

**MEMORANDUM
OF
UNDERSTANDING**



COMPETITION AUTHORITY

AND



CIVIL AVIATION AUTHORITY OF BOTSWANA

17 October 2012, Gaborone

THIS MEMORANDUM OF UNDERSTANDING is made this..... day of Two Thousand and Twelve and is intended to reflect the position reached by the **CIVIL AVIATION AUTHORITY OF BOTSWANA** (hereinafter referred to as "the CAAB"), and the **COMPETITION AUTHORITY** (herein after referred to as the "Authority") - and collectively hereinafter referred to, in context, as "the Parties").

WHEREAS- The CAAB is established under Section 3 of the Civil Aviation Authority Act and is continued under Section 4 of the Civil Aviation Act No. 11 of 2011 in order to, *inter alia*, promote the safe, regular, secure and efficient use and development of civil aviation in Botswana. The CAAB *inter alia* has jurisdiction over all aspects of air transport services, public transport, aerial work, air routes, airways, air carriers, airway facilities and air navigation services in Botswana;

WHEREAS- The Authority is established under Section 4 of the Competition Act of 2009 with the responsibility of prevention of, and redress for, anti-competitive practices in the economy and the removal of constraints on the free play of competition in the market.

AND WHEREAS- Sections 25, 26(1), 27(1), 30(1), 32(1) and 52(1) of the Competition Act embody all aspects of economic activities that may be entered into through arrangements or agreements by enterprises or businesses in any commercial sector and are deemed anti-competitive practices under the Competition Act;

AND WHEREAS- Under Section 73 of the Competition Act, the Authority and other sector regulators shall establish a mechanism through which they can maintain regular contact regarding the exercise of their respective responsibilities;

NOW THEREFORE, the parties agree to conclude this Memorandum of Understanding as follows:

1. BASIS OF THIS AGREEMENT

- a) Civil aviation and/or commercial air transport is an important part of the national economic development, economic diversification, including job creation, wealth distribution and development of competitive entrepreneurship in the economy.
- b) Competitive commercial air transportation can be constrained by abuse of dominance as a result of monopolisation of airspace by airlines, distorted by prohibited horizontal and vertical agreements between airlines and service providers or air travel agents, and restricted by collusive dealings and hostile takeovers or anti-competition airline acquisitions.
- c) Investigation of anti-competitive practices of any sector in the market economy is an arduous task that cannot be undertaken by the Authority alone without collaborating with the relevant sector regulators. Therefore, having realised that the CAAB mandate does not extend to dealing with competition issues in the exercise of its

regulatory powers in the aviation industry, it is prudent that both parties should cooperate in specific areas of information sharing and investigation of anti-competitive practices.

- d) This MoU does not limit the CAAB or the Authority from taking any steps to establish other MoUs with any other institutions that may be of assistance to their mandates.

2. SCOPE OF COOPERATION AND INFORMATION SHARING

- a) The Parties shall endeavour to inform each other in advance of regulatory changes or other material events that may have a significant impact on their joint operations or activities as herein described.
- b) Areas of coordination, cooperation or information sharing shall include, but not limited to:
 - i. providing each other with useful information on an investigation when requested by the other party or proactively by any party without a request being made;
 - ii. assisting each other with investigation, research and analysis of cases that one party may be engaged in;
 - iii. joint training sessions for officers dealing directly with matters pertinent to this MoU;
 - iv. consulting each other on a regular basis on matters of mutual interest;

- v. seeking clarification from each other on any media reports that may be related to matters connected with or incidental to this MoU;
- vi. availing to each other non-confidential information of an investigation and results thereof;
- vii. appearing in court or other judicial and quasi-judicial bodies as expert witness or to provide evidence in relation to their specific competency, or jointly prosecute an offence of mutual interest;
- viii. where a party seeks the assistance of the other in a case to provide evidence in any proceedings before court, the fees for the appearance of any officer as a witness shall be as per the witness tariffs prescribed by Government.

3. OBLIGATIONS OF THE PARTIES

a) Obligations of the Authority

To the extent possible, and within the spirit of Article 2 of this MoU, the Authority will endeavor to assist CAAB with information regarding:

- i. direct or indirect imposition of unfair rates, fares and conditions for carriage;
- ii. collusive dealing in all its forms by enterprises involved in the aviation industry;



- iii. abuse of a dominant position by an enterprise or enterprises involved in the aviation industry;
- iv. mergers or acquisitions that are not pro-competition; and
- v. any agreements or arrangements that have the effect of substantially preventing competition in the aviation industry.

b) Obligations of CAAB

To the extent possible, and within the spirit of Article 2 of this MoU, CAAB shall endeavor to assist the Authority with information regarding issues that may affect competition in the aviation sector, which may include but not necessarily be limited to:

- i. limitation of aircraft capacity, facilities, frequencies, technical development or investment;
- ii. information on ownership and control of airports;
- iii. allocation of slots;
- iv. holders of licenses and permits; and
- v. limitation or sharing of air transport market or sources of supply.

4. REQUESTS FOR INFORMATION

- a) To the extent possible, all requests for information shall be in writing and signed by the Chief Executive Officers of the Parties or their designated officers, and shall specify:

- i. the information sought by the requesting party;
 - ii. a general description of the matter which is the subject of the request and the purpose for which the information is sought; and
 - iii. the desired time period for reply and, where appropriate, the urgency thereof.
- b) In urgent situations, the parties will endeavor to notify each other of the urgent situation and communicate information to the other as would be appropriate in the particular circumstances, taking into account all relevant factors, including the status of the efforts to address the urgent situation. During urgent situations, requests for information may be made in any form, including orally by designated officers, provided such communication is confirmed in writing at an opportune time.
- c) Where an action by any party to this MoU requires the policy guidance of any other governing body, the usual extra-ordinary processes to arrange for ad hoc or special meeting shall be followed with the urgency the matter would deserve.
- d) Where joint investigations are carried out, the Parties shall consult each other before either of them issues a media release concerning a transaction covered by this MoU.

5. HANDLING OF CONFIDENTIAL INFORMATION

- a) Each party shall endeavour to maintain public confidence in terms of whistle-blowers and other sources of information, which shall not be unnecessarily disclosed to any party and cooperation in any way shall not be expected to be dependent on knowledge of the source of the information.
- b) Where confidential information is required by a judicial or quasi-judicial organ, the disclosure shall be made in conformity with the direction given by the presiding decision maker/adjudicator and the rules that generally govern their sittings.
- c) While information exchanged may be used by any party in their enforcement activities, the use of such information should not breach the confidentiality clauses of the party that disclosed the information.
- d) This MoU shall be a public document and thus may be quoted by any party to this MoU.
- e) Unless otherwise expressly stated, all information sought or exchanged shall be deemed to be usable by the receiving party according to the legal framework establishing them.

6. ESTABLISHMENT OF JOINT WORKING COMMITTEE

- a) A Joint Working Committee ("the Committee") constituted by representatives of the Parties as nominated by the parties shall be established pursuant to this MoU and shall function on an on-going basis.
- b) Functions of the Committee shall include:
 - i. management and facilitation of meetings and cooperation and consultation in respect of matters dealt with by each party in terms of this MoU;
 - ii. proposing when necessary, any amendment to, alteration of or addition to this MoU;
 - iii. advisory services to the senior management of the parties on issues affecting efficient and effective cooperation and implementation of this MoU and solutions thereto; and
 - iv. any matter connected with or incidental to this MoU.

7. IMPLEMENTATION AND ENFORCEMENT

It shall be incumbent upon the Chief Executive Officers of the Parties to this MOU to ensure that each party carries out its obligations as agreed, and commits to undertaking to implement where reasonably possible, the commitments under this MoU.

8. SHARING RESOURCES

The Parties may, under certain circumstances, share each other's available resources in order to bring the provisions of this MoU into full effect; provided such a process is reasonable, shall not compromise the respective security of the parties and does not contravene any statute with which the two Parties must conform.

9. STATUTORY LIMITATIONS

- a) The provision of, or request for, information under this MoU may be denied:
 - i. where compliance would require a party to act in a manner that would violate the applicable law;
 - ii. under circumstances where there is an imminent risk to national security or other overriding public interest; or
 - iii. when compliance with a request or provision of information would interfere with an ongoing investigation in circumstances where prejudice to the investigation is likely to outweigh the adverse effects of denying the information.
- b) No provision of this MoU shall give rise to the right on the part of any person, entity or government authority other than the parties herein, directly or indirectly, to obtain any information or to challenge the execution of a request for information under this MoU.

10. VARIATION OF THE MoU

Any variation of this MoU shall have no legal effect and shall not be binding on the Parties unless reduced to writing and signed by persons authorised to act on behalf of the Parties.

11. COMMENCEMENT OF THE MoU

This MOU shall come into force on the date on which it is signed by persons authorised to act on behalf of both Parties.

12. DURATION OF THE MoU

This Agreement shall remain in force until it is changed or repealed by both parties hereto, acting jointly or by each of the Parties with prior notice to the other party.

13. DOMICILIUM CITANDI ET EXECUTANDI

The Parties choose the following addresses as their respective *domicilium citandi et executandi* for purposes of this MoU:

THE CIVIL AVIATION AUTHORITY OF BOTSWANA

PLOT 61920, LETSEMA OFFICE PARK

PO BOX 250, GABORONE

TEL: +267 3188 200

FAX: +267 3913 121

E MAIL: caab@caab.co.bw

CONTACT PERSON: The Chief Executive Officer

THE COMPETITION AUTHORITY

PLOT 50664, FAIRGROUNDS

PRIVATE BAG 00101, GABORONE

TEL: +267 393 4278

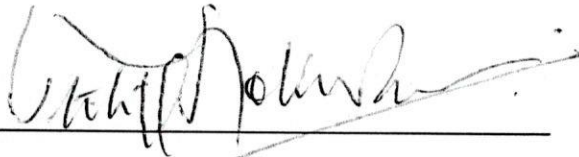
FAX: +267 312 1013

E MAIL: CA@competitionauthority.co.bw

CONTACT PERSON: The Chief Executive Officer



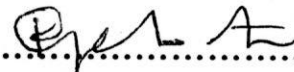
AS WITNESS THE HANDS OF THE DULY AUTHORISED
REPRESENTATIVES OF THE PARTIES THE DAY AND YEAR
FIRST BEFORE WRITTEN



SIGNED by: Retired Major General Jefferson G. Tlhokwane

For and on behalf of the CIVIL AVIATION AUTHORITY OF
BOTSWANA

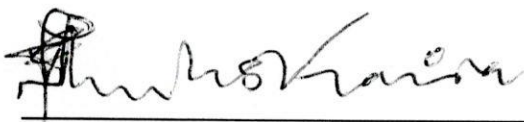
In the presence of

WITNESS.....

Name...GILBERT.....OFFICE

Address...CAB...HEAD OFFICE

Position...LEGAL...OFFICER



SIGNED by: Mr Thula Kaira

For and on behalf of the COMPETITION AUTHORITY

In the presence of

WITNESS.....

Name...Doreen T. Morosi

Address...11 Bag 00101

Position...Director: Legal & Enforcement