

**NOTICE 127 OF 2013**

Date: 14 February 2013

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

On 19 October 2012, the Competition Commission (“the Commission”) published a notice in the Government Gazette, No. 35790, Notice 843 of 2012, that the South African Airways (Pty) Ltd (“SAA”) had applied for an exemption from certain provisions of Chapter 2 of the Competition Act, No. 89 of 1998, as amended (“the Act”). SAA’s application was in respect of the Code Share Agreement (“CSA”) concluded by SAA and Qantas Airways Limited (“Qantas”) on the two direct airline routes between South Africa and Australia. The exemption was sought for a period of three years, commencing 01 January 2013 and ending 31 December 2015.

It should be noted that the Commission had exempted the CSA on five previous occasions since the year 2000. SAA is in essence requesting the Commission to grant it another exemption. In particular, SAA had requested the Commission that it be permitted to continue engaging in the following activities:

- Co-ordinate its commercial passenger airline service with Qantas in respect of the two direct airline routes between South Africa and Australia;
- Allocate the South African – Australian sector in terms of which SAA will operate on the route between Johannesburg and Perth, whilst Qantas will service the Johannesburg – Sydney route;
- Acquire blocks of seats, in various classes, on each other’s aircrafts.

The Commission concluded that the CSA has indeed divided the South African – Australian airline sector by allocating territories in contravention of section 4(1)(b)(ii) of the Act. The Commission is however satisfied that the CSA contributes to the maintenance or promotion of South African’s exports i.e. both tradable and non-tradable exports such as international tourism, thus satisfying the objective contained in section 10(3)(b)(i) of the Act. The daily services operated by SAA and Qantas between South Africa and Australia

under the CSA play a pivotal role in stimulating Australian travellers to visit South Africa and ultimately spend on the country's goods and services.

Furthermore the Commission concluded that the growth in passenger demand, particularly on the route between Johannesburg and Perth, may not yet be sufficient for SAA to be able to maintain its daily service in the absence of the CSA. The Commission found that the immediate withdrawal of the CSA could force SAA to reduce its weekly flying frequencies, which would reduce the choice of travel times to the detriment of travellers.

The Commission hereby gives another notice of its decision to grant SAA conditional exemption for a period of two (2) years, backdated to **01 January 2013** and ending on **31 December 2014**. The conditions have been designed to minimise the anti-competitive effects resulting from the CSA.

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 is re-evaluated in light of the new facts/circumstances. Any amendment or addendum to the CSA shall not be of force and effect until approved by the Commission;
- The exemption relates to scheduled passenger airline services operated by SAA and Qantas between South Africa and Australia, and does not extend to cargo or freight services;
- The exemption relates to the CSA between SAA and Qantas on the two direct airline routes between South Africa and Australia, being the Johannesburg – Perth route and the Johannesburg – Sydney route. The exemption does not extend to other routes operated by the code share partners;
- Any new CSA 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 CSA;

- SAA and Qantas must inform all passengers, at the time of ticket reservations, of the carrier actually operating the flight;
- The exemption will only be applicable while SAA and Qantas together operate a combined service of at least ten (10) flights per week. Prior notification is required should the code share partners decide to decrease their flying frequencies below the aforesaid minimum level.
- SAA and Qantas must withdraw from all IATA tariff coordination activities in relation to air fare levels between South Africa and Australia;
- SAA must submit quarterly reports to the Commission on the extent to which it has managed to comply with the aforesaid set of conditions. Each quarterly report must be accompanied by relevant evidence proving that these conditions were indeed met during the quarter under review.

In terms of section 10(8) of the Act, the firm concerned or any other person with substantial financial interest affected by the decision of the Commission may appeal the decision to the Competition Tribunal in the prescribed manner.

Further queries should be directed to:

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**In correspondence kindly refer to the following case number: 2012Sep0519**