

NOTICE 598 OF 2011

Date: 24 August 2011

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

On October 13, 2010, South African Airways ("SAA") applied to the Competition Commission ("the Commission"), in terms of Section 10(1)(a) of the Competition Act No. 89 of 1998, as amended ("the Act"), for an exemption of certain provisions of its Code Share Agreement with Qantas Airways Limited ("Qantas"). In particular, SAA has requested the Commission that it be permitted to engage in the following activities with Qantas:

- ❑ Co-ordinate their activities in respect of the direct routes between South Africa and Australia
- ❑ Divide the market by allocating territories in terms of which SAA is to operate on the route between Johannesburg and Perth, whilst Qantas will operate on the Johannesburg – Sydney sector.
- ❑ Acquire blocks of seats in various classes, on each other's aircrafts, through what is known in the airline industry as the hard block seat allocation system.

Notice is hereby given in terms of Section 10(7) of the Act, that the Commission has, in response to the application, granted SAA conditional exemption for a period of eighteen (18) months, commencing on July 01, 2011 and ending on December 31, 2012. In granting the exemption, the Commission concluded that the Code Share Agreement between SAA and Qantas constitutes a prohibited practice in contravention of Section 4(1)(b)(ii) of the Act. However the exemption was granted on the basis that the Code Share Agreement contributes towards the maintenance and promotion of exports, thus satisfying the objective contained under Section 10(3)(b)(i) of the Act.

Further, with little prospect of direct competition from a new entrant, the Commission concluded that the immediate withdrawal of the Code Share Agreement would result in absolute monopolies on the direct routes between South Africa and Australia. The Code Share Agreement is therefore necessary if SAA and Qantas are to maintain their direct airline services between the two countries. The maintenance or continuous operation of the direct services between the two countries has significantly benefited airline travellers, and also heightened the limited competitive tension that currently exists in the marketplace.

Should SAA or any other person with a substantial financial interest wish to appeal the Commission's decision regarding this exemption, they may do so by lodging a declaration in the prescribed manner to the Competition Tribunal in terms of Section 10(8) of the Act.

The exemption is granted subject to the following conditions:

- 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. Therefore, any amendment or addendum to the Code Share Agreement shall not be of force and effect until approved by the Commission;
- The exemption only relate to the (direct) scheduled passenger airline services provided by SAA and Qantas between South Africa and Australia. It does not extend either to the cargo services between the two airlines or indirect services that may be offered by the airlines between the two countries;
- Any new code share agreement or commercial agreement in so far as it affects SAA must be approved by the Commission;
- SAA and Qantas must price and sell their airline tickets on the routes independently of each other;
- SAA and Qantas shall not share or pool revenue with each other under the Code Share Agreement;
- SAA and Qantas must always inform passengers, at the time of ticket reservations, of the carrier that will actually be operating the flight;
- The exemption will only be applicable while SAA and Qantas together operate a minimum of ten (10) flights per week. Prior notification is required should SAA and Qantas decide to change their flying frequencies; and
- SAA and Qantas must withdraw from all IATA tariff coordination activities in relation to air fare levels between South Africa and Australia.

Further queries in this regard should be directed to:

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Enforcement and Exemptions Division,
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or by facsimile: (012) 394 4263 / (012) 394 4581 or by email: shadrackr@compcom.co.za
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In correspondence kindly refer to the following case number: 2010Oct5399