

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

Abuja 19 December 2008

**SUPPLEMENTARY ACT A/SA.1/12/08
ADOPTING COMMUNITY COMPETITION
RULES AND THE MODALITIES OF THEIR
APPLICATION WITHIN 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;

RECOGNIZING that the economy in the ECOWAS Common market must be efficient and competitive in order to promote and facilitate conditions necessary for economic growth in the region;

CONVINCED that an effective regulatory environment is advantageous for the promotion and sustainability of a vibrant economy within the Common market and the domestic economies of ECOWAS Member States;

NOTING that the promulgation of Community Competition Rules is consistent with the economic development objectives of ECOWAS Member States;

RECOGNIZING also that the protection of market conditions through the effective Implementation of competition rules is consistent with international best practices and is in the interest of economic integration within the ECOWAS region;

DESIROUS of endowing ECOWAS with competition rules that are consistent with

international standards in order to promote fairness in trade and effective liberalization of trade;

HAVING CONSIDERED THE OPINION of the ECOWAS Parliament;

ON THE RECOMMENDATION of the Sixty First Ordinary Session of the Council of Ministers, held in Ouagadougou from 27 - 29 November 2008.

AGREE AS FOLLOWS:

ARTICLE 1 : DEFINITIONS

(1) In this Supplementary Act, unless the context otherwise requires:-

- (a) **"acquire"** in relation to:-
 - i) goods: means to obtain by way of gift, purchase or exchange, lease, hire or hire purchase;
 - ii) services: means to accept benefit from or to perform the service;
 - iii) intellectual property rights: means to obtain by license, assignment or government grant;
- (b) **"agreement"** means any agreement, arrangement or understanding, whether oral or in writing and whether or not it is intended to be legally enforceable;
- (c) **"anti-competitive practice"** any practice coming from a physical or moral person the object or effect of which is to restrain competition to the disadvantage of the common market;
- (d) **"Authority"** means the ECOWAS Competition Authority established under Article 13 of this Supplementary Act;
- (e) **"authorized officer"** means any

- person appointed as such by the ECOWAS Competition Authority for the purposes of this Supplementary Act;
- (f) **"concerted practice"** means a practice involving direct or indirect contacts between competitors falling short of an actual agreement;
- (g) **"consumer"** means a person, partnership or body corporate or incorporate acquiring goods or services;
- (h) **"economy activity"** means economic activities involving:
- i) manufacturing, producing, transporting, acquiring, supplying, storing, , distribution and otherwise dealing in goods for gain or reward; and
 - ii) acquiring, supplying and otherwise dealing in services for gain or reward;
- (i) **"control"** in relation to a company means the power of a physical or moral person to secure by means of :
- i) the holding of shares or the possession of voting power in relation to that company; or
 - ii) any other power conferred by the company's constituent documents or other documents regulating the company,
 - iii) the effective exercise of power of decision within the company; so that the company's business is conducted in accordance with that individual's wishes.
- (j) **"Council"** means the ECOWAS Council of Ministers, the composition of which is defined in the new Article 10 of Supplementary Protocol A/SP.1/06/06;
- (k) **"document"** means written information including electronic records;
- (l) **"dominant position"** is as defined in Article 6 (i) of this Supplementary Act;
- (m) **"enterprise"** means any person or group of person engaged in business;
- (n) **"Executive Director"** means the Executive Director of the ECOWAS Competition Authority, appointed in accordance with Article 13 of this Supplementary Act;
- (o) **"goods"** means all kinds of property other than real property, money, securities or intangible property;
- (p) **"Member State(s)"** means any Member State or Member States of ECOWAS as defined in Article 2, paragraph 2, of the Revised ECOWAS Treaty;
- (q) **"person"** means an individual, partnership, body whether corporate or not or any association of persons;
- (r) **"price"** means any charge or fee or valuable consideration of any description;
- (s) **"products"** includes goods and services;
- (t) **"relevant market"** means the supply, to a geographical area, of products which the consumer regards as substitutable in terms of price and use;

- (u) **"service"** means a performance of any description, whether industrial, commercial, professional or otherwise;
 - (v) **"supply"** means, in relation to:
 - i) goods: to sell, rent, lease or otherwise dispose of goods or an interest therein or a right thereto, or offer so as to dispose of such goods, right or interest;
 - ii) services: to sell, rent or otherwise provide services or offer to provide such services;
 - (w) **"trade"** means any business, industry, profession or occupation relating to the supply or acquisition of products.
- (2) For the purpose of this Supplementary Act:
- (a) any two companies are to be treated as interconnected companies if one of them is an affiliate of the other or both are subsidiaries of the same company; and
 - (b) a group of interconnected companies shall be treated as a single enterprise.
- (3) For the purposes of this Supplementary Act, a company is a subsidiary of another company if it is controlled by that other company;
- (4) Every reference in this Supplementary Act to the term "market" is a reference to a market within the ECOWAS Community for products as well as other articles that, as a matter of fact and based on reasonable commercial practice, may be substituted for them in terms of price and use;
- (5) In this Supplementary Act, any reference to the terms "common market" means the ECOWAS common market being established.;
- (6) References in this Supplementary Act to the "lessening of competition" shall, unless the context otherwise stipulates, include references to hindering or preventing competition in the Common Market, or in a national market when such lessening of competition has a demonstrable effect on the Common Market;
- (7) For the purposes of this Supplementary Act, the effect on competition in a relevant market shall be determined by reference to all factors that affect competition in that market, including competition (actual or potential) from products supplied or likely to be supplied by any person not resident or carrying on business in the ECOWAS Common Market.

ARTICLE 2: ADOPTION OF THE COMMUNITY COMPETITION RULES

The Community Competition Rules and the modalities for their implementation, as defined in this Supplementary Act, are hereby adopted.

ARTICLE 3: OBJECTIVES

The purposes of this Supplementary Act are to-

- (a) promote, maintain and encourage competition and enhance economic efficiency in production, trade and commerce at the regional level;
- (b) prohibit any anti-competitive business conduct that prevents, restricts or distorts competition at the regional level;
- (c) ensure the consumers' welfare and

- the protection of their interests;
- (d) expand opportunities for domestic enterprises in Member States to participate in world markets.

ARTICLE 4 : SCOPE

- (1) this Supplementary Act applies to agreements, practices, mergers and distortions caused by Member States which are likely to have an effect on trade within ECOWAS. This Rules shall concern notably acts, which directly affect regional trade and investment flows and/or conduct that may not be eliminated other than within the framework of regional cooperation.
- (2) The under-listed agreement and activities may be excluded from the scope of labour-related issues, notably activities of employees for the legal protection of their interests;
- (a) collective bargaining agreements between employers and employees for the purpose of fixing terms and conditions of employment;
- (b) agreements and trade practices approved by a regional competition organ of ECOWAS where these trade practices are authorized under this Supplementary Act;
- (c) activities expressly exempted by virtue of any treaty or any instrument or agreement in relation thereto or flowing therefrom, so long as the activities are not inconsistent with the purposes of this Supplementary Act;
- (d) activities of professional associations designed to develop or enforce professional standards of competence reasonably

necessary for the protection of the public;

- (e) such other activity declared, after consultation with the ECOWAS Competition Authority, by the Council of Ministers.

- (3) The Community rules on competition shall also be applicable to state enterprises.

ARTICLE 5: AGREEMENTS AND CONCERTED PRACTICES IN RESTRAINT OF TRADE

- (1) The following shall be prohibited as incompatible with the ECOWAS Common Market all agreements between enterprises, decisions by associations of enterprises and concerted practices which may affect trade between ECOWAS Member States and the objects or effect of which are or may be the prevention, restriction, distortion or elimination of competition within the Common Market, and in Particular those which:
- (a) directly or indirectly fix purchase or selling prices, terms of sale, or any other, trading conditions;
- (b) limits or control production, markets, technical development, or investment;
- (c) share markets, customers, or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other trading parties; thereby placing them at a competitive disadvantage; or
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

- (2) Any agreement or decision prohibited under the sub-paragraph 1 of this Article shall be automatically void and of no legal effect in any Member State of the ECOWAS Community.

ARTICLE 6 : ABUSE OF DOMINANT POSITION

- (1) For the purposes of this Supplementary Act, one or more enterprises hold a dominant position in a relevant market if, singularly or collectively, it/they possess a substantial share of the market that enables it/them to control prices or to exclude competition.
- (2) Any abuse, or acquisition and abuse of a dominant position by one or more enterprises within the ECOWAS Common Market or in a substantial part thereof shall be prohibited as incompatible with the Common Market in so far as it may affect trade between Member States

Such abuse may, in particular, consist of .

- (a) limiting access to a relevant market or otherwise unduly restraining competition;
- (b) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- (c) limiting production, markets or technical development to the prejudice of consumers;
- (d) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (e) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

ARTICLE 7 : MERGERS AND ACQUISITIONS

- (1) Every merger, takeover, joint venture, or other acquisition or business combination including interconnected directorships whether of a horizontal, vertical, or conglomerate nature between or among enterprises are prohibited where the resultant market share in the ECOWAS Common Market, or any significant part thereof, attributable to any good, service, line of commerce, or activity affecting commerce shall result in abuse of dominant market position resulting in a substantial reduction of competition.
- (2) Any merger prohibited by paragraph (1) of this Article shall be automatically void and of no effect in any Member State of ECOWAS.
- (3) Mergers, acquisitions or concentrations of enterprises prohibited by virtue of paragraph 1 of this Article may be authorized or exempted if the transaction concerned is in the public interest.

ARTICLE 8: STATE AID

- (1) Except as otherwise provided in this Supplementary Act, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favoring certain enterprises or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the ECOWAS Common Market.
- (2) The following shall be compatible with the Common Market:
- (a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned; and

- (b) aid to remedy the damage caused by natural disasters or exceptional occurrences.
- (3) The following may be considered to be compatible with the ECOWAS Common Market:
 - (a) aid to promote the socioeconomic development of area of the Community where the standard of living is exceptionally low or in which there is serious underemployment;
 - (b) aid to promote the execution of an important project of Community interest or to remedy a serious disturbance in the economy of a Member State;
 - (c) aid to facilitate the development of certain economic activities or of certain economic area, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;
 - (d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest; and
 - (e) such other categories of aid as may be specified by a decision of the Authority of Heads of State and Government on the recommendation of the Council of Ministers acting on a proposal from the ECOWAS Competition Authority.

ARTICLE 9 : PUBLIC ENTERPRISES

- (1) In Case of public enterprises and enterprises to which Member States grant special or exclusive rights, Member States shall neither enact nor maintain in force any measure contrary to the rules contained in this Supplementary Act.

- (2) Enterprises entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in this Supplementary Act, in so far as the application of rules contained herein does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must be affected to such an extent as would be contrary to the interests of ECOWAS Community.

ARTICLE 10: COMPENSATION FOR VICTIMS OF ANTI-COMPETITIVE PRACTICES

- (1) A person or Member State who has suffered losses as a result of any anticompetitive practice prohibited under this Supplementary Act may, upon application to the Authority, receive compensation for such losses.
- (2) The conditions for granting the compensation stipulated in paragraph (1) above shall be defined in a subsidiary Regulation.

ARTICLE 11 : AUTHORISATIONS AND EXEMPTIONS

- (1) The Regional Authority referred to under Article 13 (1) of this Supplementary Act may declare inapplicable the provisions of Article 5 of this Act in the case of:
 - (i) any agreement or category of agreements between enterprises,
 - (ii) any decision or category of decisions by associations of enterprises,
 - (iii) any concerted practice or category of concerted practices,

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

- (a) impose on the concerted enterprises, restrictions which are not indispensable to the attainment of these objectives;
- (b) afford such enterprises the possibility of eliminating competition in respect of a substantial part of the products in question.
- (2) Mergers, acquisitions, or other business combinations prohibited under Article 7 of this Supplementary Act may be authorized by the ECOWAS Competition Authority if the transaction in question is in the public interest.
- (3) Subject to condition to be defined in another Supplementary Act, the Authority may authorize any person to conclude or execute an agreement or engage in business practices likely to violate provisions imposed by this Supplementary Act.

ARTICLE 12 : AGREEMENTS CONCLUDED BY THE MEMBER STATES

- (1) The ECOWAS Commission shall conclude on behalf of the Member States other international agreements on competition.
- (2) Where, prior to the entry into force of this Supplementary Act, Member States had concluded agreements or adopted national legislation on competition that are inconsistent with the provisions of this Supplementary Act, they shall take all necessary measures to eliminate the inconsistencies observed in the shortest time possible.

ARTICLE 13 : APPLICATION AND IMPLEMENTATION OF THE COMMUNITY COMPETITION RULES

- (1) A structure to be known as the Regional Competition Authority responsible for the

implementation of the present Supplementary Act within ECOWAS shall be established.

- (2) The organizational and operating rules of the Authority shall be defined in a Regulation.
- (3) In the implementation of the Community Competition Rules, the Regional Authority shall collaborate with other existing competition agencies. (UEMOA)
- (4) A Consultative Competition Committee composed of members who are experts in the area of competition is hereby set up. Each Member State shall be represented by two of such members who can be replaced by other members in case of incapacity. The operation of the Committee shall be governed by rules of procedure adopted by the Commission after consultation with the Committee.
- (5) When the Committee has to deal with an issue related to an important economic sector, the delegation from each Member State shall include a representative of the national Regulatory Agency of the relevant sector or at least a representative of the Professional association of the said sector.
- (6) For the purposes of application of the Community Competition Rules, the Member States shall adopt all measures they deem appropriate, on condition they are not inconsistent with the provisions of this Supplementary Act.
- (7) The modalities for the implementation of this Act shall be defined in a Regulation to be adopted by the Council of Ministers.

ARTICLE 14 : 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 communicate 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 Heads of State and Government shall examine the proposals 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 15 : 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.



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

ARTICLE 16 : 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.

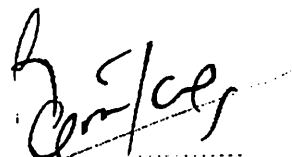
ARTICLE 17 : DEPOSITORY AUTHORITY

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 19TH DAY OF
DECEMBER 2008**

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

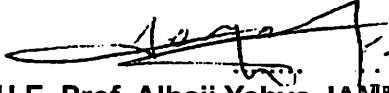


H.E. Blaise COMPAORE
President of BURKINA FASO
Chairman of the Authority of Heads of State
and Government

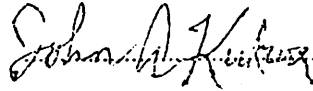


H.E. Jose Maria NEVES
Prime Minister for and on behalf of the
President of the Republic of CAP VERDE

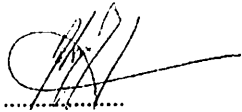
H.E. Laurent GBAGBO
President of the Republic of
COTD'IVOIRE



H.E. Prof. Alhaji Yahya JAMMEH
President of the Republic of THE GAMBIA



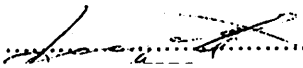
H.E. John Agyekum KUFOR
President of the Republic of GHANA



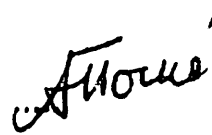
Dr. Ahmed Tidiane SQUARE
Prime Minister for and on behalf the
President of the Republic of GUINEA



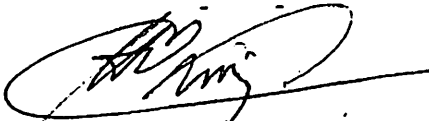
H.E. Gen. Joao Bernardo VIEIRA
President of the Republic of GUINEA BISSAU



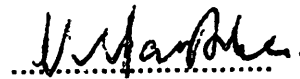
H.E. Joseph BOKAI
Vice President for and on behalf of the
President of Republic of LIBERIA



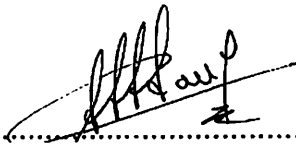
H.E. Amadou Toumani TOURÉ
President of the Republic of MALI



H.E. Seini OUMAROU
Prime Minister for and on behalf of the
Republic of Niger



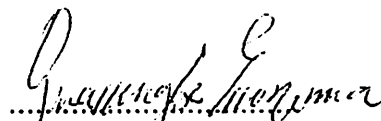
H.E. ALH. Umaru Musa YAR'ADUA
President and Commander-in-Chief of the
Armed Forces of the Federal Republic of Nigeria.



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

**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 19TH 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

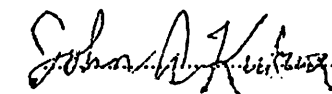
H.E. Blaise COMPAORE
President of BURKINA FASO
Chairman of the Authority of Heads of State
and Government



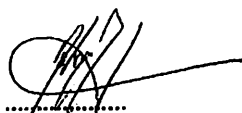
H.E. Jose Maria NEVES
Prime Minister for and on behalf of the
President of the Republic of CAP VERDE

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

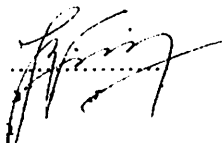
H.E. Prof. Alhaji Yahya JAMMEH
President of the Republic of THE GAMBIA



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 Bernårdo 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. Seini OUMAROU

Prime Minister for and on behalf of the
Republic of Niger



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

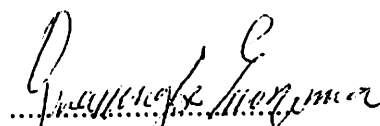


Mr. Abdou Aziz SOW

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