

15 February 2023

INVESTIGATION INTO POSSIBLE UNCONSCIONABLE CONDUCT BY MALAWI AIRLINES LIMITED

The COMESA Competition Commission (“the Commission”), launched investigations into possible unconscionable conduct by Malawi Airlines Limited (“Malawi Airlines”, “the Airline”) on 25th January 2022. The investigation followed a complaint against Malawi Airlines, through a post on Facebook in which it was reported that passengers aboard Malawian Airlines flight **ET 0021** flying from Johannesburg South Africa and destined for Chileka Airport, Blantyre on 24th January 2022, were rerouted to Kamuzu International Airport (KIA) in Lilongwe due to bad weather in Blantyre.

It was reported that upon landing at Kamuzu International Airport, the Airline booked the affected passengers at Sunbird Hotel in Lilongwe on 24th January 2022. However, after the passengers were booked at the hotel, they were informed by the hotel that the Airline would cater for accommodation for only one night and that they had to find their own means of getting to Blantyre the following day. This position was later confirmed to the passengers by the Airline. The Commission made a follow up and got in touch with two of the affected passengers who were aboard the flight.

The Commission was of the opinion that the conduct of the Airline was possibly unconscionable and a violation of the COMESA Competition Regulations (“the Regulations”), specifically Article 28(1) as read together with Article 28(2)(a). The Commission further noted that, within the Common Market, Malawi Airlines operates in Kenya, Malawi, Zambia and Zimbabwe. That some of the affected passengers were citizens of Malawi and Zimbabwe means that the conduct had a cross-border effect. In this regard the Commission notified Malawi Airlines of the complaint and required them to make representations on the matter.

Malawi Airlines, in its submissions, indicated that in the event of flight disruptions caused by an act of God, extraordinary circumstances, the action of others, or situations beyond the airlines control, the Airline has limited or no ability to give its transportation service. The Airline further indicated that it had provided the expected level of support as per its service recovery procedures, which are in line with industry norms and procedures. They however welcomed views from the Commission on how to improve the recovery process.

The position of the Commission was that Airlines are required to provide assistance to passengers to get to their destination even where flight disruptions are as a result of circumstances beyond their control. In this case the necessary assistance was not

provided, as required by the Yamoussoukro Decision¹, the ICAO's Working Paper on the Assistance to passengers in case of Airport/Airline Disruptions², and the Core Principles on Consumer Protection of the International Air Transport Association (IATA)³.

It was the opinion of the Commission that the Airline did not take the necessary measures to ensure the passengers reached their final destination, and from the information provided by the complainants, they had to incur additional costs to travel to their destination. The conduct of Malawi Airlines was therefore considered as unconscionable and a possible violation the Regulations, Article 28 (1) as read with 28(2)(a) which provides that:

Article 28 (1): "A person shall not, in trade or commerce, in connection with the supply or possible supply of goods and services to a person, engage in conduct that is, in all the circumstances unconscionable".

Article 28(2)(a): "Without in any way limiting the matters to which the Commission may have regard for the purpose of determining whether a person has contravened paragraph 1 in connection with the supply or possible supply of goods or services to a person (in this paragraph referred to as the consumer), the Commission may have regard to: (a) The relative strengths of the bargaining positions of the person and the consumer".

In view of the foregoing, the Commission engaged Malawi Airlines on its position on the matter and informed them that their conduct has the effect of contravening the Regulations. Malawi Airlines agreed to cooperate and offered to provide redress by compensating the affected passengers for the leg of the journey that was disrupted. The Airline committed to issue to the affected passengers a voucher covering the full amount for the part of the journey that was not served, or with cash which would be 25% of the amount for the uncovered portion of the journey. The Commission contacted the two complainants in the matter, who both confirmed that they received their compensation vouchers from the Malawi Airlines offices.

The Commission was satisfied with the manner in which Malawi Airlines resolved the matter thereby complying with the Regulations and subsequently closed the matter. Further, the Commission commends Malawi Airlines for its cooperation and being a responsible corporate citizen in terms of resolving the matter in the interest of the consumer.

Should any consumer have a similar complaint on any airline, or require further information regarding the Commission's investigation, you may contact Mr. Steven Kamukama, Manager Consumer Welfare and Advocacy Division on Tel: +265 (0) 1 772 466 or Email: skamukama@comesa.int.


Dr. Willard Mwemba
Director & Chief Executive Officer

¹ Annex 5 of the Yamoussoukro Decision:

https://au.int/sites/default/files/treaties/37308-treaty-yamoussoukro_decision_regulatory_texts_e.pdf

² <https://www.icao.int/sustainability/Documents/C.215.WP.14804.REV1.EN.PDF>

³ https://www.icao.int/sustainability/SiteAssets/pages/eap_ep_consumerinterests/ICAO_CorePrinciples.pdf