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## GENERAL NOTICE

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### NOTICE 408 OF 2001

#### NOTICE OF OUTCOME OF AN APPLICATION FOR AN EXEMPTION IN TERMS OF SECTION 10 OF THE COMPETITION ACT 1998: CODE SHARING AGREEMENT BETWEEN SOUTH AFRICAN AIRWAYS (PTY) LIMITED AND QANTAS AIRWAYS LIMITED

An application was filed with the Competition Commission by South African Airways (Pty) Limited (SAA) and Qantas Airways Limited (Qantas) for an exemption from certain of the provisions of Chapter 2 of the Competition Act 1998 (the Act) in respect of a code sharing agreement and a commercial agreement on the South Africa/Australia route.

The most important feature of the agreement between the parties is that it provides for:

- ❑ The parties to co-ordinate their activities in respect of the route between South Africa and Australia. SAA is to operate between Johannesburg and Perth, while Qantas is to operate between Johannesburg and Sydney.
- ❑ The parties shall purchase a fixed percentage of the seat capacity on the other's aircraft.

The agreement would, on the face of it, contravene sections 4(1)(b)(ii) of the Act. The Act provides, in section 10(3)(b), for four grounds (objectives) on which an exemption application may be based. A further objective in respect of the protection of rights acquired in terms of the intellectual property laws of this country is also provided for in section 10(4). The parties averred that two of these objectives are relevant, namely

- ❑ The maintenance or promotion of exports [section 10(3)(b)(i)]; and
- ❑ A change in productive capacity necessary to stop decline in an industry [section 10(3)(b)(iii)].

The Commission has approved the exemption for a period of eighteen months, from 1 January 2001 until 30 June 2002. It has concurred with the parties that the exemption is required to obtain the objective of the maintenance or promotion of exports.

It has, however, made the exemption subject to a number of conditions. These are set out below:

- ❑ The exemption is granted on the facts put forward by the applicant;
- ❑ During the period of the exemption, both parties to the agreements must independently of one another, submit quarterly reports, detailing the following:
  - The actual highest and lowest fare charged over the period for all classes;
  - Number of code share seats sold by each party on the other's services; and

- The volumes of cargo, rates charged for cargo, and the revenue derived from cargo as well as any increase and/or decrease in the said volumes, rates and revenue.
- The parties to the agreements shall not share or pool revenues with each other under the code share or commercial agreements.
- The parties to the agreements must each independently establish and determine their own tariffs and fares on the code share flights, and market these flights separately.
- The parties to the agreements must show how exports have been promoted or maintained in terms of both seat and cargo volumes during the period for which the exemption has been granted, before any new agreement or extension of the existing agreement will be considered by the Commission.
- Any amendment to the agreement shall not be of force and effect until approved by the Commission.
- Parties must add a clause to their agreements stating that the agreements are subject to the above-mentioned conditions, and in so far as there is a conflict between any term of the agreement between the parties on the one hand and these conditions on the other hand, the conditions shall prevail.
- Nothing in this exemption shall preclude the Competition Commission from initiating action against any party for implementing the various agreements prior to the issue of the exemption.

Section 10(8) of the Act provides that the applicant, or any other person with a substantial financial interest affected by this decision may appeal that decision to the Competition Tribunal in the prescribed manner (by filing form CT7). Such persons are invited to visit the Tribunal's website at [www.comptrib.co.za](http://www.comptrib.co.za) for details. Alternatively they may contact the Tribunal at Private Bag X23, LYNNWOOD RIDGE, 0040 (telephone 012 482 9200, facsimile 012 482 9201, email [ctsa@comptrib.co.za](mailto:ctsa@comptrib.co.za)).

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