

NOTICE 689 OF 2006**COMPETITION COMMISSION****NOTICE IN TERMS OF SECTION 10(7) OF THE COMPETITION ACT 89 OF 1998 (AS AMENDED): CONDITIONAL EXEMPTION GRANTED**

Notice was given in the Government Gazette on 11 November 2005 (Government Notice 1237 of 2005) that South African Airways (Pty) Ltd (herein referred to as "SAA") had, in terms of section 10 of the Competition Act, No 89 of 1998, as amended ("Act"), applied to the Competition Commission ("Commission") for an exemption from certain provisions of Chapter 2 of the Act in respect of an agreement governing SAA's joining of the Star Alliance ("the Main Star Alliance Agreement").

The Star Alliance is an alliance between a number of international airlines (18 members) and is one of three of the major Global Airline Alliances. The joining of the alliance would entail SAA signing the Main Star Alliance agreement, which can be described as a co-operation agreement in terms of which airline members integrate their networks and certain of their services in order to provide services similar to those which could be provided for by a single entity while still retaining their own corporate identities.

The most important features of the Main Star Alliance Agreement are that it provides for:

- Route and schedule coordination throughout global route networks on an alliance-wide basis
- Fare prorating on an alliance-wide basis
- Cooperation in marketing, advertising, sales and distribution activities, including travel agent and other commissions and development of joint bids for government and corporate contracts
- Information exchange
- Participation in reciprocal frequent flyer programs
- Participation in the following Joint Star Alliance Products:
 - Round the World Fares
 - Regional Fares
 - Joint Convention Product

o Joint Corporate Agreements

Since member airlines of the Star Alliance are in a horizontal relationship, that is a relationship between firms operating at the same level of a market, the agreement may be in contravention of Section 4(1)(a) and 4(1)(b) of the Competition Act.

The application is based on the premise that **SAA's** membership to the Star Alliance will allow **SAA** to remain competitive in global aviation markets while providing better service to consumers and business in South Africa. The Act, in section 10(3)(b), provides for four grounds on which an exemption application may be granted and **SAA** argued that *two* of these grounds may be 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 Commission has, after consideration of the Main Star Alliance Agreement and investigation of the effects of its operation, concluded that **SAA's** participation in the four joint products of Star Alliance might constitute a form of indirect fixing of prices and/or trading conditions, in contravention of section 4(1)(b) of the Act.

The Commission is satisfied that **SAA**, in joining the Star Alliance and thereby being able to participate in the alliance's four joint products, will be contributing to the objective as set out in section 10(3)(b)(i) of the Act (maintenance or promotion of exports).

Section 10(2)(a) of the Act provides that a conditional exemption may be granted for a specified term.

Notice is hereby given in terms of section 10(7) of the Act that **SAA** has been granted an exemption in terms of section 10(2)(a) of the Act for a period of five years on condition that:

- The exemption is granted on the facts put forward by **SAA**.
- The exemption is only applicable to **SAA's** participation in the four joint products of Star Alliance, being Round-the-World Fare, Regional Passes, Convention Plus and Corporate Plus.
- Any amendment and/or addendums to the Main Star Alliance Agreement, or any other agreement entered into, in as far as it affects the former, must be approved by the Commission before it is effected.
- **SAA** must submit to the Commission on an annual basis a report on the revenue generated from its participation in the four joint products of Star Alliance.

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Notice **is** further hereby given in terms of section 10(8) of the Act, **that SAA**, or any other person with a substantial financial interest affected by the abovementioned decision of the Commission, **may appeal** the decision to the Competition Tribunal in **the** prescribed manner.

Any queries in this regard should **be** directed to: The Manager, Enforcement **and** Exemptions Division, Private Bag X23, Lynnwood Ridge, 0040; or at facsimile 012 **394 4264**, citing case number 2005Apr1552.