

NOTICE 1089 OF 2014

Date: 17 November 2014

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

1. On 05 November 2013, the South African Airways (SOC) Limited ("**SAA**") and Etihad Airways PJSC ("**Etihad**"), applied to the Competition Commission ("**the Commission**"), in terms of Section 10(1)(b) of the Competition Act, No.89 of 1998, as amended ("**the Act**"), to be exempted from certain provisions of Chapter 2 of the Act.
2. The exemption application follows the intention of the parties to form an alliance, which incorporates, amongst others, (1) what is referred to in the airline industry as a "**free-sale codeshare agreement**" and (2) a commercial co-operation agreement which governs their commercial relationship. The exemption was sought for a period of five (5), and was based on the premise that the free-sale codeshare agreement is required to obtain the objectives contained in sub-section 10(3)(b)(i) & (iii) of the Act, being the maintenance or promotion of exports.
3. Notice is hereby given in terms of Section 10(7) of the Act that the Commission has, in response to the aforesaid application, granted SAA and Etihad conditional exemption for a period of **five (5) years**, commencing **immediately and ending on 31 December 2019**.
4. The agreements and/or practices which have been exempted contravene Sections 4(1)(b)(i) and 4(1)(b)(ii) of the Act. However the Commission is satisfied that these agreements and/or practices will contribute towards maintaining or promoting exports on the routes considered, and thus meeting the objective set out in Section 10(3)(b)(iv) of the Act.
5. It should be noted that SAA and Etihad or any other person with substantial financial interest affected by this decision may appeal it to the Competition Tribunal in terms of Section 10(8) of the Act.

6. The exemption has been granted subject to the following conditions:

Preamble

- (i) The conditions below only apply to the proposed scope of the alliance as specified in the exemption application and for the duration of the exemption applied for and granted by the Commission. The proposed scope of the alliance in the exemption application by SAA and Etihad involves a Memorandum of Understanding which allows the two airlines to introduce a range of co-operation and code share agreements as well as other interline air services. The proposed scope of the alliance shall cover flights with SAA code on Etihad's operations from Johannesburg to Abu Dhabi and beyond to points in the Middle East, Asia, Australasia and Europe. Further, the proposed scope of the alliance shall also initially cover flights with Etihad code on SAA's operations from Abu Dhabi to Johannesburg and beyond to points in Africa and South America. Should any additional beyond points be added, SAA and Etihad agree to notify the Commission in writing of any such changes.
- (ii) The exemption granted by the Commission to SAA and Etihad shall only be applicable subject to approvals from any applicable authorities in the state of the United Arab Emirates (UAE).

List of conditions

1. *The exemption is granted on the basis of the facts and the existing agreements and practices described by SAA and Etihad in their exemption application. Should the facts and existing agreements and practices as described in the application change materially, the Commission should be notified and approval required of such change. Any new agreement which affects the agreements and practices described in the exemption application, or any amendment or addendum to the agreements contained in the exemption application shall not be of force or effect until approved by the Commission.*
2. *The exemption applied for and granted by the Commission relates to scheduled passenger airline services by SAA and Etihad on the routes as identified in the*

Preamble above. The exemption granted by the Commission does not in any form extend to the export or import cargo or freight carried by the two airlines in the belly of their aircrafts, or any cargo or freight airline services that SAA and Etihad might be operating on the primary route between Johannesburg and Abu Dhabi.

3. *For the duration of the exemption, SAA and Etihad must always inform their passengers, at the time of ticket reservations, of the carrier actually operating the flight on each flight leg of their journeys.*
4. *The exemption granted by the Commission shall only be applicable if SAA and Etihad together operate at least a minimum of seven (7) flying frequencies per week. Should SAA and Etihad decide for any reason to reduce their weekly flying frequencies below the stipulated minimum level, the Commission should be notified and consent will be required from the Commission for such a change, which consent shall not be unnecessarily withheld or delayed.*
5. *For the duration of the exemption, the average economy class airfare charged jointly by SAA and Etihad through the code share agreement on the primary route between Johannesburg and Abu Dhabi should reflect the airfares charged by airlines on other comparable routes in terms of the travel distance (kilometres and/or flying hours), the type of aircrafts used as well as the airport tariffs charged in that particular airport ("**the Comparable Route**").*
 - 5.1. *Having agreed the Comparable Route, should the average public economy class airfare charged jointly by SAA and Etihad on the primary route between Johannesburg and Abu Dhabi be found to be at significantly higher as compared to the Comparable Route, the code share partners would be required by no later than the date stipulated by the Commission to furnish their justifications for such price levels; and*
 - 5.2. *For the duration of the exemption, SAA and Etihad must jointly submit a report of the average public economy class airfare that they jointly charge on the primary route between Johannesburg and Abu Dhabi. Reporting of such nature should occur on a quarterly basis (due at the end of one quarter after the first day of achieving a minimum of seven (7) flying frequencies per week (or such minimum as agreed with the Commission)) and should be based on average economy class airfare year to date from the beginning of the quarter.*

6. *For the duration of the exemption, SAA and Etihad must comply in all material respects with all statutes, regulations and policies which have the force of law in the airline industry in the Republic of South Africa. These include but not limited to all regulations by regulatory bodies such as the Department of Transport (DOT), the South African Civil Aviation Authority (SACAA) and the Airport Company of South Africa (ACSA).*
7. *For the duration of the exemption, SAA and Etihad must jointly submit an annual report to the Commission that includes, but is not limited to passenger and export figures on the trunk route, as well as the extent to which both parties have complied with the set of conditions listed above.*

Further queries should be directed to either:

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In correspondence kindly refer to the following case number: 2013Nov0578