



**COMESA COMPETITION
COMMISSION SURVEY
ON CONSUMER
CONCERNS IN
THE AVIATION SECTOR
WITHIN THE COMMON
MARKET FOR EASTERN
AND SOUTHERN AFRICA**

Background

1. The aviation sector plays an important role in connecting people and business across the globe. It provides a worldwide transportation network, making it essential for international trade, tourism and economic development. This is especially true for developing countries where the aviation sector contributes significantly to the distribution of goods, wealth, economic growth, prosperity and employment¹, through facilitating the movement of goods, services, and people. In Africa, air transport supported 8.1 million jobs and contributed \$75 billion to Gross Domestic Product (GDP). This is equivalent to one in every 61 jobs across the continent or 1.6% of all employment and 2.6% of all GDP in African countries in 2023². The aviation market in Africa has potential for growth and support economic prosperity. The International Air Transport Association (IATA) predicts that Africa will become one of the fastest-growing aviation markets, with annual growth rates nearing 5 percent over the next two decades. The growth is supported by the growing middle class and the youth³.
2. In the Common Market for Eastern and Southern Africa (COMESA) the aviation market has been identified as one of the key sectors that will support economic growth and integration of the region. As such the COMESA Secretariat has a programme being implemented under the Single African Air Transport Market (SAATM). The goal of the SAATM is to fully implement the 1999 Yamoussoukro Declaration (YD), which allows all participating countries to lift market access restrictions for airlines, remove restriction on ownership, grant each other extended air traffic rights and liberalize flight frequency and capacity limits. SAATM also seeks to harmonise safety and security regulations in aviation, based on International Civil Aviation Organization (ICAO) requirements. The implementation of SAATM will enhance connectivity, promote competition, safety, quality and better air fares for the benefit of the industry and ultimately the consumers in the region⁴. This will increase demand for air transport services for consumers, which will have a multiplier effect on the growth of other related sectors such as the tourism, industrial and trade sectors which rely on air transport. Growth of these sectors will positively contribute to GDP growth of the region.
3. Given the growing aviation industry in the region and the continent, and the important role that consumers play in this ecosystem, it is important that they have confidence in the industry by ensuring that their rights are protected. In 2024, the COMESA Competition Commission (the CCC) observed a rising number of complaints by consumers from the region, relating to the conduct of Airlines operating within the COMESA Region. These complaints highlighted issues such as the lack of regard by the Airlines, to the consequences suffered by passengers, during, frequent flight rescheduling, flight cancellations, increasing incidences of delayed, damaged or lost luggage; and the failure by the Airlines to provide necessary support to affected passengers.

Accordingly, the CCC initiated a survey to understand the extent of the above concerns. The findings from this survey would guide targeted interventions aimed at improving consumer protection and enhancing the overall quality of services in the aviation market.

¹ Aviation benefits beyond borders 2024 publication by Air Transport Action Group

² Aviation benefits beyond borders 2024 publication by Air Transport Action Group

³ www.africanleadershipmagazine.co.uk/emerging-growth-in-african-aviation-challenges-and-solutions-for-a-bright-future/

⁴ [Eight COMESA Countries have Signed the Air Transport Market Agreement – Common Market for Eastern and Southern Africa \(COMESA\)](#)

Statement of the Problem

4. Noting the importance of the aviation market in facilitating faster movement of people; supporting trade, tourism and economic development in the COMESA region, it is important that the service providers put in place systems and procedures that minimize inconveniencing passengers and trade. These systems should be able to address the potential challenges such as flight delays, rescheduling flights, flight cancellations and delayed, damaged or lost baggage. Even when there are shortfalls in the systems and procedures, there should be in place effective complaint resolution mechanisms that address complaints arising from the system failures. This requires that there should be a well-established redress mechanism for consumers.
5. However, the CCC had noted growing consumer complaints in the aviation market relating to the conduct of airlines. Notably, the CCC observed an increase in the number of complaints handled in the sector from 2021 to 2024. The CCC handled more than 10 complaints involving different airlines and most of them were on a large scale, affecting several passengers within one complaint. The complaints related to:
 - i. Frequent flight rescheduling, associated long delays and flight cancellations as well as challenging flight connections, leaving many consumers stranded and inconvenienced.
 - ii. Increasing incidences of delayed, damaged or lost luggage; and
 - iii. Failure by the Airlines to provide necessary support to affected passengers, failure to compensate for the delays or cancellation, failure to provide accommodation or meals in case of prolonged delays or lack of guidance by the Airline to assist or follow up with passenger complaints.
6. Therefore, to fully understand the extent of the spread of the challenges various consumers were facing and consequently propose recommendations, if indeed a real problem exists, the CCC undertook this survey. The aim of the survey was to collect complaints from consumers across the COMESA region, sought to understand the action taken by the airlines to address the concerns, whether or not redress was provided and the general practice by airlines with regards to providing information to consumers.
7. This would assist the CCC to identify the main consumer concerns in addition to what was already known, establish the extent of the spread of these concerns and identify the practices by Airlines which may infringe the rights of consumers in the Common Market and propose recommendations.

Literature Review

8. Below is a review of some literature on consumer concerns in the aviation market and the importance of consumer rights in the sector.

Consumer Concerns in the Aviation Market

9. A study undertaken by the University of Johannesburg in the South African Market on customer complaints in the airline industry revealed that international travelers were concerned with flight delays which affect the connecting flights and inconvenience their travel plans, lost baggage and

damaged baggage. The study also noted that the airlines could put in place measures that could address these concerns⁵.

10. In another study undertaken in India, it revealed that there were various service failures by airlines and these included: delayed lights- leading to missing of an event, delayed flights-not leading to missing of an event, cancelled flights leading to missing of an event, cancelled flights- not leading to missing of an event, baggage related problems, communication with flight crew/staff behavior, meals on board, entertainment on board, flight fare, airport lounges, check in process, denied boarding and in-flight seat. The study further categorized these into outcome failures, process failures, internal and external failures. The findings revealed that the process failures were 100 percent controllable and these included delays in refunds for fare after cancellation of tickets, high fees for cancellation or rescheduling, damaged baggage, delayed baggage. 77 percent of outcome failures were controllable and this included cancelled flights, delayed flights, overbooking, non-refunds for unused routes a lost baggage. 33 percent of the outcome failures were severe for consumers. 100 percent of internal failures were controllable while 67 percent of external failures were controllable⁶.
11. In the United States of America, a study on customer complaint trends covering a period of 2013-2022 revealed that there were various complaints received through the Department of Transportation. The complaints had risen over the period and included those related to flight challenges, air ticket fares, refunds, baggage and customer service across the different airlines in the United States. The study revealed that there was need for airlines to improve their communication strategies, enhance customer service responsiveness, and developing robust contingency plans to manage large-scale disruptions, including those brought about by COVID-19. A multifaceted approach was necessary to address the root causes of customer dissatisfaction and enhance the service delivery process. This could include training staff to resolve complaints efficiently, empowering employees to act, and recognizing successful customer service efforts. It was noted that it is important that airlines established clear, fair, and prompt refund and compensation policies, particularly during extraordinary events like health-related pandemics. Streamlining the refund process and ensuring that customers receive timely compensation would help mitigate negative perceptions and build long-term trust between airlines and their passengers⁷.
12. The CCC has also handled various complaints relating to the aviation market some of which are summarized below:

Ethiopian Airlines failure to Redress Consumers for damaged bags and lost property⁸

13. The CCC received a complaint in 2022 from the National Consumer Protection Agency of Sudan on behalf of four passengers whose baggage checked in on Ethiopian Airlines, were damaged and properties lost. The affected passengers had lodged in a complaint with Ethiopian Airlines, but no redress or compensation was given to them. The CCC initiated investigations into the complaint and noted that the terms and conditions on liability of the carrier for fragile, irreplaceable, or perishable articles was not elaborate and the consumer was not adequately informed of what items

⁵ University of Johannesburg

⁶ Ms. Maria Fatima De Souza alias Fatima Sousa and Dr. Ms. Purva Hegde Desai, Customer Complaints and Their Types in Airline Industry: A Descriptive Exploration of Service Failures in Airline Services

⁷ U.S Airline Customer Trends, A decade long analysis, Kunsoon Park and Shawn Lee, September 2024.

⁸ CCC 2023 Annual Report

they were not allowed, in check in luggage. The CCC specifically noted that the Airline's terms and conditions on liability of the carrier for fragile, irreplaceable or perishable articles contained on their website that applied for US and Canada were significantly different from those that applied to the rest of the jurisdictions in that they provided enough clarity for consumers to know what would constitute fragile, irreplaceable and perishable articles. The Airline in their defence submitted that the terms and conditions were erroneously uploaded on their website and agreed to compensate the affected passengers. The CCC was satisfied with the steps taken by the Airline and the matter was closed.

Ethiopian Airlines-Passenger not accessing the business class lounge⁹

14. The CCC became aware that passengers booked on business class tickets with Ethiopian Airline in December 2022 were denied access to the Business Lounge at Kamuzu Airport in Lilongwe-Malawi. The CCC noted that the conduct was a likely violation of the COMESA Competition Regulations ('the Regulations') under Article 27 (1) on false and misleading representation to consumers on benefits of being on business class that the Airline did not have. The CCC engaged the Airline who indicated that the issue was attributed to an internal service standards' problem by their service provider, however the issue had been resolved and would not recur. The CCC noted the reassurances by the Airline and cautioned them to always inform consumers beforehand of similar interruptions in service and the matter was closed.

Unconscionable Conduct by Malawi Airlines¹⁰

15. The CCC became aware that in January 2022, passengers traveling from Johannesburg to Blantyre aboard Malawi Airlines were rerouted to Kamuzu International Airport (KIA) in Lilongwe instead of Blantyre, allegedly due to bad weather. The passengers were booked at a hotel in Lilongwe and were later informed by the airline's official that they had to find their own means of getting to Blantyre the following day. The CCC investigated the matter as it amounted to unconscionable conduct and contrary to Article 28(1) of the Regulations. Following the CCC's intervention, Malawi Airlines refunded the affected passengers for the disrupted leg of their flight.

Complaint against South Africa Air Link

16. In December 2021, the CCC initiated investigations against South Africa Airlink following a complaint against the Airline for failure to reschedule a passenger's connecting flight from Johannesburg to Zambia, occasioned by a delay in Eswatini. The passenger was instead required to contact their travel agent for rebooking, which attracted an additional cost.
17. South Africa Airlink's position was that it was their practice not to amend tickets purchased through travel agents or third parties that involve multisector itineraries. The CCC's position was that this information was not availed to consumers and was not in their terms and conditions of carriage and as such they did not have prior knowledge of this. The CCC therefore required Airlink to amend their terms and conditions to include such information for consumers, to which they complied.

Cases in other Jurisdictions

18. In relation to the European Union, several cases have been decided based on the European Union Regulation (EC) No 261/2004, which outlines the rights of passengers in the event of flight cancellations, delays, and denied boarding. The EU Regulation No 261/2004 establishes common rules on compensation and assistance to passengers in the event of denied boarding, cancellation

⁹ CCC 2023 Annual Report

¹⁰ CCC 2022 Annual Report

or delay of flights. Under this regulation, passengers are entitled to compensation based on the length of the delay and the distance of the flight. Most notable cases include the following:

Case: C-532/11, *Nelson v. Lufthansa* (2014)

19. In the case C-532/11, *Nelson v. Lufthansa* (2014), passengers were delayed for over 3 hours due to technical issues and were seeking compensation under Regulation (EC) No 261/2004.
20. The Court of Justice of the European Union (CJEU) ruled that compensation should be granted even if the delay was due to an airline's internal operational issues, such as technical problems, unless these are caused by extraordinary circumstances like severe weather or strikes. The case reinforced that technical issues are generally not considered extraordinary circumstances and thus do not exempt airlines from compensation requirements.

Case of *Sturgeon v. Condor* (C-402/07 and C-432/07)

21. In the case *Sturgeon v. Condor* (C-402/07 and C-432/07), passengers were delayed by more than 3 hours on international flights and claimed compensation under EU law. The CJEU clarified that compensation is due for delays of over three hours, not just cancellations. It confirmed that the compensation framework of Regulation (EC) No 261/2004 applies to long delays as well. The judgment expanded the scope of compensation in the event of flight delays, aligning with passenger protection principles.

Case of *Wallentin-Hermann v. Alitalia* (C-549/07)

22. In the case of *Wallentin-Hermann v. Alitalia* (C-549/07), a flight was delayed by over 3 hours due to technical failure. The passengers claimed compensation under Regulation (EC) No 261/2004, but the airline argued that it should be exempted due to "extraordinary circumstances. The CJEU ruled that technical failures are not considered extraordinary circumstances, if they are not caused by external factors. The decision emphasized that airlines are responsible for compensating passengers for delays caused by internal technical issues unless the failure is directly linked to an extraordinary event. The case clarified that routine maintenance, or technical failures are not a valid excuse for avoiding compensation to the affected passengers.
23. In the United States, on 24 April 2024, the U.S. Department of Transportation (DOT) issued a rule¹¹ that requires airlines to promptly provide passengers with automatic cash refunds in situations of flight delays or cancellations. The rule establishes the right of passengers to prompt ticket refunds in case their flights are cancelled or significantly changed, or where the extra services they purchased are not provided. This rule followed the US Supreme Court ruling in the case of ***Kerry v. Delta Air Lines (2023)*** that airlines must provide passengers with a full refund if their flight is cancelled, regardless of whether the cancellation was within the airline's control or not. The court ruled that the airline's policies of offering only vouchers or credit instead of a full refund were not in compliance with existing U.S. Department of Transportation (DOT).

¹¹ [Biden-Harris Administration Announces Final Rule Requiring Automatic Refunds of Airline Tickets and Ancillary Service Fees | US Department of Transportation](#)

24. In Canada there have also been cases based on Air Passenger Protection Regulations, 2019, which provide specific guidelines for compensating passengers in cases of flight delays, cancellations, and denied boarding. For example, in the **Case: Canadian Transportation Agency (CTA) – Decision No. 98-C-A-2020 (2020)**, the Passengers filed complaints with the Canadian Transportation Agency (CTA) after being delayed for more than 3 hours and not receiving compensation.
25. The CTA ruled in favor of the passengers, emphasizing that the airline failed to meet its obligations under the Air Passenger Protection Regulations and awarded compensation. The ruling reinforced the requirement for airlines to adhere strictly to the compensation regulations for delays exceeding 3 hours, with limited exceptions.

Importance of Consumer Rights in the Aviation Market

26. The increase in the number of consumer complaints in the aviation market has highlighted the need for stronger consumer protection measures to ensure passenger safety and well-being. Consumer protection in the aviation industry is important for maintaining trust and confidence among passengers. Passengers need to have confidence that their rights and interests are protected by airline policies and regulations¹².
27. Consumer rights in the aviation market are crucial to encourage the increased use of the services, as it ensures that passengers' rights are protected and they receive fair treatment in all aspects of their travel experience. Further, consumer protection in the aviation industry is important for maintaining safety standards. Among the important rights for consumers in the sector include: the right to information, the right to redress and the right to safety. The right to information relates to the fact that consumers have the right to accurate and transparent information about flight schedules, fares, and any other relevant details. Redress for consumers entails that they have the right to be compensated for flight delays, cancellations, or any other inconvenience caused by the airline. Passengers also have the right to expect that airlines adhere to rigorous safety protocols and maintain their aircraft in optimal condition. This is especially crucial in light of the increasing number of incidents and accidents in the aviation industry¹³.
28. Furthermore, consumer protection measures can contribute to the overall competitiveness and efficiency of the aviation industry. By enhancing consumer trust and satisfaction, a strong framework for consumer protection can attract more passengers, leading to increased employment and economic output within the aviation industry. Consumer protection in the aviation industry is not only important for safeguarding passengers' rights and ensuring their safety, but it also has broader implications for other sectors such as tourism, logistics, and trade¹⁴.
29. The International Civil Aviation Organization (ICAO) recognizes the importance of consumer protection in the aviation market and has in place some core principles on consumer protection. The core principles call for governments to develop appropriate consumer protection regimes that strike a balance between protection of consumers and industry competitiveness, and which take into account the countries' social, political and economic context without prejudice to safety and security of aviation. The core principles also highlight the rights of consumers before, during and

¹² Kanishka Choudhary, Journal of Legal Research and Juridical Sciences Vol. 2 Issue 4.

¹³ ibid

¹⁴ Opcit

after travel. Before travel, passengers should have access to clear and transparent access to all pertinent information regarding the characteristics of the air transport product that is being purchased. During travel, passengers should receive due attention in cases of service disruption, whether they result in the passenger not boarding the flight or arriving at the destination significantly later than scheduled. This could include rerouting, refund, care and/or compensations were provided by relevant regulations or otherwise. After travel, passengers should be able to rely on efficient complaint handling procedures that are clearly communicated¹⁵.

Methodology of the Survey

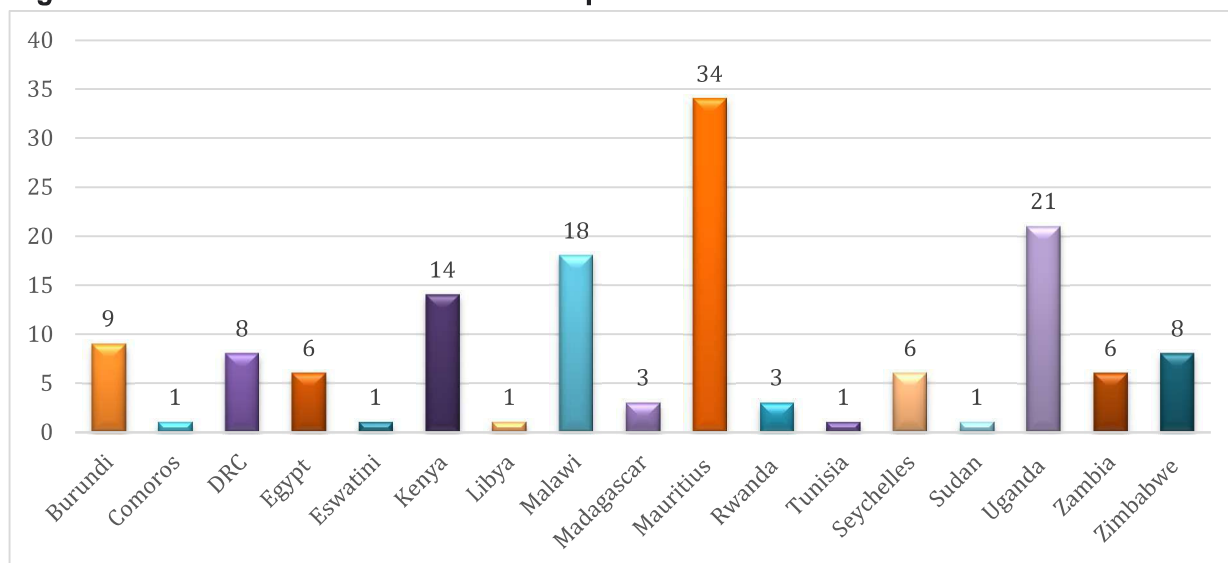
30. This survey report is based on primary data collected using a questionnaire that was developed by the CCC. The questionnaire was developed to collect information from consumers on the nature of the complaints, airlines involved, redress provided and how information is provided to the consumers. The questionnaire was limited to the consumers from the COMESA region and was administered online. The online questionnaire was sent out to all the Member States through the national competent authorities and widely shared through the CCC's website, social media platforms including X and Facebook.

Findings of Survey

31. The CCC received a total of one hundred and forty-one (141) responses from seventeen (17) out of 21 COMESA Member States. Below is the analysis of the results. It is important to note that even though 141 responses were received, the responses had 350 complaints raised by consumers.

Description of the Member States Responses

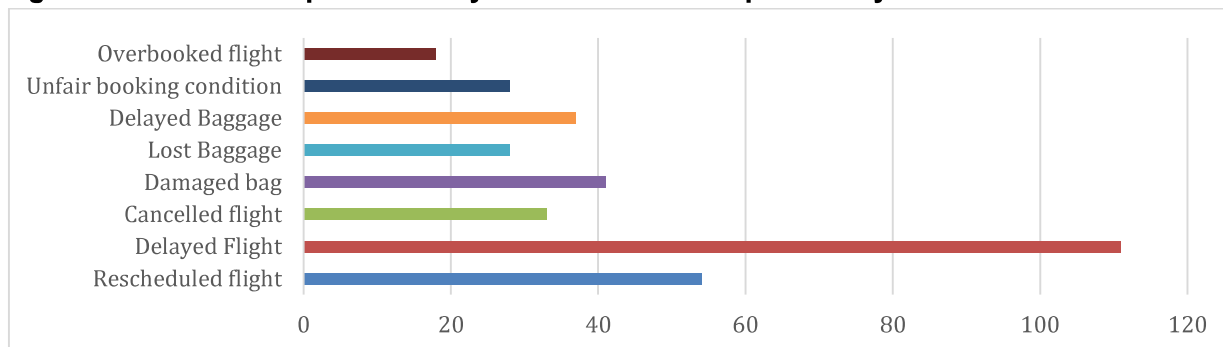
Figure 1 shows the distribution of the respondents across the Member States



32. Figure 1 shows that the highest number of responses were received from Mauritius with 34 followed by Uganda with 21, Malawi with 18 and Kenya with 14 while the least number of responses were received from Comoros, Eswatini, Tunisia and Sudan with one response each.

¹⁵ ICAO Core principles on Consumer Protection

Figure 2: concerns experienced by consumers in the past one year

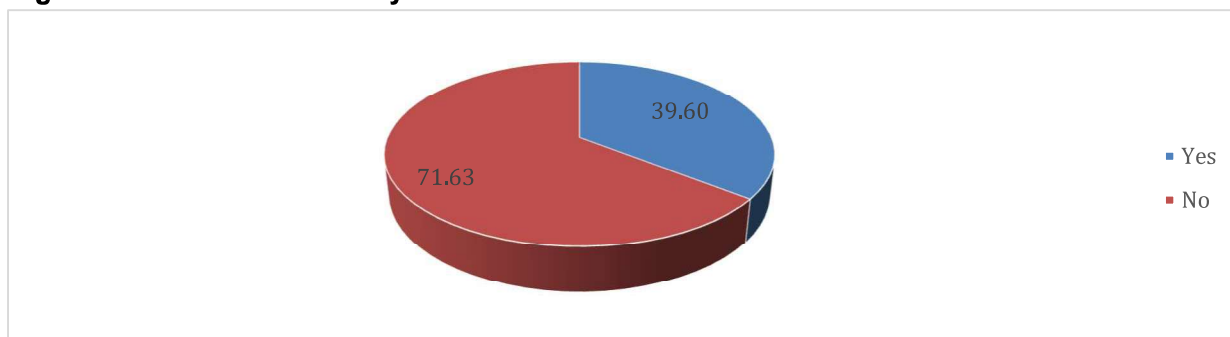


33. Consumers raised complaints against twenty-one (21) airlines operating in the COMESA Region. Several respondents (141) raised complaints against more than one airline and as such there are more complaints against the airlines compared to the number of respondents.

34. Three hundred and fifty (350) complaints were received from consumers highlighting the issues of concern experienced in the past one year from the airlines that are operating in COMESA. The 350 complaints were spread across 21 airlines. Figure 2 above shows that the most common concern experienced by the consumers was delayed flights comprising 111 complaints, that is 31.71 percent of the total complaints received. This was followed by rescheduled flights where 54 complaints were raised representing 15.43 percent, 41 complaints of damaged baggage representing 11.71 percent while delayed baggage represented 10.57 percent, cancelled flights represented 9.43 percent, lost luggage and unfair booking conditions represented 8 percent each while overbooked flights represented 5.14 percent of the total complaints received.

35. The CCC sought to find out if the consumers that experienced a cancelled or delayed flight received a refund, meals, alternative booking or other means to their destination, accommodation and telephone services from the airline. It was noted as shown in figure 3 that 71.63 percent of the consumers (101) did not receive redress from the airlines while 39.6 (40) percent received redress.

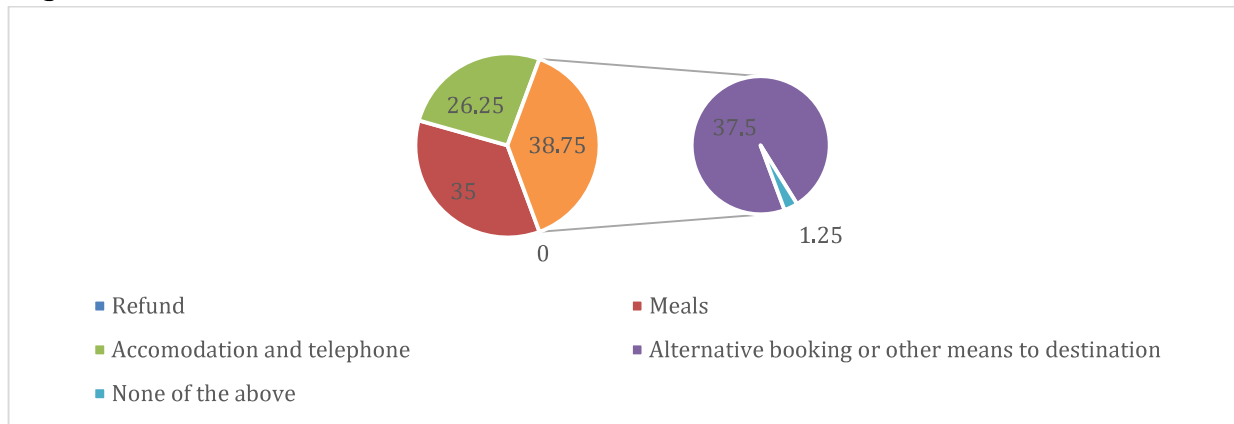
Figure 3: Redress offered by the airline



36. The specific redress received by 39.6 percent of the consumers is shown in figure 4 which shows that 37.5 percent of the affected consumers received alternative booking or other means to their destination, while 35 percent received meals, 26.25 percent received accommodation and

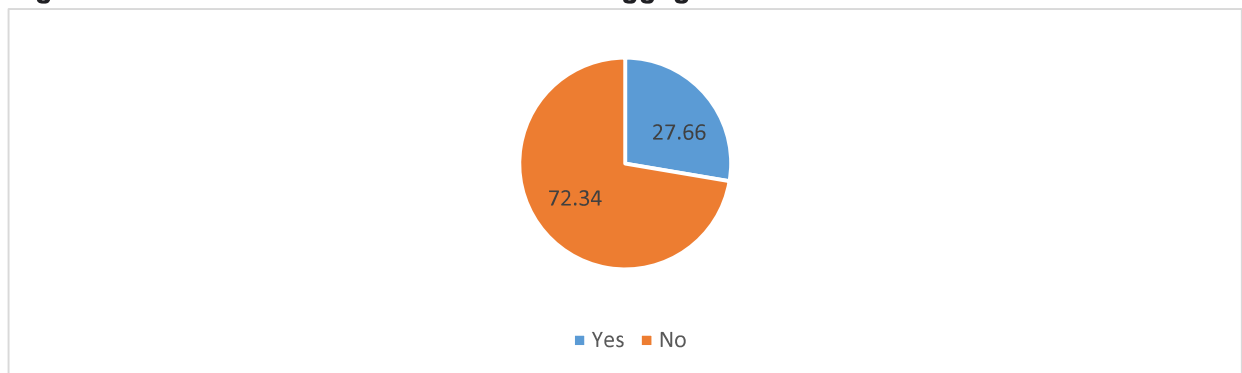
telephone services, 1.25 percent received redress, and no refund was issued for the affected consumers.

Figure 4: Redress received from the airline



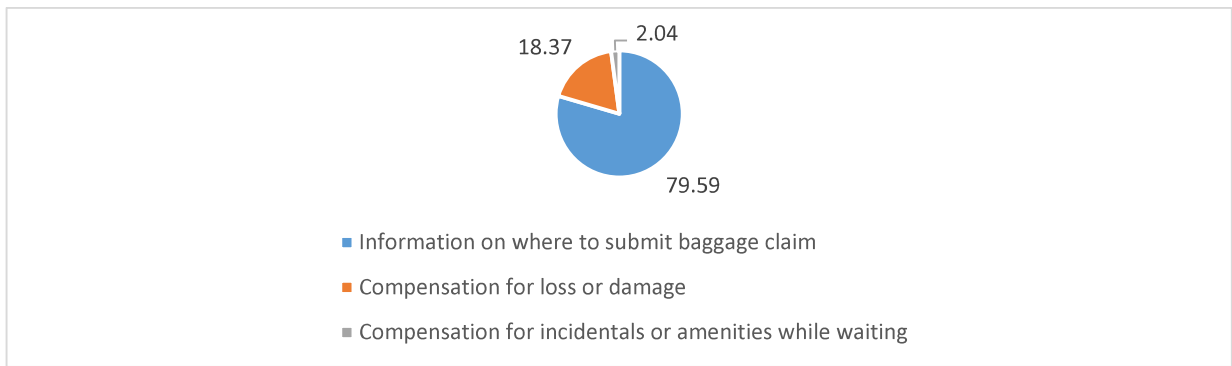
37. The CCC also sought to establish whether consumers received information on where to submit baggage claims, compensation for loss or damage, compensation for incidentals or amenities, in an event of lost, delayed or damaged baggage. It was noted as shown in figure 5 that 72.34 percent (102) of the affected consumers received such information while 27.66 percent (39) did not receive the information.

Figure 5: Information on where to submit baggage claims



38. Further, figure 6 below shows the information that was provided for the 39 consumers. It was noted that 79.59 percent of the consumers received information on where to submit baggage claims, 18.37 percent received information for loss or damage and only 2 percent received information on compensation for incidentals or amenities while waiting.

Figure 6: Information provided for lost or damaged baggage



39. The CCC also sought to establish if the airlines provided information regarding which items were not allowed in the checked in baggage. As shown in figure 7 where it was noted that 95 of the respondent's received information on which items were allowed in checked in luggage while 46 did not receive such information. Figure 8 below shows how the information was provided to consumers. It was noted that 56 respondents received information verbally at check-in, 46 indicated that the information was written on the air ticket while 25 indicated that it was included in the terms and conditions for the air ticket and 22 submitted that the information was on posters.

Figure 7: information on which items are allowed in checked-in luggage

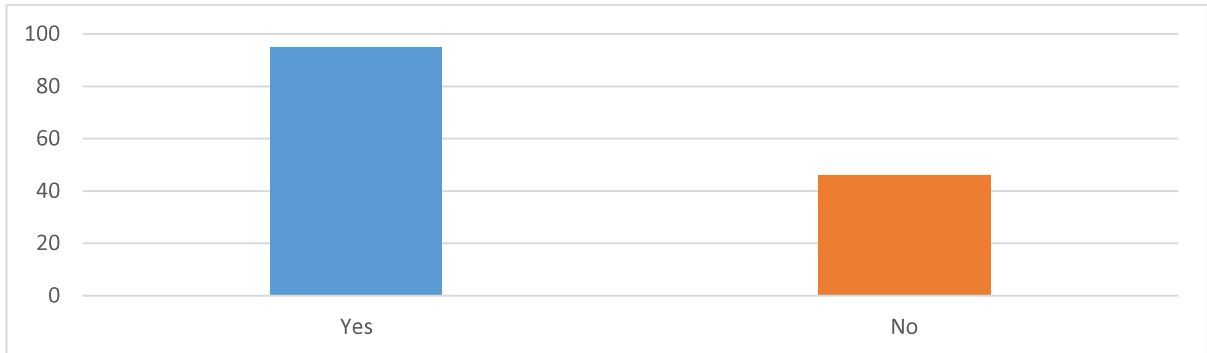
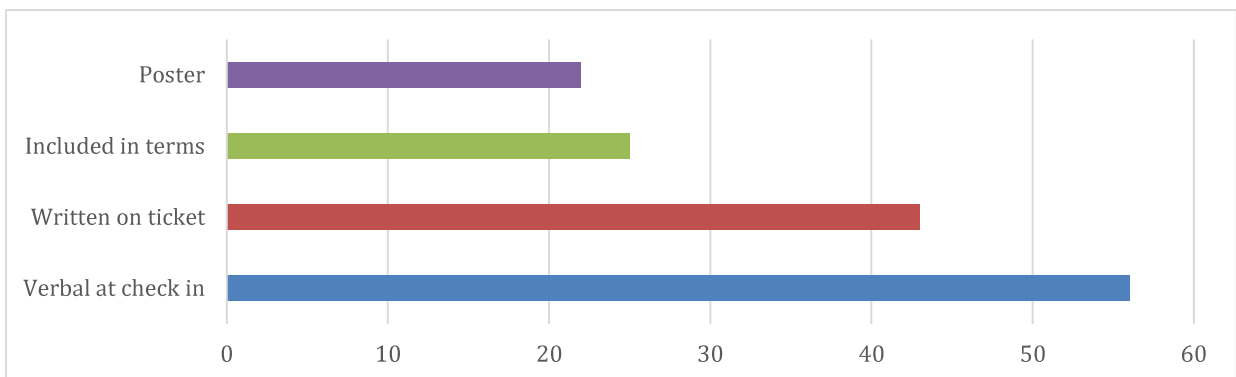


Figure 8: How information was provided to the consumers.



40. A critical review of the responses, however, revealed several consumers having confirmed receiving the information being high because they included information provided by aviation authorities regarding materials that are not allowed in the baggage for security reasons.

Complaints Against Specific Airlines

41. The report also conducted an analysis of the complaints received against each airline, the redress

provided, whether sufficient information was provided to consumers on lost or damaged baggage as well as information on what is allowed in checked in baggage. For example, it was noted that the total number of complaints received against twenty-one (21) airlines was 153. Several respondents (141) raised complaints against more than one airline and as such there are more complaints against the airlines compared to the number of respondents. It was noted that the highest number of complaints received against any one airline were 62 followed by 34, then 13 and the least number of complaints against any one airline was one. The issues complained about are highlighted in figure 2 above. Most of the analysis relating to the particular airlines has been left out of this version of the report.

Other Issues of Concern

42. It was noted that there were other concerns experienced by the consumers that were not specifically highlighted in the survey but have been raised by consumers on different platforms such as social media sites, and these include the following:
- Airlines involved in successive international travel for the passengers, failing to honour their obligations in case of flight delays and cancellations.
 - Airlines leave earlier than scheduled leaving passengers stranded.
 - Failure to provide emergency support funds to passengers in case of baggage delays.
 - Unclear calculations of the frequent flyer benefits.
 - Terminating code share relations with other airlines without catering for the passengers holding frequent flyer cards covering flights of the affected airlines.
 - Forcing consumers mid flights to reschedule connecting flights through their agents following delays or cancellations occasioned by the airline.

Analysis of the Findings

43. The main objectives of this survey were to identify the actual consumer concerns in the aviation sector, establish the extent of the spread of consumer concerns in the Common Market, establish whether consumers were provided with redress and based on the report determine the way forward.
44. The survey findings are that there are widespread consumer concerns which point to the likelihood of consumer rights violations. Out of the three hundred and fifty (350) complaints, the most common concern experienced by the consumers was delayed flights which is (31.71 percent) followed by rescheduled flights (15.43 percent), damaged baggage (11.71 percent), delayed baggage (10.57 percent), cancelled flights (9.43 percent), lost luggage and unfair booking conditions (8 percent) while overbooked flights (5.14 percent). In respect of consumers who experienced a cancelled or delayed flight, it was noted that 71.63 percent of the consumers did not receive redress from the airlines while 39.6 percent received redress.
45. It was further noted that for the consumers that experienced a cancelled or delayed flight, 71.63 percent of the consumers did not receive redress from the airlines while 39.6 percent received redress in the form of a refund, meals, alternative booking or other means to their destination, accommodation and telephone services from the airline. With regards to delayed, damaged or lost baggage, 72.34 percent of the affected consumers received information on where to submit baggage claims, compensation for loss or damage, compensation for incidentals or amenities, in an event of lost, delayed or damaged baggage while 27.66 percent (39) did not receive the

information.

46. While airlines may not avoid occurrences that lead to complaints by consumers, it is even more important for them to have clear dispute settlement mechanisms and ensure that the consumer concerns are addressed timely. When such complaints are not addressed timely, they cause distress and inconvenience to the consumer. Airlines are also bound by the provisions of the consumer protection laws at national as well as regional level depending on the nature of the complaint. In the case of the CCC, airlines are bound by the consumer protection provisions contained in Part 5 of the COMESA Competition Regulations. Therefore, lack of providing consumers with adequate information that may lead to misleading representation, failure to redress consumers resulting into any form of unconscionable conduct and other means of consumer protection violations are captured by the Regulations.
47. Airlines are also guided by the Convention for the Unification of Certain Rules relating to International Carriage by Air (Montreal, 1999), which establishes airline liability in the case of death or injury to passengers, as well as in cases of delay, damage or loss of baggage and cargo and the amount of compensation due to the affected passengers in the different circumstances.

48. Specifically, the following Articles are contained in the Montreal Convention:

49. Article 19 — Delay

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo. Nevertheless, the carrier shall not be liable for damage caused by the delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.

50. Article 22 — Limits of Liability in Relation to Delay, Baggage and Cargo

1. In the case of damage caused by delay as specified in Article 19 in the carriage of persons, the liability of the carrier for each passenger is limited to 4 150 Special Drawing Rights.
2. In the carriage of baggage, the liability of the carrier in the case of destruction, loss, damage or delay is limited to 1 000 Special Drawing Rights for each passenger unless the passenger has made, at the time when the checked baggage was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the passenger's actual interest in delivery at destination.

51. Article 36 — Successive Carriage

1. In the case of carriage to be performed by various successive carriers and falling within the definition set out in paragraph 3 of Article 1 of the Convention, each carrier which accepts passengers, baggage or cargo is subject to the rules set out in this Convention and is deemed to be one of the parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under its supervision.
2. In the case of carriage of this nature, the passenger or any person entitled to compensation in respect of him or her can take action only against the carrier which performed the carriage

during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey.

3. As regards baggage or cargo, the passenger or consignor will have a right of action against the first carrier, and the passenger or consignee who is entitled to delivery will have a right of action against the last carrier, and further, each may take action against the carrier which performed the carriage during which the destruction, loss, damage or delay took place. These carriers will be jointly and severally liable to the passenger or to the consignor or consignee.
52. It is clear that there are various legal instruments that aim to protect consumers in cases of delayed flights, flight cancellations, rescheduling, lost, delayed or damaged baggage as highlighted above. However, the survey shows that the complaints relating to these issues are still rampant. There may be a need to address these matters collectively as they affect several consumers and cut across different airlines. It is noted that in other jurisdictions such as the European Union, they have adopted Regulation (EC) No 261/2004 of the European Parliament and the Council of 11 February 2004 (Regulation No. 261/2004) that protects the rights of passengers departing from an airport located in the territory of a Member State to which the Treaty¹⁶ applies and passengers departing from an airport located in a third country to an airport situated in the territory of a Member State to which the Treaty applies. Regulation No. 261/2004 establishes minimum rights for passengers when they are denied boarding against their will, their flight is cancelled, or their flight is delayed.
53. In addition, the Council of the European Union in 2001 made a decision to approve on behalf of the European Community the Montreal Convention and ratified the convention pursuant to Article 53(3) of the Montreal Convention¹⁷. In COMESA, it was observed that 13¹⁸ Member States have ratified, accepted, approved or accessioned to the Montreal Convention that is Democratic Republic of Congo (DRC), Egypt, Eswatini, Ethiopia, Kenya, Madagascar, Mauritius, Rwanda, Seychelles, Sudan, Tunisia, Uganda, Zimbabwe.
54. Further, in Africa, the Regulations on the Protection of Consumers of Air Transport Services, Annex 6 to the Yamoussoukro Decision (YD) contain provisions that protect consumers in case of overbooking, delayed or cancelled flights and contains provisions on reimbursement, re-routing and compensation. To facilitate for the implementation of the YD, several annexures have been adopted including those on consumer protection (annex 6). This is important to ensure the protection of consumers in the air transport market. The Executing Agency of the YD is the African Civil Aviation Commission (AFCAC) who also work closely with the RECs in Africa to facilitate the implementation of the YD. It is particularly noted the provisions of annex 6 to the YD are aligned with Regulation 261/2004 of the EU.

Recommendations

55. The CCC noted that the issues of concern are industry-wide and there maybe need to consider industry-wide interventions. It is noted that the issues identified in the survey may violate part 5 of the Regulations. In addition, the issues are contrary to the Montreal Convention, Annex 6 of the YD decision on Consumer Protection, best practices existing in other jurisdictions such as the EU,

¹⁶ Treaty establishing the European Community

¹⁷ Article 53(3) of the Montreal Convention states that; "this convention shall be subject to ratification by states and by Regional Economic Integration Organisations which have signed it".

¹⁸ Zambia has signed the Montreal Convention but has not ratified, approved, accepted or accessioned to the Convention.

US, Canada and case precedents. In view of the foregoing, the CCC has issued a guidance letter to the industry that highlights the measures to be undertaken by airlines in different circumstances.

56. Further, on the basis of this survey and the guidance letter:
- i. The CCC will develop a policy on the operation of airlines in the COMESA market to be presented to and adopted by the Council of Ministers.
 - ii. The CCC will undertake advocacy work in the aviation market by engaging the airlines to take measures such as implementing a compliance programme on consumer rights protection and engage other stakeholders.

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