KENYA AIRWAYS PLC AND PRECISION AIR SERVICES PLC EXEMPTION APPLICATION

1. The Competition Authority of Kenya (CAK) granted a four-year exemption to Kenya Airways (KQ) and Precision Air to extend their joint venture (JV) partnership until 11th April, 2022.

2. KQ, Kenya's national carrier, operates from its hub at the Jomo Kenyatta International Airport (JKIA) in Nairobi to over 50 destinations across the world. The airline's shareholding is as follows; Government of Kenya (48.9%), KQ Lenders Company Limited (38.1%), KLM (7.8%) and others (5.2%).

3. Precision Air is a Tanzanian-based airline operating out of the Julius Nyerere International Airport, Dar es Salam. It offers scheduled and chartered air passenger and cargo transportation services with domestic flights within Tanzania and regional flights to Nairobi and Moroni, Comoros.

4. KQ has a 41.2% shareholding in Precision Air, resulting in cross directorship between the two airlines.

5. The proposed JV, whose scope covers the airlines' routes in Kenya and Tanzania, would allow the two competing airlines share sensitive information contrary to provisions of section 21(3) of the Competition Act No.12 of 2010.

6. The restrictive elements in the agreement include;

a) **Reciprocal code sharing on the JV routes** – code-sharing agreement between airlines generates anti-competitive concerns since it this has the effect of decreasing the number of carriers on a route. It can also result in collusion.

b) **Coordination of network activities** – This has the effect of allocation of markets/customers, a prohibited action under the Act as it would distort or lessen competition.

c) **Alignment of Price of ticket fares on the JV routes** – The Act prohibits any agreement, decision or concerted practice which directly or indirectly fixes purchase or selling prices or any other trading conditions.

d) **Revenue management** – Coordinated management of all revenues attributable to the airlines' JV is a form of sharing strategic information which would also have the effect of distorting competition.

e) **Coordination of marketing & sales activities** - Coordination of marketing and sales activities could also lead to collusion. It could also increase barriers to entry in this sector as new players would come up against high sunk costs associated with advertising.

7. The foregoing underscores the fact that when competing parties coordinate activities with respect to pricing, customers, or exchange of commercially sensitive information, they are engaging in prohibited practices under Section 21(3) of the Act, unless expressly exempted by the Authority.

8. Section 26(2) of the Competition Act however provides that the Authority may grant an exemption if it will;

i. Maintain or promote exports.

ii. Improve, or prevent decline in the production or distribution of goods or the provision of services.

iii. Promote technical or economic progress or stability in any industry.

iv. Obtain a benefit for the public which outweighs or would outweigh the lessening in competition that would result or likely to result from the agreement, decision or concerted practice or the category of agreements, decisions or concerted practices.

9. In their application, the two airlines argued that their customers had already realized benefits from the year-long exemption by the Authority, including the opening up of new routes to passengers, optimum ticket prices and better scheduling of flights.

10. It was submitted that Precision introduced new routes in Tanzania which are now accessible to customers in Nairobi by virtue of the JV arrangement. The parties submitted that they recorded a **4.7%** growth in traffic between Nairobi-Bukoma and Nairobi-Seronera attributable to improved connectivity within Tanzania domestic

market -- that is linked to Nairobi flights -- and the introduction of a new flight to Seronera.

11. The parties also said they recorded a growth in ticket sales from **211** tickets sold in the year to May 2017 to 221 tickets sold between in the year to May 2018. Further, the parties contented that the JV created efficiencies as regarding cost of air services offered to customers through which translated in reduction or maintenance of fares.

12. When analyzing the KQ/Precision Air application, the Authority took into consideration international best practice and local scenarios.

13. The Authority has previously granted similar exemptions in Kenya's aviation sector – (KQ/KLM in 2013 and KQ/KLM/France Air (2018) the basis that they occasioned an insignificant negative impact on competition in the country's aviation sector, improved connectivity between Nairobi and various destinations and increased trade between Kenya and its partners.

14. Further, these earlier pacts increased KQ's penetration in various destinations to the benefit of the Kenyan public by facilitating the national carrier become a more formidable competitor to other airlines in the region.

15. The Authority has previously considered and approved joint venture agreements involving KQ/KLM (2013), KQ/Precision (2017) and KQ/KLM/France Air (2018).

16. The key considerations for grant of the exemptions included; the Single Entity Doctrine, insignificant negatively affect competition within Kenya, improved connectivity between Nairobi and various destinations, enhancement of access to markets and trade between Kenya and other regions and increased KQ penetration in various destinations to the benefit of the Kenyan Public.

17. Other considerations were facilitation of KQ to be a more formidable competitor to other airlines in the region belonging to other alliances, enhancement of convenience for passengers and cargo under one brand and seamless service through coordinated arrival and departure schedule.

18. Given that the activities of KQ and Precision is the provision of scheduled flights for passengers and cargo the Nairobi-Kilimanjaro, Nairobi- Dar es Salam and Nairobi-

Zanzibar JV routes. It was established that the relevant market was the provision of scheduled flights for passengers and cargo in these routes.

19. From an international best practice perspective, competition regulators in Europe and United States of America have used similar arguments to grant JV exclusions to several airlines like Delta, Air France and Alitalia.

20. According to the Authority's analysis, code sharing between Precision Air and Kenya Airways will, among other benefits, improve connectivity between the routes served by the two airlines with consumers able to buy tickets on multiple airlines through a single booking channels.

21. By concertedly managing revenues and marketing activities, the two airlines will increase efficiencies to the benefit of the Kenyan public who may, otherwise, not have enjoyed the offerings.

22. In addition, joint coordination of network activities - routes, schedules, capacity and designation will also extract efficiencies for both airlines and enhance destination choice and convenience for passengers flying under a joint brand. For instance, consumers are also guaranteed seamless connectivity and concerted customer case service by the different JV partners.

23. It is the Authority's view that these benefits fulfil the requirement set out under Section 26(3) (d) of the Act as it is likely to lead to generating more public benefits which outweigh lessening of competition.

24. Additionally, KQ and Precision Air do not have overlapping routes in Kenya and, therefore, coordination of pricing strategies will have minimal negative effect on competition in the local aviation industry.

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