

Competition Commission won't probe SAA

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The Competition Commission says it does not have any evidence that the Treasury's R5bn guarantee for South African Airways (SAA) amounts to anti-competitive conduct, and has decided not to investigate its distorting effect on the aviation industry



The airline industry is facing enormous pressures, which could lead to the development of a new regulatory environment. Several low-cost carriers have gone under in recent years and months while SAA has been propped up by taxpayers.

The Democratic Alliance (DA) asked the Competition Commission in August to probe unfair competition and anti-competitive behaviour by state carriers following the R5bn lifeline.

The commission's head of advocacy and stakeholder relations, Trudi Makhaya, said on Sunday (11 November 2012) that the DA's request would be turned down as the Competition Act did not have "state aid provisions" similar to those of the European Union (EU). The European Commission directorate-general for competition could investigate how government subsidies of companies affected competition in the region.

"In the EU that (state subsidies) is important because the aim of competition policy is to unify the market, and if some governments are sponsoring their companies at the expense of foreign companies, integration will not happen," Makhaya said.

Questions raised about the effect of the R5bn lifeline to SAA on competition were an issue, but this was not something that could be addressed through South Africa's competition law, she said.

However, the Competition Commission was planning "advocacy research" into the aviation market to help decision makers understand how policy changes could increase competition.

The Department of Transport had policies on the way that the airline industry should be run, and this was where "something could be done", Makhaya said.

The DA alleged that SAA was engaged in predatory pricing which was destroying the airline industry at the expense of taxpayers and consumers.

"Given that 10 out of 11 private airlines launched since 1991 have had to shut down, whilst SAA soldiers on despite recording persistent losses, the DA firmly believes that the state-backed carrier is in contravention of the Competition Act," said DA public enterprises spokeswoman Natasha Michael.

"The bottom line is that domestic airlines simply cannot compete fairly with their state-funded counterparts."

Makhaya maintained that there was not enough evidence to initiate an investigation, and said the DA's suggestion that the commission should search SAA's premises for evidence of anti-competitive behaviour was not sufficient reason to ask the courts for a search warrant.

"If we do not have evidence, it does not mean we have the right to raid a company. You still need to have a reasonable suspicion why you want to raid a company to get a search warrant, and in this case we just do not have that."

Comair's chief executive Erik Venter said the recent demise of 1time was evidence enough of unfair competition.

"Just in terms of the pricing they (SAA subsidiary Mango) put into the market, everyone had to price down to that level to stay competitive, despite the fares being economically unviable," Venter said.

Makhaya said that if SAA was using its state funding to engage in predatory pricing through low-cost carrier Mango, that would constitute conduct that could be prosecuted.

"We do not have any evidence that the subsidy is used to engage in anti-competitive conduct, and Public Enterprises has denied that the subsidy is used to prop up Mango," she said.

Mango's chief executive Nico Bezuidenhout said the wholly owned subsidiary of SAA had made losses of R132m since its inception in 2006 and that it had only received a once-off capitalisation of R300m from its parent company.

He said Mango's losses had to be seen in the context of a global economic crisis and rising fuel costs which have hit airlines throughout the world and seen many of them fold.

Bezuidenhout rejected the allegation that fares were economically unviable and said Mango was the most efficient low-cost carrier in South Africa, which was the explanation for its success - rather than the fact that it was owned by the state.

"Allegations are made that we are breaching the law, circumventing the Competition Act, and insinuations have been made that the company has lost R500m - all of which are designed to cause commercial harm," he said.

Venter insisted that Mango benefited unfairly from cross-subsidisation by SAA in various forms - for example, preferential terms of its aircraft leases and a relationship with SAA's maintenance arm, SAA Technical.

Bezuidenhout said that all these relationships had been submitted to the Competition Commission for an opinion and had been approved.

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