

**THIRTY-FIFTH ORDINARY SESSION OF  
THE AUTHORITY OF HEADS OF STATE  
AND GOVERNMENT**

**SUPPLEMENTARY ACT A/SA.2/12/08  
ON THE ESTABLISHMENT,  
FUNCTIONS AND OPERATION OF  
THE REGIONAL COMPETITION  
AUTHORITY FOR ECOWAS**

**THE HIGH CONTRACTING PARTIES**

**MINDFUL** of Articles 7, 8 and 9 of the ECOWAS Treaty as amended establishing the Authority of Heads of State and Government and defining its composition and functions;

**MINDFUL** of Article 3 of the said Treaty that provides for the harmonization and coordination of National Policies in the area of trade as a means of maintaining and enhancing economic stability within the sub region;

**MINDFUL** of Supplementary Act adopting the Community Competition Rules and the Modalities for its implementation within ECOWAS;

**REAFFIRMING** that the implementation of the Community Competition Rules is necessary to promote the economic integration of Member States and stimulate region-wide economic growth;

**AWARE** that the proper and optimum application of the community rules requires the establishment of a regional body, endowed with appropriate powers, as well as the definition of adequate procedures capable of guaranteeing its efficiency;

**RECOGNISING** the need to draw inspiration from existing regional and subregional competition bodies in order to enhance the functioning of the ECOWAS regional body;

**DESIROUS** of endowing the Community with a regional Competition Authority and to define its functions and operation;

**HAVING CONSIDERED THE OPINION** of the ECOWAS Parliament;

**ON THE RECOMMENDATION** of the Sixty first Session of the Council of Ministers, held in Ouagadougou from 27 to 29 November 2008.

**AGREE AS FOLLOWS:**

**ARTICLE 1**

**ESTABLISHMENT OF THE ECOWAS  
COMPETITION AUTHORITY**

There is hereby established a regional body to be known as the ECOWAS Competition Authority, (The Authority) which shall be charged with the implementation of the ECOWAS Community Competition Rules.

**ARTICLE 2**

**COMPOSITION AND APPOINTMENT**

- (1) The Authority shall be headed by an Executive Director, assisted by two (2) Directors and staff necessary for its smooth functioning.
- (2) The Executive Director shall be a Statutory Appointee and shall be recruited and appointed by the Council of Ministers on the proposal of the Ministerial Committee on the Selection and Evaluation of the Performance of Statutory Appointees, after evaluation of three candidates who are nationals of the State to which the post has been allocated.
- (3) The Executive Director shall be recruited for a non-renewable period of four (4) years.
- (4) Notwithstanding the provisions of paragraphs 1 and 2 of this article, and within a transitional period, the Executive Director and the two Directors shall be recruited on the basis of a contract for a period not exceeding 8 years maximum

and shall be directly attached to the President of the Commission.

### ARTICLE 3

#### DUTIES

In accordance with the provisions of Article 2 of this Supplementary Act, the ECOWAS Competition Authority shall perform the following functions:

- (a) keep under review commercial activities in the Community Market with a view to ascertaining practices which may distort the efficient operation of the market conduct or which may adversely affect the economic interests of consumers;
- (b) carry out on its own initiative or at the request of private persons or government officials from the Member States or of the Community Court of Justice, such investigations in relation to the conduct of business in the Common Market as will enable it to determine whether any enterprise is engaging in business practices in contravention of the Supplementary Act adopting the Common Competition Rules.
- (c) preclude and eliminate anti-competitive practices amounting to an abuse of a dominant market position;
- (d) propose for adoption, through the ECOWAS Commission, to the Council of Ministers, the setting and periodic review of the schedule of fines and various levels of compensation to be applied within the framework of this Supplementary Act;
- (e) at the request of the executive and judicial authorities of Member States and Community institutions, issue advisory opinions regarding the interpretation and application of the Community Competition Rules;
- (f) co-operate with national and regional competition agencies in taking measures necessary to ensure implementation of the obligations arising from this Supplementary Act;
- (g) co-operate with and assist any association, intergovernmental organization, or body of persons in developing and promoting the observance of standards of conduct for the purpose of ensuring compliance with the provisions of this Supplementary Act;
- (h) make available to persons engaged in business as well as to consumers, general information with respect to their rights and obligations under the Supplementary Act adopting the Community Competition Rules;
- (i) undertake studies and publish reports and information regarding matters affecting the interests of consumers in the implementation of the Supplementary Act adopting the Community Competition Rules;
- (j) as input into the activity report of the Community, prepare and transmit to the President of the ECOWAS Commission, an interim report and an annual report on the activities of the Authority;
- (j) contribute to the training of the staff of national competition structures and provide them with support notably in the management of investigations, creation of a

competition-related data base, advocacy on competition and consumer protection.

#### ARTICLE 4

##### POWERS

(1) Without prejudice to the provisions relating to the powers of the Community Court of Justice, the Authority, in the execution of its functions under this Supplementary Act, shall have power to issue injunctions:

- (i) ordering the termination of a contract;
- (ii) prohibiting the conclusion or implementation of a contract;
- (iii) prohibiting the imposition of terms external to any transaction, the effect of which is to reduce competition;
- (iv) prohibit discrimination or preferences in price matters and other related aspects, and
- (vi) requiring the transparent publication of commercial information (prices, scale of rates, general terms of sale, product composition and expiry dates);

Subject to the provisions of the present Supplementary Act, the authority shall undertake the necessary actions for the effective performance of its functions.

(2) In considering applications for authorizations, mergers, acquisitions or business combinations as provided for in Article 7, paragraph 3, of the Supplementary Act adopting the Community Competition Rules, the Authority shall, in particular, take into consideration the following data:

- (i) the position on the market of the businesses concerned as well as their economic and financial power;

- (ii) the structure of all the markets concerned;
- (iii) the actual or potential competition from enterprises located within or outside the ECOWAS Common market;
- (iv) the effects of the transaction on suppliers and buyers;
- (v) the legal or other obstacles to entry as well as the supply and demand trends in respect of the goods and services considered; and
- (vi) any potential for technical and economic progress created by the proposed transaction, which may be in the interest of the consumer and may not constitute a hindrance to competition.

(3) For the purpose of granting to any person and to any Member State, the authorization provided for in Article 12 of the Supplementary Act adopting the Community Competition Rules which relates to authorization for the conclusion or execution of an agreement for the purpose of engaging in business practices likely to violate prohibitions imposed by that Supplementary Act, the Authority shall take into consideration, the following factors, among others:

- (i) the vulnerability of the sectors concerned;
- (ii) the impact that the said agreement or practices will have on the capacity of small and medium enterprises to effectively compete;
- (iii) the promotion of socio-economic development within the Community; and
- (iv) any other relevant consideration.

(4) The Authority may withdraw or modify an authorization if it observes that:

- (i) the conditions of the grant have changed

- (ii) the information provided in support of the application for authorization were false or misleading; or
- (iii) the conditions and obligations governing the grant of authorization are violated.
- (5) The Authority shall, before canceling or reviewing any authorization, forward a notification in writing to the interested party, detailing the reasons of its decision and informing it of its right to request hearing by the Authority on the matter within a deadline to be specified in the said notification.
- (6) The Authority shall keep a register of authorizations granted, in a form that it shall determine. The register shall be open to consultation by the public.
- (7) The Authority shall obtain such information as it considers necessary to assist it in its investigations and inquiries and, where it considers appropriate, shall examine and obtain verification of documents submitted to it.
- (8) The authority shall have power to:
- (i) summon and examine witnesses;
  - (ii) demand any document to be communicated for examination;
  - (iii) require that any document submitted to it be supported by an affidavit;
  - (iv) require the furnishing of such returns or information as it may require within such period as it may specify by notice; and
  - (v) adjourn any investigation or inquiry, where necessary.
- (9) The Authority may hear orally or in writing from any person who in its opinion will be affected by an investigation or inquiry being carried out by the Authority.
- (10) The Authority may require an enterprise or such other person as it considers appropriate to provide information concerning products manufactured, produced or supplied by that person as the Authority may deem necessary to determine whether the conduct of the business in relation to the products constitutes an anti-competitive practice.
- (11) If the information specified in paragraph (7) of this Article is not furnished to the satisfaction of the Authority, the Authority may draw conclusions on the basis of information available to it.
- (12) All enterprises or persons summoned to attend and give evidence or produce documents at any sitting of the Authority shall be bound to obey the summons served thereupon.
- (13) Hearings of the Authority shall take place in public but the Authority may, whenever the circumstances so warrant, conduct a hearing in camera.
- (14) A person commits an offence and is liable to a fine if that person:
- (a) without sufficient cause, fails or refuses to:
    - i) appear before the Authority when a summon is validly served;
    - ii) produce a document which he/she is required by such summons to produce;
  - (b) destroys any record likely to be required for an investigation that has commenced under this Supplementary Act, with intent to mislead the Authority or to prevent or impede the investigation;
  - (c) being a witness, leaves a sitting of the Authority without the Authority's permission;
  - (d) willfully:
    - (i) insults any member or officers of the

Authority; or

- (ii) obstructs or interrupts the proceedings of the Authority.

## **ARTICLE 5**

### **POWER OF ENTRY AND SEARCH**

The Authority may, where necessary and for the purpose of gathering evidence of the involvement of a person or body corporate in an anti-competitive conduct or conduct likely to be anti-competition, request authority from the competent national institutions to:

- (i) carry out a search in accordance with legal procedures;
- (ii) inspect and remove temporarily in accordance with legal procedures" for the purpose of making copies, any documents or extracts under the control of any person.

### **DISCONTINUANCE OF INVESTIGATION OR INQUIRY**

At any stage of an investigation or inquiry under this Supplementary Act, if the Authority, or an investigator appointed by it, is of the opinion that the matter being investigated or subject to inquiry does not justify further investigation or inquiry, the Authority may discontinue the inquiry or investigation. Where the Authority decides on discontinuance, it shall submit a report in writing to the President of the Commission within thirty (30) days and informs the parties concerned, within the same time limit, of this decision, stating the reasons for discontinuance.

## **ARTICLE 7**

### **SANCTIONS OR MEASURES AGAINST ANTI-COMPETITIVE PRACTICES**

- (1) Where the Authority, upon conclusion of investigations, is convinced that there is

evidence to presume a violation of the provisions of this Supplementary Act adopting the Community Competition Rules, it shall pronounce the appropriate sanctions against the offender(s). An appeal against the Authority's decision may be filed before the Community Court of Justice.

- (2) In addition to the sanction provided in Article 4, paragraph 14, and Article 8, paragraph 2, the Authority may also pay compensations as provided for in Article 8, paragraph 3, Article 9, paragraph 3, and Article 10, of this Supplementary Act.
- (3) Decisions taken by the Authority in accordance with paragraphs 1 and 2 of this article may be subject to appeal. The Community Court of Justice shall sit as an appellate court and its decision shall be final.

## **ARTICLE 8**

### **ACTION BY THE AUTHORITY IN RELATION TO AGREEMENTS AND CONCERTED PRACTICES IN RESTRAINT OF TRADE**

- (1) Unless otherwise provided, when the Authority determines that any agreement, decision or concerted practice constitutes a violation of the Supplementary Act adopting the Community Competition Rules, it proceeds in accordance with the provisions of Article 5 paragraph 1 of this Supplementary Act.
- (2) Any person who executes an arrangement prohibited by Article 5 of the Supplementary Act adopting the Community Competition Rules and who fails to terminate such arrangement within a time determined by the Authority commits an offence and is liable to a fine.
- (3) Any person who has suffered losses as a result of any prohibited anti-

competitive arrangement may apply for compensation to the Authority. The Authority and the Community Court of Justice shall order the parties to such prohibited arrangement to pay to the applicant(s) such compensation as they shall determine.

#### **ARTICLE 9**

##### **ACTION BY THE AUTHORITY IN RELATION TO ABUSE OF DOMINANT MARKET POSITION**

- (1) Where the Authority has reasons to believe that one or more enterprises holding a dominant position in a relevant market has/have abused or is/are abusing such position, the Authority shall conduct an investigation into the matter.
- (2) If the Authority finds, after its investigation, that the abuse referred to in paragraph (1) has occurred or is occurring and that such abuse has had, is having or is likely to have the effect of substantially lessening competition in the Community Market, the Authority shall prepare a report indicating the practices that constitute the abuse and shall:
  - (a) notify the enterprises involved of its finding and
  - (b) order the enterprises involved to cease the abusive practice immediately or not later than on a date determined by the Authority.
- (3) Any person who has suffered losses as a result of any anti-competitive practice prohibited under Article 8 of the Supplementary Act adopting the Community Competition Rules may apply to the Authority for compensation. The Authority may order the infringer or infringers to pay to the applicant or applicants such compensation as it shall determine.

#### **ARTICLE 10**

##### **ACTION BY THE AUTHORITY IN RELATION TO STATE AID AND ANTI-COMPETITIVE PRACTICES OF STATE-OWNED ENTERPRISES**

A person or Member State who has suffered losses as a result of any anti-competitive practice prohibited under the Supplementary Act adopting the Community Competitive Rules may apply to the Authority for compensation and the Authority may, if it is satisfied that the circumstances of the case so warrant, order the infringer or infringers to pay a compensation to the applicant.

#### **ARTICLE 11**

##### **MODALITIES FOR ENFORCEMENT OF DECISIONS TAKEN BY THE AUTHORITY AND THE COMMUNITY COURT OF JUSTICE**

- (1) Decisions of the Authority and of the Community Court of Justice that entail pecuniary obligations on individuals and or corporate bodies shall be binding
- (2) Enforcement, which shall be submitted by the Senior Registrar of the court of the Member State concerned, shall be governed by the rules of civil procedure prevailing in the said Member State.
- (3) The enforcement formula shall be applied by the national authority appointed by the Government of each Member State, without any other control except for that of verifying the authenticity of the decision.
- (4) Member States shall appoint the competent national authority, which shall receive or implement the decisions of the Competition Authority and those of the Community Court of Justice and notify their appointment to the latter.

- (5) Enforcement of the decision referred to in paragraph (1) of this article may be suspended only by a decision of the Community Court of Justice.

## ARTICLE 12

### FINANCING OF THE ACTIVITIES OF THE COMPETITION AUTHORITY

The activities of the Competition Authority shall be funded by budget allotment allocated in accordance with the provisions of the ECOWAS Treaty and from any other source that the Council of Ministers may determine.

## ARTICLE 13

### ACCOUNTS AND AUDIT

- (1) The accounts of the Authority shall be audited annually by the External Auditors of the Institutions of the Community.
- (2) A statement of accounts audited in accordance with paragraph (1) shall be presented to the Council of Ministers through the Administration and Finance Commission.

## ARTICLE 14

### RULES OF PROCEDURE

All other issues relating to the organization of the Authority and the rules governing its functioning not set out in this Supplementary Act or in a Regulation shall be defined in the Rules of Procedure of the Competition Authority as approved by the Council.

## ARTICLE 15

### AMENDMENT AND REVISION

- (1) Any Member State, the Council of Ministers, the ECOWAS Parliament and the ECOWAS Commission may submit proposals for the amendment or revision of this Supplementary Act.

- (2) Proposals not emanating from the ECOWAS Commission shall be submitted to it. The Commission shall forward all proposals for amendment and revision to the Member States not later than thirty (30) days after their receipt. Upon expiration of the thirty (30) days notice given to Member States, the Authority of the Heads of State and Government shall examine the proposal for amendment or revision of the Supplementary Act.

- (3) The amendments or revisions shall be adopted by the Authority of Heads of State and Government in accordance with the provisions of Article 9 of the ECOWAS Treaty. The adopted amendments and revisions shall enter into force upon their publication in the Official Journal of the Community.

## ARTICLE 16

### PUBLICATION

This Supplementary Act shall be published by the ECOWAS Commission in the Official Journal of the Community within Thirty (30) days of its signature by the Chairperson of the Council of Ministers. It shall also be published by each Member State in its National Gazette within thirty (30) days after notification by the Commission.

## ARTICLE 17

### ENTRY INTO FORCE

1. This Supplementary Act shall enter into force upon its publication. Consequently, signatory Member States and the Institutions of ECOWAS undertake to commence the implementation of its provisions on its entry into force,
2. This Supplementary Act is annexed to the ECOWAS Treaty of which it is an integral part.

**ARTICLE 18 :**  
**DEPOSITORY AUTHORITY**

This Supplementary Act shall be deposited with the Commission which shall transmit certified true copies thereof to all Member States and shall register it with the African Union, the United Nations and such other organizations as Council may determine.

**IN WITNESS WHEREOF, WE, THE HEADS  
OF STATE AND GOVERNMENT OF THE  
ECONOMIC COMMUNITY OF WEST  
AFRICAN STATES, HAVE SIGNED THIS  
SUPPLEMENTARY ACT**

**DONE AT ABUJA, THIS 19<sup>TH</sup> DAY OF  
DECEMBER 2008**

**IN SINGLE ORIGINAL IN THE ENGLISH,  
FRENCH AND PORTUGUESE  
LANGUAGES, ALL THREE (3) TEXTS  
BEING EQUALLY AUTHENTIC**

**H.E. Dr. Thomas Boni YAYI**  
President of the Republic of BENIN

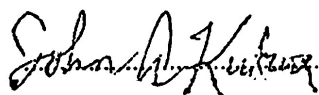
**H.E. Blaise COMPAORE**  
President of BURKINA FASO  
Chairman of the Authority of Heads of State  
and Government



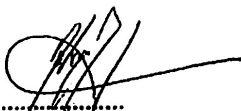
**H.E. Jose Maria NEVES**  
Prime Minister for and on behalf of the  
President of the Republic of CAP VERDE

**H.E. Laurent GBAGBO**  
President of the Republic of  
COTD'IVOIRE

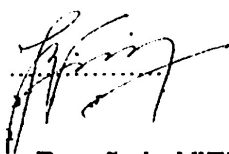
**H.E. Prof. Alhaji Yahya JAMMEH**  
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**H.E. John Agyekum KUFOR**  
President of the Republic of GHANA



**Dr. Ahmed Tidiane SQUARE**  
Prime Minister for and on behalf the  
President of the Republic of GUINEA



**H.E. Gen. Joao Bernārdo VIEIRA**  
President of the Republic of GUINEA BISSAU

**H.E. Joseph BOKAI**

Vice President for and on behalf of the  
President of Republic of LIBERIA

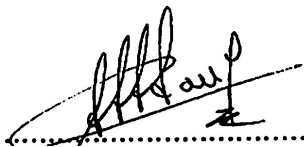
**H.E. Amadou Toumani TOURÉ**  
President of the Republic of MALI



**H.E. ALH. Umaru Musa YAR'ADUA**  
President and Commander-in-Chief of the  
Armed Forces of the Federal Republic of Nigeria.

**H.E. Seini OUMAROU**

Prime Minister for and on behalf of the  
Republic of Niger

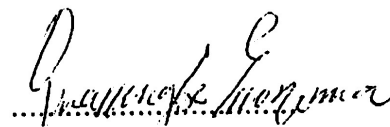


**Mr. Abdou Aziz SOW**

Minister of Information, Relation with the Institutions and  
NEPAD and NEPAD and Spokesman of the  
Government for and on behalf of the President of the  
Republic of Senegal



**H.E. Dr Ernest Bai KOROMA**  
President of the Republic of SIERRA LEONE



**H.E. Faure Essozimna GNASSINGBE**  
President of the TOGOLESE Republic