberalisation on consumers and producers
8. Developing guidelines and policies relating to third countries
9. Develop policy guidelines on Consumer protection
10. Build and maintain a data bank on the airline industry it is regulating to allow analysis on:
 - Capacity

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- Traffic
- Tariffs
- Financial performance and productivity
- Route Structure
- Airports
- employment

Thus, in addition to monitoring implementation of Competition Regulations, the JCA will also facilitate application of the template by States as a means of overseeing full implementation of YD in the tripartite region.

These functions have been dealt with in Articles 9 and 10 of the draft Regulation.

3.7 Conclusions and recommendations

This section collates the conclusions and recommendations of this study.

3.7.1 JCA Regulation

The Joint Competition Authority should be empaneled at the very highest level in order to be a powerful regulatory force in the industry. The industry needs an authority with insight, clout and power. The initiative of the JCA if carried though as envisaged in the Competition Regulations and the foresight of the Tripartite Summit is surely meant to result in a strong regulatory institution, harnessing the collective strengths of half of Africa.

In anticipation, the Consultants have proposed a set of functions which enables the institution play that role.

It is recommend that:

- a. The JCA be made to manage the Multilateral Air Services Agreement and the Competition Regulations in tandem – this we believe is exactly what is needed to enhance the collective force of the YD and the regions role in African and global air transport.
- b. It should be empowered to support states to implement the YD and the Competition Regulations.
- c. It should be empowered to be interventionist and not merely serve as an agency for making recommendations
- d. It should be empowered to drive the concept of eligibility of the 3 RECs following from the initiative of the COMESA Legal Notice No. 3.
- e. It should also be empowered to propose and assist in devising innovative ways of funding and ownership and yet it must have its fingers on the Competition Regulations to prevent any abuses.

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- f. In bringing the other service providers to the fold, it is proposed that the JCA be seen to be the primary focal point in COMESA EAC SADC to address holistic air transport economic regulatory matters be it growth or abuse, or cross subsidies or block negotiations, tariffs, frequency, slots, or protection of air transport consumers as a whole.
- g. The JCA is required to conduct, sponsor and finance studies to aggressively develop the industry within the Tripartite region.
- h. As an investigatory and adjudicatory institution, the JCA should also be required to expose its decisions to external review. This starts from initiation of rules which should involve all stakeholders in a consultation process. Decisions should not be arbitrary and must always be justifiable to those who the decisions are addressed to and all other parties for that matter. Finally, it should also be made to answer for its acts before the Ministers, before Directors General of CAA's and finally before the Courts and Tribunal.
- i. A key responsibility of the JCA must be to help modernise data collection and dissemination. Consequently it should be compelled to build and maintain a data bank on the airline industry.
- j. Essentially, the JCA can only be able to assist States. States can also only be useful if clear and distinctive commitments are requested. It is proposed that the JCA move into content-based regulation by studying the regulatory environment and devising content-based questionnaires that will assist the States abide by their commitments. If properly thought through, State and industry reporting could be redesigned to make it less painful. This, it is proposed should be done as early as possible to enable States know exactly what will be required of them in relation to each regulation, how often they will have to report, who the focal points should be and what the penalty will be for not reporting.

3.7.2 YD Compliant ASA

- a. The proposed template drafted by the Consultants provides the JCA and Member States a basic practical supervisory tool to use in facilitating liberalisation and full YD implementation in line with the decision of the First Tripartite Summit.
- b. The template will provide a practical packaged YD for States to use in implementing the liberalisation programme. As a model MASA, it will enhance harmonisation of air transport regulations and policies in the tripartite region. The template will require to be developed to eventually evolve and be transformed into a multilateral agreement.
- c. The degree and extent of the effectiveness of the template in YD implementation will largely depend on its status in the operationalised JCA.
- d. States should be encouraged to use the template as a basis in their bilateral relationships with African States outside the tripartite region
- e. The JCA should regularly review implementation of provisions in the template to determine their impact on the provision of air services in the three RECs and beyond.

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- f. (f) **Recommended Status of the Template:** The template should be accorded legal and formal recognition and empowerment in the JCA Regulation. Hence:
- (i) The legal mandate and status of the template be specified in the Regulation
 - (ii) Template to be transformed into a MASA open for signature by any member State
 - (iii) The JCA Regulation to provide provisional arrangement for States to declare commitment to template awaiting final determination of its status.

3.7.3 Human Resource Plan

The Human Resource and Organisational Plan recommended that:

1. The overall structures and legal mandates of the three Secretariats provide an appropriate context within which to construct a JCA Secretariat that will have across the board acceptance with the capacity to effectively carry out its mandate.
2. Currently, the Transport Departments of the 3 RECs have been performing the basic functions assigned to the JCA. The departments will therefore provide a foundation or springboard and a basis for the future development of the JCA Secretariat. There will always, of course, be the risk of overlapping of responsibilities and ‘stepping on each other’s toes.’
3. Personnel policies and benefits of the RECs that supplied sufficient data on the matter provide an indication of what the JCA could offer to attract suitably qualified members of staff.
4. In light of the above, the JCA Secretariat, as far as possible, be the hybrid of the best of the three RECs in terms of policies and benefits, subject to ability to support such proposals.

3.7.4 Business Plan

Financial sustainability of the organization can only be assured if core regulatory functions are funded on a long term basis by member states. The estimated annual budget identified by the consultancy team for the JCA has been revised and other adjustments made, providing for its phased implementation, as suggested at the April 2013 JCA Stakeholders Workshop in Harare.

It has not, however, been possible to redefine the passenger and cargo statistics of traffic between Member States in the JCA area, and between those States and other countries in Africa. This data is simply not published. Statistics are generally available in total, albeit not always consistently. Domestic and international traffic is often distinguished, and in a few cases intercontinental traffic (or its absence) can be identified or inferred, but we have found no instances of African international traffic being defined by route or even by country of

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origin/destination. Thus there is no authoritative factual published data on traffic volumes between the States of RECs, or between RECs within the JCA area, or between the JCA area and other countries in Africa, or of airlines’ market shares. The figures used, while inevitably imperfect, remain our best estimates in the circumstances. We therefore see the task of establishing the ongoing systematic collection of route traffic data as task to be carried out for or by the JCA as a matter of urgency.⁶ ,

Three scenarios have been elaborated, detailed in the following tables, but broadly varying according to the remuneration and terms of service of the seven JCA members, and whether office accomodation is provided free or at commercial rates by SADC or the PPIU. All costs are rounded to the nearest US\$000.

In Years 1 and 2, the JCA starts with a skeleton staff of seven (four executive and three administration staff), and then a full complement of 23 (11 executive and 12 administration staff) thereafter. For consistency, the revised budget is presented in constant 2013/2014 US\$, so that there is no provision for inflation. However, increments in pay scales have been built in at 5% per annum in real terms, reflecting likely seniority progression and recognising that points on a salary scale at which employees join may vary. Salaries are assumed to carry a 10% on-cost to the employer to cover pension, insurances, training, and other benefits. Travel expenses have been estimated according to function, JCA members on an attendance basis, assuming peripatetic meetings, staff expenses ranging from nil to 20% according to function. The total cash outflow for the Years 1 and 2 equates to approx US\$700,000 pa. Thereafter, it varies between \$2 million and \$3 million, according to scenario. Over the range of years and scenarios these costs are estimated to approximately equate to between 15¢ and 30¢ per African international passenger departing from a JCA area airport.

3.7.5.1 Low Cost Scenario

| Low Constant \$ mn. | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 |
|----------------------------|---------------|---------------|---------------|---------------|---------------|
| Recurrent Costs | 0.678 | 0.698 | 1.901 | 1.969 | 2.041 |
| Capital Costs | 0.025 | - | 0.075 | 0.010 | 0.010 |
| Total Cash Costs | 0.703 | 0.698 | 1.976 | 1.979 | 2.051 |
| JCA Members | 7 | 7 | 7 | 7 | 7 |
| Staff | 7 | 7 | 23 | 23 | 23 |

Source: Consultant’s estimates

⁶ There are at least two commercial computer programmes which can analyse capacity data by city pairs from digitally published airline schedules, from which traffic can be much more closely estimated manner, but the cost runs to thousands of dollars. Manual analysis is possible, and some sample airports were examined for sample months in the course of preparing this report, but it is extremely time-consuming and would require a special contractual arrangement. .

*FINAL REPORT – Summary, Conclusions & Recommendations***3.7.5.2 Mid Cost Scenario**

| Mid Constant \$ mn. | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 |
|----------------------------|---------------|---------------|---------------|---------------|---------------|
| Recurrent Costs | 0.678 | 0.698 | 2.346 | 2.438 | 2.535 |
| Capital Costs | 0.025 | - | 0.100 | 0.020 | 0.020 |
| Total Cash Costs | 0.703 | 0.698 | 2.446 | 2.458 | 2.555 |
| JCA Members | 7 | 7 | 7 | 7 | 7 |
| Staff | 7 | 7 | 23 | 23 | 23 |

Source : Consultant's estimates

3.7.5.2 High Cost Scenario

| High Constant \$ mn | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 |
|----------------------------|---------------|---------------|---------------|---------------|---------------|
| Recurrent Costs | 0.678 | 0.698 | 2.846 | 2.964 | 3.087 |
| Capital Costs | 0.025 | - | 0.100 | 0.020 | 0.020 |
| Total Cash Costs | 0.703 | 0.698 | 2.946 | 2.984 | 3.107 |
| JCA Members | 4+3 | 4+3 | 4+3 | 4+3 | 4+3 |
| Other Staff | 7 | 7 | 23 | 23 | 23 |

Source : Consultant's estimates

3.7.5 Sustainable Funding Mechanism

Sustainable funding for regulatory organisations is often very challenging and complex in application due to the various elements discussed above. As highlighted in our analysis of the various funding options and sources of funding, it is evident that dependence on cost recovery exercises through fees and charges will be insufficient source of funding the JCA as most agencies of similar composition across Europe and Africa have not been successful with this model of funding without contributions from government and other sources.

As a result we will recommend that the JCA is fully funded by the states as a statutory organisation to enable effective establishment and operationalisation. However, the management of the JCA will need to consider generating additional and supplementary income from some of the sources discussed above, mostly through fees and grants from regional and international bodies. The Steering Committee needs to review options as discussed in the report and approve the most suitable funding model for the organisation.

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In conclusion, we will suggest that a more stable funding should be used to establish the JCA and other potential funding sources identified above could be used in conjunction with funding from the contributions from member states as recommended. A decision to fund through other sources could seriously jeopardise the outcome and position of the organisation within the communities. Also we will recommend that the Steering Committee considers to set up a fund raising team to assist with the compilation of the proposed funding structures and documentation (concept paper, technical, legal, institutional, financial etc) and also help in the negotiations in establishing the financial frameworks for establishing the JCA.

4. APPENDICES

4.1 Annex 1: Terms of Reference

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.

COMESA invites proposals by consultant firms 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.

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

4.2 Validation Workshop and Assessment of Project

This section reproduces comments received by the Consultant at the Stakeholders workshop from Burundi, and from a number of states and regional organisations

4.2.1 Comments from the Validation Workshop

Comments in relation to the definition of a **JCA Legal Instrument**

1. Address the relationship with the existing National and Regional Competition Institutions
2. Clearly define the power and mandate of the JCA
3. Address issues on the relationship with 3rd countries (beyond JCA region – YD countries and foreign countries)
4. Address written comments from Member States once submitted through PPIU
5. Dispute Resolution: Be aware of future dispute resolution measures under the Tripartite
6. Entry into Force: Consider that SADC may have different procedures for adoption and ratification of legal instruments
7. Purpose of JCA: Identify core function in relation to personnel requirements

In reference to the study on the **ASA Template**

8. Reference to Article 2 of the YD on dispute resolution to be removed.
9. Provide recommendations on depository issue based on its detailed analysis
10. Adopt AFCAP definition of the Air Transport Services
11. Consider the implications of the Beijing Convention/Protocol on Aviation Security
12. Lessons from the Banjul Accord MASA (2001)
13. Address issues of non physical barriers such as free movement of people

In relation to the **Study on HR and Organisational Plan:**

14. Clearly define the roles of JCA in policy development and rulemaking
15. Clearly define the role of JCA in regulatory against development matters
16. HR - Identify Core functions and related personnel for kick off of the JCA Secretariat
17. Phased approach of the operationalization of key tasks
18. Consider secondment of experts from Member States

19. Ensure that there is no duplication of functions in relation to the JCA and the Executive Agency
20. Ensure that JCA has competency and capacity to secure incorporation of Competition Regulations or reconcile national, regional and continental competition structures
21. In terms of External Relations ensure compliance with AU requirements
22. HR: Consider revising title of Air Transport Economist to Air Transport Officer and Head of Air Transport Economics to Head Air Transport Services

In relation to **Sustainable Funding**

23. Provide a revised budget based on a phased approach
24. Analysis of the challenges of funding options especially through levies from airline tickets
25. Undertake risks analysis for sustainable funding of JCA

4.2.2 Written Comments Submitted by 15th May 2013

| NO. | COMMENT |
|-------------|---|
| | COMMENTS ON THE DRAFT FRAMEWORK FOR THE OPERATIONALISATION OF THE COMESA-EAC-SADC JOINT COMPETITION AUTHORITY (JCA) - COMESA |
| COM1 | Following the presentation which was made at the meeting in Harare and a careful consideration of the Draft Framework for the operationalisation of the COMESA-EAC-SADC Joint Competition Authority (JCA), we would like to make the following comments for your consideration: |
| | 1. Preamble |
| COM2 | <p>Adoption of Tripartite Air Transport Regulations by the RECs - The preamble has made reference to the adoption of regulations by COMESA and SADC but not for EAC. Accordingly our recommendation is that we need to include a paragraph in the preamble which will make reference as to when EAC Policy Organs adopted the regulations just as you have done for COMESA and SADC. Please note that our reference is to paragraph 2 of the Preamble.</p> <p>Adoption of a Common internal and external air transport liberalization policy – Since the draft framework is on the operationalisation of the Joint Competition Authority (JCA), I wonder if Member/Partner States are going to accept that we start talking about a common internal and external air transport liberalization policy which may lead to the adoption of a multilateral air services agreement in this framework as it is indicated in the sixth paragraph of the Preamble. We may have to reflect on this matter carefully.</p> <p>Implementation of Global Competition Regulations or Rules by COMESA and EAC – We wonder what purpose this serves in this agreement in its current form. You may wish to cast it in a positive light to the effect that although COMESA and EAC have started implementing Global Rules on Competition, as</p> |

| | |
|-------------|--|
| | <p>regards Air Transport Competition, the JCA shall be the Implementing Agency in the COMESA-EAC-SADC Region. Here I am referring to paragraph 7 of the Preamble.</p> <p>Establishment of the Joint Competition Authority – We would like to recommend that we bring into the Preamble a summarized version of Article 9 of the Regulations for Competition in Air Transport Services within COMESA, EAC and SADC which provides for the establishment of the Agency.</p> |
| | Article 1 – Definitions and Abbreviations |
| COM3 | <p>There is need to go through all the abbreviations in the draft framework and ensure that they have been defined in Article 1 on Definitions and Abbreviations. The example of this is the abbreviation of the word “RECs” which has been used in the last paragraph of the Preamble. We would also recommend that the title of the article should just be “Definitions”. To this effect we advise that we should just put the abbreviations and words to be defined in one paragraph and not split them as 1.1 and 1.2.</p> <p>The title Objectives and Establishment on top of Article 2 seems to be hanging. Our suggestion is that it should be lifted to just below the words “Chapter Two” and we amend it to read “Definitions, Objectives, Establishment”.</p> |
| | Article 2 – Objectives and Establishment |
| COM4 | <p>We have carefully considered this provision and we would recommend that we recast it. Firstly, we need to talk of the objective of this framework which is the operationalisation of the COMESA-EAC-SADC Joint Air Transport Competition Authority in one article. We should then proceed to recast the Articles and bring in a new specific article on Scope of Application. We are also not sure of the relevancy of the roman number on the title of this Article. We feel that it should be deleted.</p> |
| | Article 3 – Object and Basic Principles |
| COM5 | <p>This provision needs to be recast in the light of the foregoing submissions on Article 2. The provisions relating to objectives should be taken to the Objective Section and this Article should focus on principles only. We are not sure as to the title “Object”. Our recommendation is that we should talk of “Objectives” as the title of this part shows.</p> |
| | Article 6 – External Relations |
| COM6 | <p>We have had a careful consideration of this provision and we have reservations in giving the Agency powers beyond implementation of the Regulations on Air Traffic Competition in the region. If it is in relation to the implementation of the Regulations, we would agree but the powers given under this provision are quite wide and liable to raise conflicts.</p> |
| | Article 7 – Liability |
| COM7 | <p>Almost all institutions in the case of COMESA and which we think is the same for SADC and EAC are conferred with diplomatic immunity and privileges by the Treaty and an Agreement on Immunities and Privileges as well as Host Agreements. In this case it may be proper to recast the provision herein in this light.</p> |
| | Article 9 – Powers of the Joint Competition Authority |

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| COM8 | We feel we need to carefully consider the provision herein in terms of powers to seek a legal opinion from any of the Tribunals or Courts of Justice as of now there is no provision or jurisdiction of that nature. In the case of COMESA, it is only the Secretary General who can request for a legal opinion from the Court. See Article of the COMESA Treaty. There are conditions attached thereon and that is, the COMESA Council of Ministers has to make a decision thereon. Accordingly we need to re examine that provision in this context. We shall try also to resolve the challenges here through our comment on the article on Dispute Resolution. |
| | Article 11 – Research |
| COM9 | We have carefully considered this draft provision and feel that it needs to be redrafted with focus on the umbrella issues on research and training in relation to the competition regulations. We feel provisions such as Article 11(5) on encouraging universities and institutions to conduct research on transport liberalization go beyond the objective of implementing the Air Transport Regulations. |
| | Article 12 – Monitoring |
| COM10 | We have concerns in relation to Article 12(iii) which provides for a name and shame list. Our concern is based on the fact that the treaty of each of the three organizations makes provisions for sanctions for non compliance with commitments and we therefore find it difficult to have such a provision in this Charter. Furthermore, the principles of the Tripartite include the principle variable Geometry which means that Member/Partner States shall only implement when they are ready to do so without prejudice to their commitments to implementation. We can explain more on this principle if required. |
| | Article 14 – Database, Website, Privacy and Publication |
| COM11 | We suggest that in Article 14(1) we delete the word “Council” as it is not practical. Sharing of information envisaged happens at the technical level and we feel that mentioning the technical stakeholders as you have done shall suffice. |
| | Article 15 – Investigation of Member States |
| COM12 | We have reservations on this provisions starting with the title. The Competition Regulations are about regulation of the behavior of Air Transport services providers and therefore we take it that when we talk of investigations on anti competitive behavior, we shall be looking at service providers. Accordingly, in line with the regulations, we suggest that the entire provision be revised with a focus on service providers and not Member/Partner States. The revision should be in the light of Regulation 11 of the Tripartite Competition Regulations. It is not Member States that shall be investigated but the service providers. Reading it in its current form suggests that there will be investigations on non compliance with this Charter (See Article 15(2) on one hand as well as investigations on anti-trust practices (See Article 15(3) (a) of the Draft Charter). |
| | 23. Article 17 – Imposition of Sanction |
| COM13 | We refer to our comment on Article 12 and feel that it is also relevant here. To begin with, we feel that this Charter should be confined to the implementation of the Air Transport Competition Regulations and as such going to cover the Yamoussoukro decision as well as a Multilateral Air Transport Services Agreement not yet agreed upon is going beyond the mandate given y the regulations. We would therefore request that this provision be deleted in its entirety. |
| | 24. Article 20 – Structure of the Joint Competition Authority |

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| COM14 | We would like to suggest that the Committee of Senior Officials be included under this structure. It comes immediately before the Sectoral Ministerial Committee on Infrastructure and also the Technical Committee on Air Transport Competition if they will be one. We need to interrogate this further. We would also like to suggest that we remove the Courts or Tribunals from this structure and take them to the Article on Dispute Resolution. We shall address the issue of dispute resolution under Article 31. Cast as they are in this draft provisions, one wonders about their legal authority as their jurisdictions are governed by specific instruments such as the COMESA Treaty in the case of COMESA. We also feel that Articles 20(e) and 20(f) are talking of the same thing and therefore we need to regularize the same by deleting 20(e) for example. |
| | 25. Article 21 – Composition and Chair of the Authority |
| COM15 | There is need to recast this provision in line with Article 9 of the Competition Regulations in terms of the Authority being a Joint Committee under the Regulations. |
| | 26. Article 22 – Meetings |
| COM16 | Our comment on this provision is mainly on language and structure. Since Article 23 is on voting our suggestion is that Article 22(2) in so far as it relates to voting should be moved to Article 23. Instead we should replace it with another provision that says “the Executive Director of the Authority shall attend the meeting as an ex officio”. Furthermore as regards Article 23(3), since you have indicated that there shall be at least three “ordinary” meetings in a year, it therefore goes without saying that the rest of the meeting referred to in the second part of the provision should be referred to as “extra Ordinary” meetings and we advise that the provision be recast accordingly. |
| | 27. Article 27 – Staff |
| COM17 | We realize the challenge of determining the staff compliment of the Authority at this point but one of the ways of coming out of this dilemma is to make a provision to the effect that Council shall determine the staff compliment of the Authority. We therefore suggest that the article be revised to include the above comment. |
| | Article 32 – Powers of the Courts; Article 33 – Appeals Against Decisions of the JCA |
| COM18 | In terms of Article 32(1), our comment is that we still confine ourselves to the Competition Regulations and also that we do not go into the jurisdiction of national courts. As for the COMESA Treaty in relation to the powers of the COMESA Court of Justice, one has to exhaust the national court system first before coming o the COMESA Court of Justice and our recommendation is that we follow this arrangement so that we do not tamper with or try to oust the jurisdiction of national courts. As for the Courts and Tribunals of the Regional Economic Communities, we are at a loss as to how this will work since they are governed by legal instruments that confer on them jurisdiction in so far as their membership is concerned. Our recommendation is that instead to using the regional courts or tribunal, we establish an Appeals Panel which will be composed of one or two judges from each of the Regional Court or Tribunal in relation to appeals from decisions of the Joint Competition Authority. Since justice delayed is justice denied, our suggestion is that in the case of dispute resolution we need to make it user friendly and efficient. Accordingly, we suggest that we review Articles 32, 33, 35, 36, 37 and 38 in line with our suggestion above. To this effect, we do not think that Article 45 is necessary as it work shall be done by the Appeals Panel to be composed of a judge from the court or tribunal from each of the RECs. |

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| | General |
| COM19 | We would also like to suggest that we include general standard clauses on issues such as amendments, entry into force, dissolution, accession etc. |
| | Conclusion |
| COM20 | In addition to the foregoing comments, once again, we would like to advise that we confine the charter to the implementation of the Joint Air Transport Competition Regulations. We would also like to draw your attention to the comments which were made by AFRAA during the workshop to the effect that in terms of issues of data collection and monitoring we should avoid duplication as that is the role of AFCAN. We therefore accordingly request that our comments be seen in this light and where you need clarification, we shall be able to provide the same. We also feel that once all comments from all stakeholders have been addressed, there may be need for legal experts, starting with those from the RECs to meet to work with the Consultants in revising the final draft which shall be sent to Member States for consideration before negotiations take place. |
| | COMMENTS ON JCA CHARTER - KENYA |
| | Article 1 |
| KN21 | Airport should be defined as international airport Authority should be clearly defined; The 7 member States in the current definition of is confusing. Distinguish between the Board and the JCA Courts: A separate courts for JCA should be formed to separate it from the RECs, preferably a Tribunal Board should be included in the definitions Definition of Minister should be replaced by Council of Ministers Define equivalent of CAC in other RECs (EAC and COMESA) Use of word “ Opinions ” in the document should be avoided because they are not rules and are personal There is need to include rulings of the Tribunal Define Treaties in all RECs, only SADC treaty is defined |
| | Article 3 |
| KN22 | 3.1 JCA has been given a lot of powers. Its role should only be to supervise and coordinate the implementation of YD. 3.2 c Include Air Operators to enjoy 5 th Freedom Traffic Right 2.d Night flights is not a problem in Africa, Delete words from “during.....minimum” |
| | Article 5 |
| KN23 | Hosting of JCA should be open to member States and not RECs. The JCA CEO does not have powers to draw a hosting agreement |
| | Article 6 |
| KN24 | 6.1 Replace” respect” with “comply”..... with all relevant Civil Aviation Organizations 6.2 JCA should not assist States in negotiations of ASAs |
| | Article 7 JCA |
| KN25 | should be given immunity. We can borrow an international clause on liability |
| | Article 8 |
| KN26 | There is need to review the role of JCA with a view to reducing it. 8.1 Numbering is wrong. JCA should not manage but can only coordinate and supervise |

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| | 8.2 JCA and not enforce any thing in member states, it can only recommend and leave domestic laws to apply in implementation 8.2L JCA can only give recommends on review of competition Regulations |
| | Article 9 |
| KN27 | Delete Relevant, Opinions 9.1g Who gets the fines? The sub article should be reviewed |
| | Article 10 |
| KN28 | Should be deleted because it is similar to article 8 on functions of the JCA |
| | Article 11 |
| KN29 | Training should be only for officers working in the JCA Revise the article |
| | Article 12 |
| KN30 | 12.2c JCA should not have mandate to review National regulations but can recommend review 12.5a JCA should only deal with States but not directly with service providers. Nature of the reports should also be specified. |
| | Article 14 |
| KN31 | 14.1d should be deleted because it is covered in 1.a on use of modern technology 14.5 JCA should also maintain confidentiality |
| | Article 15 |
| KN32 | Title of the article should be consistence with the contents 15.1 Replace Africa with Region 15.2a Specify the decision 15.2d “Seek permission “instead of “obtaining permission” |
| | Article 16 |
| KN33 | Separate Investigation and Inspection |
| | Article 17 |
| KN34 | Recommendations should be made to States and not Council of Ministers 17.3 The sub article is misplaced |
| | Article 18 |
| KN35 | Title is wrong Revise the article |
| | Article 19 |
| KN36 | Merge articles 18 and 19 and revise the contents. |
| | Article 20. |
| KN37 | 20.21d the sub-article should refer to the yet to be formed Tribunal of the JCA |
| | Article 21 |
| KN38 | 21.2 Senior Officer should be specified because seniority is differed in member States Recast 21.8 and 9 |
| | Article 23 |
| KN39 | Consensus should be encourage before voting |

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| | Article 24 |
| KN40 | 24.1f Recommendation on sanctions should be made to the Tripartite Sectoral Ministerial Committee on Infrastructure. |
| | Article 25 |
| KN41 | 25.2 Add the words “except in accordance with the provisions of this Charter” at the end of the sub-article |
| | Article 26 |
| KN42 | 26.1f Replace “each year” with “annual” and “s” to reports Delete 26.1i Add sub-article 2. In exercise of his powers, the Executive Director may delegate to any member of staff. |
| | Article 27 |
| KN43 | Borrow a standard clause on staffing |
| | Article 28 |
| KN44 | Budget will be subject to consideration of funding Mechanisms |
| KN45 | Article 29 Revise the whole article |
| | Article 30 |
| KN46 | Fees and charges are subject to Financial mechanisms Add words “into force” after entry. To whom will the JCA submit the draft regulations on fees and charges? |
| | Article 31 |
| KN47 | A schedule on complaint procedures 31.3 Replace 7 days with 90days. |
| KN48 | Article 32 A tribunal should be established, this tribunal should be comprised of a nominee(s) from the three REC’s Courts and tribunal. This tribunal should be the highest judicial body for the purposes of this charter. The JCA can only train its members of staff. |
| KN49 | Article 33 (Legal officers can be nominated from the REC courts.) Part 6 of this Article should be aligned with the proposal made at Article 32, whereby appeals shall be lodged to the tribunal and not to any of the Courts or Tribunal of the three REC’s. Articles 34, 35 and 36 should be revised in line with the composition of the JCA Tribunal |
| | Article 37 |
| KN50 | 37.1 Replace “may” with “shall”. Revise 3 because it is not clear |
| KN51 | Article 38 The article should be reviewed |
| KN52 | Article 39 Please review |
| KN53 | Article 40 Revise and give a time frame |
| KN54 | Article 41 Concerned parties should decide and not the Executive Director |
| KN55 | Article 45 Harmonize with the proposed JCA Tribunal |
| KN56 | Article 46 Rule making should be Tri-annual. The rules should be developed and reviewed when necessary |
| | Article 53 |
| KN57 | Approval should be by the Summit and not Ministers |
| | Article 54 |
| KN58 | Approval should be by the Summit and not Ministers |

| Comments on the Framework on Operationalization of JCA | |
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| KN59 | Page 45 Kenya is opposed to removal of Ownership and Effective Control as designated Criteria. |
| OPINION ON JCA'S FUNCTIONS AND DRAFT MASA - ERITREA | |
| ER60 | The JCA must not have a rule making role since it will have a quasi- judicial role or there must be a mechanism that ensures the conflicting role of rulemaking and adjudicating. |
| ER61 | The relationship between the MASA and BASAs that individual African States have with non-African countries must be clearly defined. |
| ER62 | The role of ground handling agents, air traffic controllers and other stake holders must be defined and their financial contribution to JCA must also be included. |
| ER63 | The compatibility of the JCA documents with COMESA Treaty and various legal documents that affect the interests of the stake holders must be guaranteed. |
| ER64 | If the JCA will have the mandate to oversee the MASA, would it be practical to form a body that oversees a document created before its formation? |
| ER65 | The JCA must have a mechanism to avoid conflict of interest in its rule making and adjudicating roles as major carriers and big countries may tend to influence just decisions. |
| ER66 | Compatibility checking mechanisms with IATA resolutions with JCA's mechanisms to control fares shall be designed. In case of conflicts, the prevailing legal document shall also be expressly defined. |
| ER67 | It's not clear if JCA will have the power to give a green light for any mergers or joint ventures in the airline industry between African Carrier and non-African Carriers. |
| ER68 | The role of the JCA in governing ground handling agents is yet to be developed. It seems impractical for JCA to have a say on ground handling without developing effective legal and institutional mechanism to implement the YD, the yet to be approved MASA and related materials. |
| ER69 | Would the JCA have the power to investigate competition complaints between two carriers registered in one Country or would its authority be limited between carriers registered in different countries? |
| ER70 | It's not clear if JCA will unilaterally deal with ICAO and other similar organizations with regard to MASA. The horizontal and vertical relationships between JCA and other organizations need to be defined in the JCA's Regulations. |

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| ER71 | Will the JCA have the authority to investigate issued related to multilateral interline traffic agreements? |
| ER72 | What would be the role of JCA in slot allocation in international air service that carriers regulate themselves in accordance with certain principles and guidelines set up by IATA? |
| ER73 | If JCA will have the authority to control slot allocation and airport scheduling concerning air services between African airports, how would airports improve the utilization of airport capacity and airspace and facilitate air traffic control? |
| ER74 | The budget allocation of JCA's must be convincingly put so that member states will have confidence in its funding. |
| ER75 | If the JCA will become the custodian of the MASA, Article 14 (Dispute Settlement) of the draft MASA shall reflect that JSA will have the power in dispute settlement. |
| COMMENTS/OBSERVATIONS BY SADC LEGAL COUNSEL | |
| SAD76 | 1. Our understanding of the assignment is that it is to draft a legal instrument to assist operationalize the JCA which has in a sense been established through Article of the Regulations. |
| SAD77 | 2. We have reviewed the Draft Charter produced by the Consultants and our general observation is that the Draft as it stands does not address the sole purpose for which it is required but rather re-packages legal issues that have already been addressed through the Regulations and the Guidelines. |
| SAD78 | 3. Our view is that the sole intention of the legal instrument should be to establish the JCA formally and provide for legal administrative issues that it needs for it to start working. As such we think that the instrument should be providing for following basic issues: |
| SAD79 | 3.1 a preamble that focuses on why the Parties saw a need to establish the JCA, |
| SAD80 | 3.2 a scope of the instrument, that being that the instrument shall apply to the JCA as defined both in the instrument itself and the Regulation. |
| | 3.3 establish the JCA |
| SAD81 | -In simply legal language recreate the JCA. |
| SAD82 | -Provide for its headquarters at a location (probably this should be left very open and flexible instead of providing for the temporal location at SADC Secretariat but to said at a place to be determined by the Joint Council). The location at SADC Secretariat can only be a loose and temporary arrangement in view of the fact that if legally it is going to be independent and have a legal status of its own that it would be appropriate that it formally enters into a hosting/headquarters agreement with the host country where it will be based. It is important to make the legal distinction between 'being housed at' and 'being hosted in a formal and legal process'. The JCA could be housed at the SADC Secretariat but to enjoy some privileges and immunities it would also need to be formally hosted/headquartered in Botswana. |
| SAD83 | -Mandate the JCA to conclude a HQ agreement with the host country determined by Council. (The above arguments apply). |
| SAD84 | 3.4 Provide for the legal status of the JCA and give it international legal personality, especially to have full legal capacity to be able to function in the |

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| | Tripartite Member States. |
| SAD85 | 3.5 Provide for the objectives and functions of the JCA as already provided in the Regulation. |
| SAD86 | 3.6 Provide the Institutional Structure (Organs that will oversee the proper function of the JCA), include their compositions, functions and decision making procedures. Some of those would be the Ministers, the Senior Officials, the JCA, the Secretariat. |
| SAD87 | 3.7 Obligations of the Members States. |
| SAD88 | 3.8. Financial Provisions. This should provide for where the budget to fund the JCA will come from (i.e the budget of the JCA could be drawn from annual cash contributions by Member States; donations, grants and loans from bilateral and multilateral organizations; monies raised internally; and other sources of funding agreed to by the Member States). |
| SAD89 | 3.9. How to address issues of non-compliance with obligations. |
| SAD90 | 3.10 Provide for a Dispute Settlement Mechanism that will be able to resolve all disputes relating to the legal instrument. NB: The Tripartite needs to resolve this issue of a Joint Dispute Settlement Mechanism. Our legal analysis notes a gap and potential loose hole in the manner proposed for resolving legal disputes that are tripartite in nature. We tend to defer these issues to the existing courts of the REC forgetting that those Tribunals and courts are only competent and have jurisdiction over their Member States only. For instance which judicial institution is competent to adjudicate a legal dispute between Egypt and South Africa or Kenya and Namibia as Egypt is not Part of SADC and South Africa is not part of COMESA or EAC. This applies as well to the Namibia/Kenya scenario and there are more other examples. This anomaly is also in the Regulation and other legal instruments of the tripartite. The issue need to be addressed and if need be corrected. |
| SAD91 | 4. Provide for other general clauses dealing with withdrawal, dissolution, asserts, entry into force, amendments, etc, of the legal instrument. |
| ZAM92 | A cost-benefit analysis should be indicated in the final draft report |
| | Comments on the Draft JCA Charter-SWAZILAND |
| | Article 15/2 |
| SWA93 | Is it exhausting all the listed factors or one will suffice? |
| SWA94 | Paragraph 2(d) What if a State declines granting permission for an investigation |
| SWA95 | Paragraph 3. Does this suppose search warrants should be sought to ensure performance of the tasks underlisted in this paragraph. |
| SWA96 | Paragraph 4. Who issues authorization? Is it the JCA or the member states? What if the member state has reservation and/or declines to recognize the authorization? |
| | Article 16. |
| SWA97 | Who will issue the authorization? |
| | Article 17 |
| SWA98 | Paragraph 3 (h). Why not limit the liability of JCA, that is, exclude liability where the JCA acted in good faith. |
| | Article 27 |
| SWA99 | Category of assigned plus seconded staff and of recruited staff not clearly stated. |
| | Article 32 |
| SWA100 | Definition of National Courts in jurisdictions with more than one system of law. |
| | Article 37 |
| SWA101 | Define personal interest. |

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| | ETHIOPIAN AIRLINES |
| ET102 | Ethiopian Airlines disagrees with the relaxation of the Yamoussoukro Decision ownership criteria in Draft Final Report |
| | UGANDA |
| UGA103 | In the proposed ASA, the consultant seems to deviate from the Eligibility Criteria as set in the YD paragraph g. (proposed Art. 5 of the ASA). May be he would have an explanation for the deviation. |
| UGA104 | Is the JCA only for Air Transport Sector?? if not, the relationship with other sectors is not clear!! If yes, then the challenges are more or else articulated. |
| | BH-JCA-A1-DRAFT CHARTER |
| | Article 1-Definitions |
| | In this article, the definition of Comesa Treaty and EAC Treaty should be written as done for SADC Treaty; |
| BUR105 | Clarify the definition of "COURT" to conform to provisions of article 20 (1) (d) (quote "court" defined in article 7 of COMESA treaty, "court" defined in article 9 of EAC treaty, and "tribunal" defined in article 9 of SADC treaty; hence, there is a need of to conform with provisions of article 32; |
| | Article 20 & Article 32 |
| BUR106 | Article 20 and 32 to conform with the definition of the word "court" given in article 1 and the provisions of the MASA. |
| | BH-JCA-A4-HR REPORT /ORGANIGRAMME |
| BUR107 | For efficiency and budget saving, we propose COMMUNICATIONS, CONSUMER PROTECTION AND PUBLICATIONS UNIT (CCP) to be combined with the REGULATORY AND ENFORCEMENT SERVICES UNIT; CCP to be under the umbrella of Regulatory and Enforcement Services Unit = |
| BUR108 | Finance officer: our proposal is to replace <i>finance officer</i> by "accounting officer" for this position: |
| | reason: there is a need of efficiency and budget saving, because the work of finance officer can be done by the Head of Administration and finance in matters of finance. There is a need of phased approach in various positions to operationalise the Authority. Identify positions for kick-off and others positions for future year!+Y2... |
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| | BH_JCA A5_Draft_staff Rules and Regulations |
| | Regulation 5: definitions: JCA means "the Authority .. ."quote the tripartite summit |
| BUR109 | and the chart establishing JCA and complete other groups of words accordingly e.g. JCA Board..."the Authority .. ."quote the tripartite summit |
| BUR110 | Regulation 20 (11) complete: 62 years |
| BUR111 | Regulation 21. See CASSOA process ; CAAs send one person in the interviewing pannel, as the case may be, depending on the nature of the vacancy. |
| BUR112 | Regulation 22 (..): draft a special sub-regulation to be numbered (3) in the case of vacancy of ED |

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| BUR113 | Regulation 23 (..): draft a new sub-regulation on renewal to be numbered (16).- any vacancy of a post in the professional grades must be re-advertised; and those members of staff who wish to have their contracts renewed shall apply among others; |
| BUR114 | Regulation 33 (4): draft or indicate which Court/or tribunal for "appeals" or if it the courts/tribunal in accordance with referred to in <i>the article 20</i> (1) (d) of the Draft JCA CHARTER, to select one of the 3 organs; |
| BUR115 | Regulation 34: - renumber sub-regulations , and correct typing the figure between bracket to read (8) in former sub-Regulation (8) |
| BUR116 | Submit the Training Request Form and Training Report Form in the appendix.... |
| BUR117 | Regulation 43: indicate the schedule or choose one of the best schedules in place in the 3 RECs; |
| BUR118 | Regulation 56: the term "Community" which means here the 3 RECs, is not defined in Regulation (5) on Definitions; clarify in the "3 RECs" in quoting the 3 community names ; if JCA HQ is established in one of the 3 RECs , then use the same as the said REC or the specified term written in definitions; |
| BUR119 | Regulation 65 (4): in this sub-regulation (4), not necessary to write "initial recruitment" because provided in Regulation 49. Otherwise, quote regulation 49 in sub-regulation (4) to read " On separation from service, the Authority shall pay the costs for the transportation of personal effects and household goods according to the terms and conditions establishing the authorised baggage weight as provided for in Regulation 49". |
| BUR120 | In sub-reg.(2), in case of train journey In first class for ED and professionals staff: harmony and correction needed. |
| BUR121 | XI. Regulation 69: EAC day to be inserted. |
| | BH-JCA-A6-JCA -JOB DESCRIPTION |
| BUR122 | To rename: "Chief Air Transport Economist" to read "Chief Air Transportand |
| BUR123 | To rename: "Air Transport Economists" to read Air Transport Specialist or air transport officer NB. many officers at medium or senior levels perform air transport work correctly without holding degree in Economics but holding other specialization documents; specialists in this domain are not necessary Economists; they can hold bachelor, engineer degree or PhD. in law, economy, sciences ... as a basis, and hold a qualification as specialist in air transport. For these reasons, correction of qualifications and experience needed in documents on JOB DESCRIPTION to be rewritten. |
| BUR124 | Distinguish "qualification" and "experience" |
| BUR125 | Reason: the experience (to be written) is not clear in the description for the Competition Lawyer, the chief air transport services, the air transport officer and the Finance officer positions. |
| BUR126 | Use of the following schedule: |
| | Chief Air Transport Services |
| | qualification |
| | University degree in economics, transports or sciences |
| | Qualification in air transport |
| | Experience |

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| | At least 10 years experience acquired in.... |
| | Experience in ASA negotiation... |
| | Air Transport specialists |
| | Qualification |
| | i. University degree in economics, transports or sciences |
| | Experience |
| | At least 5 years experience acquired in CAA ... |
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| BUR127 | Indicate how staff will be recruited .. .from WHO to who and so on .. .and planning per year.. .Y1, Y2.. .. HR plan not clear.. .see phasing remarks in BH-JCA-A4-HR REPORT. |
| BUR128 | Finance officer our proposal is to replace <i>finance officcr</i> by "accounting officer" for this position, write then "qualification" and "experience" for this new position; |
| BUR129 | Competition Lawyers "qualification" and "experience" |
| | BH-JCA-A9-Sustainable funding mechanism /BUDGET FUNDING |
| BUR130 | We note that the system based on the grants and donor funding and revenue generated from its regulatory activities as provided in the Protocol establishing the JCA is not viable; contribution by member States are necessary. However, many States are more active in the aviation industry than others. Contributions should be based on the level of development; hence, Burundi finds that this would be "equitable" and proposes that JCA be funded by proportional level of contribution by member States based on market share. |
| | BH-JCA-10-MASA |
| | Preamble |
| BUR131 | In the ASA preamble, delete the last group of words " .. .and being Parties to the Convention on International Civil Aviation" because it appears again in the last paragraphs of the Preamble; |
| BUR132 | The current last paragraph which begins by " NOTING that the highest organs ofthe three RECs have endorsed the" should be placed after the first paragraph to |
| BUR133 | in the definitions, write "annex" with small letter to differentiate with that of Annex "to Chicago Convention" which is written with capital letter;insert the definition of "ICAO" |
| BUR134 | In the definitions: "eligible airline & designated airline" correction ; see reference of "article 4 " not correct because it deals with "tariffs", but quote the figure as "5" to read"...in article 5"; |
| BUR135 | 'effective control'... this applies on "eligible airlines" and in Article 5, is written "effectively controlled"; so there is a need to retype the term "effectively controlled" or in article 5, correct the text accordingly to read : "effectively controlled by one State Party or Group of State Parties or their nationals"; |
| BUR136 | "Operating licence": ... according to the content found here, change the term to read: "Air service licence" - means an authorization granted to an air carrier by the competent This to avoid confusion with the term "Air operator certificate" (AOC);aeronautical authority of a Member State enabling it to carry out the carriage by air of passengers, mail or cargo, as specified in the licence, for reward |

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| | Article 4 |
| BUR137 | There is a need of a provision for intervention of the Party to implement article 7 of this regulation to avoid anti competitive rules, otherwise, reinforce the role of JCA; |
| | Article 5 |
| BUR138 | Article 5 (4) (c)-. delete the word "licensed" and replace it by the word "certified"; |
| | Article 11 |
| BUR139 | Article 11. equipment are listed in another Annex: ANNEX 9, FAL and not Annex 17; |
| | Article 12 |
| BUR140 | Article 12-. safety is not addressed in Annex 17 (AVSEC), but other Annexes such as 1,6, 8, ... Aviation security has something to do with the current article 13 and not article 12; in sub-regulation (2), delete " and especially with Annex 17 of the Chicago Convention on International Civil Aviation" to avoid quoting all the annexes dealing with safety (Annex 17 excluded which deals with security) and insert definition of the term "ICAO" in the preamble; |
| | Article 13 |
| BUR141 | Article 13: when dealing with security, what about Beijing Convention and Protocol ON THE SUPPRESSION OF UNLAWFUL ACTS RELATING TO INTERNATIONAL CIVIL AVIATION? |
| | Article 18 |
| BUR142 | Article 18: typing correction in sub-reg.(2); "1" |
| | |
| | BH-JCA-A11-BASA |
| | Preamble |
| BUR143 | In the BASA preamble, change the "being parties and quote only AU and CAFAC"; |
| BUR144 | In the preamble, it is not possible to begin the preamble by quoting the "HEADS of STATES and all the names of member States because a bilateral agreement is signed by two Partners States and not all the Tripartite members; so delete all the names of member States accordingly; |
| BUR145 | In article 1, definition of ICAO is to be inserted; |
| BUR146 | As JCA is referred to in article 7, insert in the preamble provisions on its existence: "Being member of the JCA.. |
| | Article 1 |
| BUR147 | in the definitions, write "annex" with small letter to differentiate with that of Annex "to Chicago Convention" which is written with capital letter; |
| BUR148 | 'effective control'... this applies on "eligible airlines" and in Article 5, is written "effectively controlled"; so there is a need to retype the term "effectively controlled" or in article 5, correct the text accordingly to read = "effectively controlled by one State Party or Group of State Parties or their nationals"; |

| | |
|--------|--|
| BUR149 | "Operating licence": ... the content found here to be copied and pasted on the first terms of article 1 to read: "Air service license" - means license to carry out air services or means an authorisation granted to an air carrier by the competent aeronautical authority of a State enabling it to carry out the carriage by air of passengers, mail or cargo, as specified in the licence, for remuneration; This is to avoid confusion with the term "Air operator certificate" (AOC); |
| | Article 5 |
| BUR150 | Article 5 (c): delete the word "licensed" and replace by the word "certified"; |
| | Article 11 |
| BUR151 | Article 11.- equipment are not listed in Annex 17; the list is given in Annex 9 ; FAL; |
| | Article 12 on Safety |
| BUR152 | Article 12: safety is not dealt in Annex 17 (AVIATION SECURITY); but in other Annexes such as 1, 6, 8,... aviation security provisions are given in the current article 13 of the draft and not article 12. In sub-regulation (2), delete " and especially with Annex 17 of the Chicago Convention on International Civil Aviation" to avoid quoting all the annexes dealing with safety (Annex 17 excluded which deals with security) and insert definition of the term "ICAO" in the preamble; |
| | Article 13 on AVSEC |
| BUR153 | article 13 is on aviation security, hence Annex 17 has something to do with; please insert provisions from Beijing Convention and Beijing Protocol ON THE SUPPRESSION OF UNLAWFUL ACTS RELATING TO INTERNATIONAL CIVIL AVIATION; Article 20 on Withdrawal |
| BUR154 | Normally, a Tripartite member is not allowed to withdraw, unless it ceases to be a member of both RECs. In case of withdrawal, one of the Parties shall give a written notice to the depository, JCA Secretariat. |

4.3 Minutes of Stakeholder Workshop 11-12 April 2013

COMESA-EAC-SADC TRIPARTITE



ALL STAKEHOLDERS' WORKSHOP ON THE OPERALISATION OF THE JOINT COMPETITION AUTHORITY

OUTCOMES

Cresta Jameson Hotel
Harare, Zimbabwe
11-12 April 2013

Opening Ceremony

1. The All stakeholders' workshop on the operationalisation of the Joint Competition Authority (JCA) was held at the Cresta Jameson Hotel in Harare, Zimbabwe, on 11 and 12 April 2013 and was attended by 16 Tripartite Member/Partner States and seven (7) regional and international aviation organisations. The list of participants is attached as **Annex 1**.

2. The Workshop was officially opened by the Principal Director of Technical Services, on behalf of the Permanent Secretary of the Ministry of Transport, Communication and Infrastructural Development, Engineer Erick Gumbie. The Chairperson of the Joint Competition Authority (JCA), Ms. Irene W. Ileri and the Director of the Tripartite Project Preparation Implementation Unit (PPIU), Mr. Amos Marawa, also made some welcoming remarks and thanked the Government of Zimbabwe for their hospitality and facilities availed to delegates on arrival.

Adoption of Agenda and Work Programme

3. The Workshop adopted the Agenda and Work Programme which are attached as **Annex 2**.

Background of JCA and Workshop Objectives – Tripartite Project Preparation and Implementation Unit (PPIU)

4. The Director of PPIU presented a background of JCA emanating from decisions of the Tripartite Ministers responsible for Air Transport starting with their Meeting in Matola, Mozambique, in 2001 and subsequent meetings and decisions of the Tripartite Summit that was held in Kampala, Uganda in October 2008.

5. The main objective of the Workshop was to review the draft Final Report presented by the Consultants in general and in particular the following deliverables:

- Legal instrument for the JCA;
- A Yamoussoukro Decision (YD) compliant Air Service Agreement template;
- Organisational and management structure and functions of the JCA Secretariat;
- Business plan and budget; and
- Sustainable funding mechanism including a plan and strategy for its implementation.

Presentation of JCA Study Report - Consultant

Study Background

6. The presentation on the Study Background covered all issues relating to Project Background and its objectives, Project specific tasks, expected results and achievements which are covered in the Report on “A Framework for the Operationalisation of the COMESA-EAC-SADC Joint Competition Authority (JCA)” – Draft Final Report – Part 1.

Draft Legal Charter

7. The presentation on the Draft Charter (which provides for the establishment of the JCA in accordance with the Regulations for Competition in air transport services, 2004) outlined and justified the choice of legal instrument and highlighted key provisions in the legal instrument.

8. The presentation also covered the following proposals relevant to operationalisation of the JCA: Air Transport Regulation: Air Services Agreement (ASA) and Multilateral Air Services Agreement (MASA), the Secretariat, Draft Budget, Sustainable Funding and a Strategic Plan.

9. In the discussions that ensued, delegates made comments on the draft documents that were presented. The workshop however, observed the need for Member/Partner States to have more time to review the documents and provide written comments to the Tripartite Secretariats.

Workshop Outcome

10. The following are the major outcomes of the workshop:

- (i) The Workshop resolved that stakeholders should review the draft Charter and the other documents and submit comments to the PPIU by no later than 10th May 2013;
- (ii) The JCA Board would be tasked with responsibility of finalising the draft Charter taking into account comments from Member/Partner States;
- (iii) Approval of the Draft Charter would enable the Tripartite to consider other issues relating to the operationalisation of the JCA;
- (iv) The JCA Board is mandated to establish specialised working groups to review and finalise development of the JCA operating manuals;
- (v) The Workshop recommended that the adoption of the MASA template is not dependent on the approval of the draft Charter, and therefore once adopted, Member/Partner States can start using the template as a basis for negotiating air services agreements; and
- (vi) The issues raised during discussions on some proposals and directives to the consultant are attached as **Annex 3**.

Closing

11. The Chairperson thanked all the participants for cooperation and support during the entire Workshop. She also urged participants to provide comments to the PPIU by the agreed date and expressed her optimism that JCA will take be operationalised as envisaged.

12. The Director of PPIU also thanked all delegates for their enthusiasm and positive attitude towards the process of operationalising the JCA. He further thanked the Tripartite Secretariat and Government of Zimbabwe for the hospitality and facilities availed to the delegates. He wished all participants safe journey back to their respective destinations.

Annex 1

List of Participants Liste des Participants

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Annex II

COMESA-EAC-SADC TRIPARTITE



PROVISIONAL AGENDA

1. Opening Ceremony
2. Adoption of Agenda and Work Programme
3. Background of JCA and Workshop Objectives – Tripartite Project
Preparation and Implementation Unit (PPIU)
4. Presentation of JCA Study Report - Consultant
 - 4.1. Study Background
 - 4.2. Draft Legal Charter
 - 4.3. Air Transport Regulation: ASA and MASA
 - 4.4. The JCA Secretariat
 - 4.5. Draft Budget
 - 4.6. Sustainable Funding
 - 4.7. Strategic Plan
5. Workshop Outcome
6. Closing

ORGANISATION OF WORK

DAY 1:

| | |
|---------------|---|
| 08.00 -09.00 | Registration |
| 09.00 – 10.00 | Opening Ceremony |
| 10.00 - 10.30 | COFFEE BREAK |
| 10.30 – 10.45 | Background of JCA and Workshop Objectives – Tripartite Project Preparation and Implementation Unit (PPIU) |
| 10.45 – 10.50 | Presentation of Study Report – Project Background – BH Solicitors (Consultant) |
| 10.50 – 12.00 | Presentation of Draft Legal Charter |
| 12.00 – 13.00 | LUNCH |
| 13.00 – 13.50 | Discussion of Draft Legal Charter |
| 13.50 – 14.00 | TEA BREAK |
| 14.00 – 15.00 | Presentation of ASA & MASA |
| 15.00 – 15.45 | Discussion of ASA & MASA |
| 15-45 – 16.45 | Presentation on the JCA Secretariat |
| 17.00 | Adjournment – Close of Day 1 |
| DAY 2: | |
| 09.00 – 09.45 | Discussion of JCA Secretariat |
| 09.45 – 11.30 | Presentation of Draft Budget |
| 11.30 – 12.00 | Discussion of Draft Budget |
| 12.00 – 13.00 | LUNCH |
| 13.00 – 14.00 | Presentation of Sustainable Funding |
| 14.00 – 15.00 | Discussion of Sustainable Funding |
| 15.00 – 15.30 | TEA BREAK |
| 15.30 – 16.00 | Presentation of Strategic Plan |
| 16.00 – 16.45 | Recommendations to Consultant |
| 16.45 – 17.30 | Closing Ceremony |

4.4 References

| No | Title | Date |
|----|--|----------------------------|
| 1 | Agreement Amending The Treaty Of The Southern African Development Community | |
| 2 | Agreement Establishing the Inter-Governmental Authority on Development (IGAD) | |
| 3 | Clarification of Issues and Articles of the Yamoussoukro Decision | |
| 4 | Commencement Of The East African Community Common Market Protocol: Press Release | December 2009 |
| 5 | Communiqué of the Second COMESA-EAC-SADC TRIPARTITE SUMMIT | 12 June 2011 |
| 6 | Constitutive Act of the African Union | 11 th July 2000 |
| 7 | COMESA Treaty | |
| 8 | Comesa Regulations For The Implementation Of The Liberalised Air Transport Industry; LEGAL NOTICE 2 | 1999 |
| 9 | Decision On The Third African Union Conference Of Ministers Responsible For Air Transport - Doc. Ex.CI/350 (Xi) | |
| 10 | Decision Relating to the Implementation of the Yamoussoukro Declaration Concerning the Liberalisation of Access to Air Transport Markets in Africa | November 1999 |
| 11 | Declaration Launching the Negotiations for the Establishment of the Tripartite Free Trade Area | 12 June, 2011 |
| 12 | Draft Regulation On The Application Of Competition Rules To The Air Transport Sector | |
| 13 | Draft Study On The Implementation Of The Resolution To Entrust Afcac With The Mission Of Execution Agency Of The 1999 Yamoussoukro Decision : New Functions Of The African Civil Aviation Commission | 2008 |
| 14 | EAC: An overview of the Institutional Framework | |

| No | Title | Date |
|----|--|---|
| 15 | EAC Development Strategy (2011/12 – 2015/16) <i>Deepening And Accelerating integration : One People, One Destiny</i> | August 2011 |
| 16 | Evaluation of Southern African Development Community (SADC) Member States' Compliance in Implementing the Yamoussoukro Decision (YD), Request No. 2009/202993 | July 2009 |
| 17 | Final Communiqué of the joint COMESA- EAC- SADC Heads of State and Government Tripartite Summit 'Towards a Common Market' | 20 th October 2008 |
| 18 | Guidelines, Provisions and Procedures for the Implementation of the Regulations for Competition in Air Transport Services within COMESA, EAC and SADC | November 2006 |
| 19 | MOU between the Department for International Development (DFID) of the UK and The Tripartite Task Force of COMESA, EAC and SADC | 27 TH January, 2010 |
| 20 | MOU on Inter Regional Cooperation and Integration Amongst COMESA, EAC, and SADC | |
| 21 | Roadmap For Establishing The Tripartite Fta January 2011 - January 2016: Activity Matrix | |
| 22 | Study on the Evaluation of Legal Notice No. 2 of 1999 on the COMESA Regulations for the Implementation of the Liberalised Air Transport Industry | |
| 23 | Treaty Of The Southern African Development Community (SADC) | 1993, 2001 |
| 24 | Treaty Establishing The African Economic Community | |
| 25 | Treaty Establishing The East African Community | 30 th November, 1999 |
| 26 | Treaty For The Establishment Of The East African Community (As amended) | 14th December, 2006 and 20th August, 2007 |
| 27 | Tripartite FTA Negotiating Principles, Processes And Institutional Framework: Guidelines for Negotiating the Tripartite Free Trade Area among the Member/Partner States of COMESA, EAC and SAD | 12 June 2011 |

