

ECONOMIC DEVELOPMENT DEPARTMENT
NOTICE 704 OF 2015

Date: 27 August 2015

COMPETITION COMMISSION

NOTICE IN TERMS OF SECTION 10(7) OF THE COMPETITION ACT 89 OF 1998 (AS
AMENDED): ETIHAD & AIR BERLIN GRANTED CONDITIONAL EXEMPTION

1. On 07 October 2014, Air Berlin PLC & Co. Luftverkehrs KG ("**Air Berlin**") 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 concerned the parties' intention to extend their existing free sale codesharing arrangement to cover joint practices/agreements which contravene the Act. The Exemption was sought for a period of five (5) years, 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 and change in productive capacity necessary to stop a decline in an industry.
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 Air Berlin and Etihad conditional exemption for a period of **five (5) years**, commencing **immediately and ending on 31 August 2020**.
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)(i) of the Act.

5. It should be noted that Air Berlin and Etihad or any other person with substantial financial interest affected by the conditional granting of the Exemption may appeal the decision 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 joint Exemption Application and for the duration of the Exemption applied for and granted by the Competition Commission ("the Commission");*
- (ii) *The proposed scope of the alliance in the joint Exemption Application by Air Berlin PLC & Co. Luftverkehrs KG ("Air Berlin") and Etihad Airways PJSC ("Etihad") involves certain agreements which allows the two airlines to co-operate on joint commercial activities relating to scheduled passenger flights on a free-sale codesharing basis;*
- (iii) *The proposed scope of the alliance shall cover indirect flights between Germany and South Africa, with Abu Dhabi being a connecting hub, and beyond to points in Middle East, Switzerland and Austria. Further, the proposed scope of the alliance shall allow Etihad and Air Berlin to, amongst other things, jointly price and schedule their codeshare activities in both directions between various German cities (i.e. Hamburg, Berlin, Frankfurt, Munich, Nuremberg, Stuttgart and Dusseldorf) and South African cities (Johannesburg, Cape Town and Durban);*
- (iv) *Etihad and Air Berlin agree to notify the Commission in writing of any material changes to their proposed joint codeshare services or activities between Germany and South Africa (both directions);*
- (v) *The Commission has noted the common involvement of Etihad in both the Etihad-SAA exempted co-operation agreement and the proposed Etihad-Air Berlin proposed alliance;*
- (vi) *The Exemption granted herein to Etihad and Air Berlin shall only be applicable to alliance matters falling within the jurisdiction of the Commission.*

LIST OF CONDITIONS

1. *The Exemption is granted on the basis of the facts and the existing agreements and practices described by Etihad and Air Berlin in their joint Exemption Application. Should the facts and existing relevant agreements and practices as described in the application change materially, the Commission must be notified in writing and such a change can only be implemented after the Commission's written approval. Any new arrangement which affects the suite of agreements and practices described in the joint Exemption Application, or any amendment or addendum to the agreements contained in the joint 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 offered by Etihad and Air Berlin on the routes as identified in the Preamble above.*
3. *For the duration of the Exemption, Etihad and Air Berlin must always inform their passengers at the time of ticketing, of the carrier actually operating the flight on each sector of their journeys.*
4. *For the duration of the Exemption, Etihad and Air Berlin shall only sell tickets in line with the applicable country to country Air Services Agreements.*
5. *The Exemption granted by the Commission shall only be applicable if Etihad and Air Berlin together operate at least a minimum of seven (7) flying frequencies per week on the Germany to Johannesburg primary route. Should Etihad and Air Berlin decide for any reason to reduce their weekly flying frequencies below the stipulated minimum level, the Commission must be notified and written consent will be required from the Commission for such a change, which consent shall not be unnecessarily withheld or delayed.*
6. *For the duration of the Exemption, Etihad and Air Berlin must comply in all material respects with all statutes, rules, 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 and to prevent possible sharing of competitively sensitive information, discussions between Etihad and Air Berlin in the context of the Exemption will not be disclosed to other airlines.*
8. *For the duration of the Exemption, Etihad and Air Berlin must jointly submit an annual report to the Commission detailing the extent to which they 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: 2014Oct0544