

ECONOMIC DEVELOPMENT DEPARTMENT

NO. 425

15 APRIL 2016

COMPETITION COMMISSION

NOTICE IN TERMS OF SECTION 10(7) OF THE COMPETITION ACT NO. 89 OF 1998, AS AMENDED – REFUSAL OF ETIHAD AND ALITALIA EXEMPTION APPLICATION

1. On 21 May 2015, Etihad Airways PJSC ("Etihad") and Alitalia Societa Aerea Italiana S.p.A ("Alitalia") applied to the Competition Commission ("the Commission") to be exempted from certain provisions of Chapter 2 of the Act in terms of section 10(1)(b) of the Competition Act, No.89 of 1998, as amended ("the Act").
2. The exemption application concerned the parties' intention to enter into various agreements, including a Commercial Co-operation Agreement, in terms of which the parties would freely cooperate on, *inter alia*, joint pricing, joint route and services schedule coordination, as well as the sharing of commercially sensitive information such as that for passenger bookings/itineraries, frequent flyer programs, fare and fare rules, which is in contravention of the Act.
3. The exemption was sought for a period of five (5) years and was based on the premise that, if approved, the agreements forming the basis of the exemption application would satisfy the objectives contained in sub-section 10(3)(b)(i) and (iii) of the Act in that the proposed arrangement would contribute to (i) the maintenance or promotion of exports; and (ii) change in the productive capacity necessary to stop a decline in an industry; respectively.
4. In terms of section 10(7) of the Act, notice is hereby given of the Commission's refusal to grant Etihad and Alitalia an exemption in respect of their application filed with the Commission on 21 May 2015.
5. The agreements and/or practices which the parties seek to be exempt amount contraventions in terms of section 4(1)(b)(i) and 4(1)(b)(ii) of the Act. However, the Commission is not satisfied that such agreements and/or practices will contribute towards meeting the objectives as set out in section 10(3)(b)(i) and (iii) of the Act.
6. It should be noted that the parties or any other person with a substantial financial interest affected by the refusal of the exemption may appeal this decision to the Competition Tribunal in the prescribed manner.
7. Such representations must also be directed to either Selelo Ramohlola on SeleloR@compcom.co.za or Marlon Dasarath on MarlonD@compcom.co.za. Kindly refer to the following Case No: **2015MAY0262** in any correspondence.