

## GENERAL NOTICES ALGEMENE KENNISGEWINGS

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### NOTICE 623 OF 2007

#### 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 29 March 2006 (Government Notice 488 of 2006) that South African Airways (Pty) Ltd ("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 its code share agreement with Qantas Airways Limited ("Qantas") on the routes between South Africa and Australia.

It is important to note that the Commission had exempted this agreement on two previous occasions and SAA was in essence asking the Commission to further grant another exemption. SAA has requested that it be permitted to continue engaging in the following activities:

- ❑ Co-ordinate their activity in respect of the routes between South Africa and Australia, in terms of which SAA is to operate on the route between Johannesburg and Perth, while Qantas will operate on the route between Johannesburg and Sydney.
- ❑ The parties shall acquire blocks of seats, through a hard block seat allocation system, in various classes, on each other's aircraft.

The Commission evaluated the application as a possible contravention of section 4(1) of the Act since SAA and Qantas are in a horizontal relationship.

The application is based on the premise that the agreement is required to obtain the objectives contained in section 10(3)(b)(i) and (iii) of the Act, being the maintenance or promotion of exports and a change in the productive capacity necessary to stop decline in an industry.

The Commission found that the allocation of routes between SAA and Qantas as set out in the agreement constitutes market allocation, in contravention of section 4(1)(b) of the Act.

However, the Commission is satisfied that this code share agreement will contribute to the objectives contained in section 10(3)(b)(i) and (iii) of the Act.

Therefore notice is hereby given in terms of section 10(7) of the Act that SAA has been granted an exemption until 31 December 2007 on condition that

- ❑ The exemption is granted on the basis of the facts put forward by SAA. Should the said facts and circumstances change materially, the Commission should be notified so that the exemption may be re-evaluated in light of the new facts/circumstances. Further any amendment or addendum to this code share agreement shall not be of force and effect until approved by the Commission;
- ❑ The exemption relates to the code share agreement on the direct routes between South Africa and Australia (being Johannesburg / Perth / Sydney and vice versa) only. Any new code share agreement or commercial agreement in so far as it affects the former must be approved by the Commission;
- ❑ SAA and Qantas must price and sell its services on the routes independently;
- ❑ The parties shall not share or pool revenue with each under the code share agreement;
- ❑ Parties must inform all passengers, at the time of ticket reservations, of the carrier actually operating the flight;
- ❑ The approval will only be effective while SAA and Qantas together operate at least ten (10) flights per week. The Commission will allow a reduction from this level, during periods of low demand, provided there was prior notification to the Commission;
- ❑ SAA and Qantas must withdraw from all IATA tariff coordination activities in relation to air fare levels between South Africa and Australia.

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 4263, citing case number 2005Dec2041