



COMESA Competition Commission

Kang'ombe House, 5th Floor

P.O. Box 30742

Lilongwe 3, Malawi

Tel: +265(0)1 772466

+265 (0) 999 970 269

Email- compcom@comesa.int



Common Market for Eastern
and Southern Africa

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INVESTIGATION INTO POSSIBLE UNCONSCIONABLE CONDUCT ON THE TERMS AND CONDITIONS OF AIRLINK (PTY) LIMITED

The COMESA Competition Commission ("the Commission"), launched investigations into possible unconscionable conduct by Airlink (Pty) Limited (herein referred to as "Airlink") on 14th December 2021. This was following a complaint received by the Commission with regard to failure by Airlink to reschedule a passenger's flight from Eswatini to Zambia through Johannesburg, occasioned by a delay due to bad weather at Eswatini. The passenger was required by Airlink to contact their booking agent for the rescheduling, which was effected but at an additional cost.

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) and (b). The Commission further noted that Airlink, being one of the major players in the Common Market in the air transportation market, its conduct, if not regulated, is bound to deter the efficient operation of the Common Market. The practice had cross-border effects considering that it involved two COMESA Member States (Eswatini and Zambia) and that Airlink itself also has operations in other COMESA Member States namely; the Democratic Republic of Congo, Madagascar, Uganda, and Zimbabwe. In this regard the Commission notified Airlink of the complaint and required them to make representations on the matter.

Airlink in its submissions, indicated that it was their practice to refer passengers to booking agents for rescheduling of flights involving multisector itineraries, booked through travel agents or third party websites, as any adjustments to the booking by the airline would thereafter disable access to the booking by the agent for any further itinerary changes. Airlink further submitted that the additional cost incurred by the passenger was charged by the agent.

The Commission established that in as much as the requirement for passengers to rebook their ticket through their agents was a practice of Airlink and some other players in the industry, this condition was not included in their conditions of carriage and the passengers were not informed accordingly.

The conduct by Airlink forced the consumer to comply to conditions they were not aware of beforehand and had not consented to. This denies passengers the opportunity to make informed decisions on whether to proceed with the agent booking or book directly with the airline. Further, the passenger was in a weak position to negotiate with Airlink, which at the time enjoyed a stronger bargaining position. In the opinion of the Commission, Airlink's conduct was unconscionable and a possible violation of the COMESA Competition Regulations under Article 28 (1) as read together with Article 28(2)(a) and (b), 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) and (b): "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; and (b) Whether as a result of the conduct engaged by the person, the consumer was required to comply with conditions that were not necessary for the protection of the legitimate interests of the person".

In view of the foregoing, the Commission engaged Airlink to amend its terms and conditions accordingly to ensure that passengers are made aware of the conditions associated with making bookings through travel agents and third party websites.

Airlink submitted that they were ready to cooperate with the Commission but that such cooperation was not an admission of guilt. Airlink contended that they were not in breach of the Regulations. Nevertheless, Airlink complied with the Commission's requirement and amended its terms and conditions of carriage to include the following clauses:

Clause 2.2.6

Passengers booking directly with a Travel Agent or third party, and not booking directly with Airlink, shall be required to contact their Travel Agent for assistance related to the flight booking.

Airlink cannot make passenger suggested changes to a booking done via a third party or Travel Agent such as cancelling the itinerary a week before departure or changing the flight to another date.

Please contact your Travel Agent to make the necessary changes to your itinerary and Airlink E-ticket. The only changes Airlink can make to third party or Travel Agent bookings is when Airlink has an irregular flight operation in the form of a delay relating to the airline's responsibility done at the airport on the day of operation.

Any changes to your E-ticket made by a third party or Travel Agent may carry a cost in terms of your contract with the third party or Travel Agent. That cost is for your account and is not payable by Airlink nor can it be claimed from Airlink.



Clause 9.5.4

Tickets bought directly from Airlink- If you booked with Airlink through our website (www.flyairlink.com), mobile app, Airlink office bookings, our airport ticket office or our appointed General Sales Agent then Airlink will send you an email and/or SMS to notify you of a flight schedule change provided your contact details (mobile number and email) are provided in the booking. You agree and accept that these changes are in order unless you contact Airlink to advise otherwise to change to an alternative flight or to cancel your booking.

Clause 9.5.5

Tickets bought via a Travel Agent or Third-Party Website- When booking a flight through a Travel Agent or a third party travel company the passenger will be required to contact the original booking agent for further assistance and handling of any flight schedule changes made to your booking.

Airlink will notify the original booking agent via a message in the reservation system and the onus lies with the original booking agent to reissue the ticket after accepting the Airlink schedule change or alternatively cancel the booking.

Travel companies include bookings made through a third party website e.g., Expedia, Travelstart, Computicket or IATA Travel Agencies. Any changes to your E-ticket made by a third party or Travel Agent may carry a cost in terms of your contract with the travel company. That cost is for your account and is not payable by Airlink nor can it be claimed from Airlink.

The Commission was satisfied with the amendments of the conditions of carriage by Airlink and subsequently closed the matter. Further, the Commission commends Airlink for its cooperation and being a responsible corporate citizen in terms of amending its conditions of carriage 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 AND CHIEF EXECUTIVE OFFICER