

NOTICE 1485 OF 2002**NOTICE OF AN APPLICATION FOR AN EXEMPTION IN TERMS OF SECTION 10 OF THE COMPETITION ACT, 1998: COMMERCIAL AND CODE SHARING AGREEMENT BETWEEN SOUTH AFRICAN AIRWAYS (PTY) LIMITED AND AIR SENEGAL LIMITED**

An application has been filed with the Competition Commission by South African Airways (Pty) Limited (SAA) and Air Senegal Limited (Air Senegal) for an exemption from certain of the provisions of Chapter 2 of the Competition Act, 1998 (the Act) in respect of a code sharing agreement and a commercial agreement on the South Africa/Senegal/United States route.

The most important features of the agreement between the parties is that it provides for—

- the parties to co-ordinate their activities in respect of the route between South Africa, Senegal and the United States;
- SAA to sell to Air Senegal a number of seats on SAA's aircraft at a discount for Air Senegal to on-sell to customers at whatever price the latter may decide on.

The agreement would, on the face of it, contravene section 4 (1) (b) (ii) of the Act. The Act provides, in section 10 (3) (b), for four grounds on which an exemption application may be granted. A further ground in relating to the exercise of rights acquired in terms of the intellectual property laws of this country is also provided for in section 10 (4). The parties aver that two of these grounds are relevant, namely—

- the maintenance and promotion of exports [section 10 (3) (b) (i)]; and
- a change in productive capacity necessary to stop decline in an industry [section 10 (3) (b) (iii)].

The period for which an exemption has been applied for is two (2) years.

There is no agreement currently in place.

In terms of section 10 (6) of the Act, notice is hereby given of the application for exemption. Interested parties are afforded 30 days (thirty days) from the date of this Notice to make written applications as to why the exemption should not be granted.

Correspondence may be directed to:

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Competition Commission
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In correspondence kindly refer to case number 2002Aug179.

(23 August 2002)
