

NOTICE 843 OF 2012**COMPETITION COMMISSION****APPLICATION FOR AN EXEMPTION**

Notice is hereby given in terms of section 10(6)(a) of the Competition Act, No. 89 of 1998, as amended ("the Act"), that the South African Airways (Pty) Ltd (herein referred to as "SAA"), a state owned company, registered in terms of the Company Act of 1973, has applied to the Competition Commission ("the Commission"), in terms of section 10(1) of the Act, to be exempted from certain provisions of Chapter 2 of the Act. SAA is active in the business of providing passenger and cargo air transportation services in South Africa, the African region and internationally.

The subject matter of the application is a code share agreement between SAA and Qantas Airways Limited ("Qantas") on the South African / Australian routes.

It should be noted that the Commission had previously exempted this agreement and SAA is in essence asking it to again consider granting another exemption.

In particular, SAA has requested the Commission that it be permitted to engage in the following activities:

- ❑ Co-ordinate its activities with Qantas in respect of the two airlines routes between South Africa and Australia.
- ❑ Allocate the market in terms of which SAA will operate on the route between Johannesburg and Perth, while Qantas will operate the Johannesburg – Sydney route.
- ❑ Acquire blocks of seats, in various classes, on the each other's aircraft.

SAA and Qantas are in a horizontal relationship, being a relationship between competitors. Previous exemptions granted by the Commission concluded that this code share

agreement constitutes a prohibited practice in that it involves the division of the market by allocating territories, a contravention of section 4(1)(b)(ii) of the Act.

Section 10(3)(b) of the Act provides for four grounds on which the exemption may be granted. SAA avers in its application that the code share agreement is required for:

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

SAA seeks this exemption for a period of three (3) years, commencing on 01 January 2013 and ending on 31 December 2015.

The Notice is hereby given in terms of section 10(6)(b) of the Act to allow interested parties 20 business days from the date of the publication to make written representations to the Commission as to why the exemption should not be granted.

Such representations must be directed to either Mr Tshegofatso Radinku or Shadrack Rambau or Myra Craven to the following electronic mailing addresses, TshegofatsoR@compcom.co.za, ShadrackR@compcom.co.za, MyraC@compcom.co.za, respectively.

In correspondence kindly refer to the following Case No: 2012Sep0519