

**NOTICE 99 OF 2015****NOTICE IN TERMS OF SECTION 10(6) OF THE COMPETITION ACT NO. 89 OF 1998****(AS AMENDED)****COMPETITION COMMISSION****APPLICATION FOR AN EXEMPTION**

1. Notice is hereby given in terms of section 10(6)(a) of the Competition Act, No 89 of 1998, as amended ("the Act") that Air Berlin PLC & Co. Luftverkehrs KG ("Air Berlin") and Etihad Airways PJSC ("Etihad"), have 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. Both Air Berlin and Etihad operate in the air travel industry and provide passenger and cargo air transportation services internationally. They submit this exemption application as joint applicants hereinafter referred to as (the "applicants").
2. Both Air Berlin, a foreign entity of Germany and Etihad, a foreign entity of the United Arab Emirates ("UAE"), will under the proposed alliance with each other (as detailed below), operate activities that hold effect in the Republic of South Africa. Section 3(1) of the Act stipulates that the Act "applies to all economic activity within, or having effect within the Republic", and as such covers conduct that the applicants seek an exemption for.
3. The subject matter of the application is an alliance between Air Berlin and Etihad, incorporating a codeshare agreement which will cover routes between Germany, Austria, Switzerland and the Middle East and South Africa<sup>1</sup>, a commercial co-operation agreement, a commercial representation agreement and a prorate agreement which will govern the commercial relationship between the applicants.
4. The scope of the alliance will cover flights with Etihad's code on Air Berlin operations from points in Germany, Austria and Switzerland on the one hand and Air Berlin's code on Etihad from points in UAE, as well as beyond and across each other's

<sup>1</sup> The applicants currently offer services to Johannesburg in terms of the codeshare agreement. They intend to expand their services to include flights from Germany to other destinations within South Africa.

networks, limited only by bilateral constraints. Air Berlin will enter the market for the supply of passenger airline travel services as well as belly freight services from Germany and the Middle East to South Africa. The cooperation will enhance Etihad's presence in the Middle East and Europe.

5. Specifically, the applicants have requested from the Commission that they be exempt from the following activities as shall arise from the alliance:

*5.1 Reciprocal, preferred and enhanced fare proration on shared services;*

- o The alliance will enable the applicants to align their airfares, and eliminate the costs resultant of double marginalization as would otherwise occur without the exemption. Double marginalization essentially involves each carrier applying its own mark-ups to prices.

*5.2 Joint pricing and schedule co-ordination on shared routes*

- o The alliance will involve the applicants' collaboration on their pricing for the trunk routes and associated routes. Joint pricing will result in more competitive fares as a result of the reduction in double marginalisation which would result if each carrier was pricing independently from each other. The gains for the airlines would also be by way of lower average costs owing to higher load factors.

*5.3 Joint route and schedule co-ordination*

- o The alliance will enable Air Berlin to offer services to South Africa through connections from Abu Dhabi (on flights operated by Etihad). In doing so, stimulating competition with the current carriers that operate in South Africa providing a cost-effective schedule to ensure greater frequencies and expanded operations between the trunk routes. The greater frequencies will contribute to airline sustainability and competitiveness against larger (and often dominant) competitors such as Lufthansa AG, SAA, Qatar, Emirates creating an additional choice for travel from points

in Germany to South Africa. The coordination will possibly expand the presence of the applicants in markets where they currently face limited exposure, and improve aircraft utilization, resource allocation and connectivity to beyond markets which will benefit consumers.

*5.4 Joint dealing, joint marketing, distribution, sales representation and co-operation including travel agency and corporate account dealing arrangements; and*

- o Further cooperation between the applicants on marketing, distribution and ticket sales will also promote alliance specific efficiencies and cost reductions. The elimination of duplication of the roles by the airlines results in cost savings which ultimately filter through to passengers. The applicants will also collaborate on offering joint fares to sales channels, including travel agents and corporate customers.

*5.5 Sharing of competitively sensitive information*

- o In order to facilitate the co-ordination on capacity and scheduling, joint pricing and marketing between the applicants, it may become necessary for the applicants to share competitively sensitive information.

6. The applicants are competitors or potential competitors in the passenger airline market/s. Accordingly, the above conduct may constitute prohibited practices in contravention of sections 4(1)(a), 4(1)(b) (i) and 4(1)(b)(ii) of the Act.
7. The applicants submit that their alliance is necessary and required for:
  - a. The maintenance or promotion of exports (section 10(3)(b)(i) of the Act); and\ or
  - b. A change in productive capacity necessary to stop decline in an industry (section 10(3)(b)(iii) of the Act).
8. The applicants seek the exemption for a minimum period of five (5) years, starting from the date of the approval of the application by the Commission.

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

Such representations must be directed to either Mr Itumeleng Lesofe or Ms Noluthando Jokazi on the following electronic addresses, [ItumelengL@compcom.co.za](mailto:ItumelengL@compcom.co.za), [NoluthandoJ@compcom.co.za](mailto:NoluthandoJ@compcom.co.za), respectively.

In correspondence kindly refer to the following Case No: **2014OCT0544**