

# Liquidated airline claiming R155m from SAA

SAA has been served with a summons from liquidated Nationwide Airlines claiming more than R155m in damages because of the alleged abuse of the national carrier's dominant position by it inducing travel agents not to sell domestic air tickets for SAA's competitors.



This is the second damages claim by Nationwide after SAA was found guilty of anticompetitive conduct by the Competition Tribunal. The airlines settled for an undisclosed amount outside court in the first case, covering the period from 1999 to 2001, said Lucinda Verster, a partner at legal firm Bowman Gilfillan, representing Nationwide.

Ms Verster said that as a result of SAA's wrongful conduct, Nationwide had suffered damages amounting to R118,4m, but Nationwide was also entitled to claim interest for all the damages incurred at a rate of 15,5% a year.

To date, the total damages suffered including interest amounted to R155m. Interest would accrue until the final payment, Ms Verster said.

In reaction, SAA said it "intends to enter into a defence".

SAA recently agreed to pay a R18,8m administrative penalty to settle its involvement in a pricefixing arrangement on the Far East route. It had already paid millions in settlement agreements with the Competition Commission after it was found to have contravened the Competition Act relating to complaints by Nationwide and Comair.

Comair is also seeking damages against SAA for hundreds of millions of rand in two separate claims before the high court. Shawn van der Meulen, a senior associate of Webber Wentzel, representing Comair, said the first claim related to an action brought by Comair and Nationwide in 2006 after the tribunal found that SAA had abused its dominant position in the domestic air travel market by offering incentive payments to travel agents between 1999 and 2001.

Nationwide, which had been placed under final liquidation in 2008, settled its damages claim outside court for an undisclosed amount. Comair's claim for this period was still pending, Mr van der Meulen said.

Nationwide and Comair's second, separate claims related to similar incentive schemes, this time covering the period 2001-

05. The tribunal, after hearing evidence in a consolidated case against SAA, found it guilty of contravening the act. SAA appealed against the decision, but this was dismissed by the Competition Appeal Court last year.

Nationwide said in its particulars of claim that the tribunal found that SAA, through its incentive and trust schemes, sought to "immunise" against competition its fares distributed through the travel agents, and to extend its market power in that segment of the market (the sale of tickets through travel agents).

SAA had at least 45% of the market for the purchasing of travel agent services for the sale of domestic airline tickets, and also the market for domestic scheduled airline transportation in SA at the time.

According to Nationwide's papers, travel agents were then the "single most important route" to the market, distributing about 70% of all domestic airline tickets, worth about R3,3bn.

This inducement closed off SAA's rivals from the domestic airline market. Rivals could not match the financial incentives offered by SAA, the tribunal found.

*Source: Business Day*

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