



competitiontribunal

SOUTH AFRICA

Notice CT 7

About this Form

This form is issued in terms of the Competition Tribunal Rules, to be used for filing an appeal in terms of Tribunal Rule 38.

Please attach to this notice a typed document, which must comply with the requirements of Competition Tribunal Rule 38(3), setting out the grounds for your appeal.

Contacting the Tribunal

The Competition Tribunal
Private Bag X24
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0132
Republic of South Africa
tel: 27 12 394 3300
e-mail: ctsa@comptrib.co.za

Notice of Appeal

Date: 28 February 2025

To: The registrar, Competition Tribunal

From:

The Commercial Producers Association of South Africa NPC;
and
The Association for Communication and Advertising NPC

Concerning:

(Name and Commission file number:)
Exemption Application granted to the South African Guild of Actors NPC and the Personal Managers Association NPC under Commission case number: 2022OCT0030

(Date of Commission decision being appealed:)
Published in Government Gazette on 31 January 2025

Take notice that we appeal from the decision of the Competition Commission, to the Competition Tribunal in terms of the Competition Act :

- | | |
|---|---|
| <input type="checkbox"/> section 10(2) | <input type="checkbox"/> section 10(4A) |
| <input checked="" type="checkbox"/> section 10(5) | <input type="checkbox"/> Item 8 of Schedule 1 |

The decision being appealed, the grounds for appeal, and the facts and contentions on which we rely, are set out on the attached sheet.

Name and Title of person authorised to sign:

Jac Marais, Partner of Adams & Adams

Authorised Signature:


_____ P.P

Date:

28 February 2025

For Office Use Only:

Tribunal file number: _____

Date filed: _____

**IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA
HELD IN PRETORIA**

CASE NUMBER:

CC CASE NO: 2022OCT0030

In the matter between:

THE COMMERCIAL PRODUCERS ASSOCIATION OF SOUTH AFRICA NPC 1st Appellant

THE ASSOCIATION FOR COMMUNICATION AND ADVERTISING NPC 2nd Appellant

and

THE COMPETITION COMMISSION OF SOUTH AFRICA 1st Respondent

THE SOUTH AFRICAN GUILD OF ACTORS NPC 2nd Respondent

THE PERSONAL MANAGERS ASSOCIATION NPC 3rd Respondent

**NOTICE OF APPEAL IN TERMS OF SECTION 10(8) OF THE COMPETITION ACT
89 OF 1998**

TAKE NOTICE THAT the 1st and 2nd Appellants (collectively referred to as “the Appellants”) note an appeal in terms of section 10(8) of the Competition Act 89 of 1998 (“**the Act**”), read with rule 38 of the Rules for the Conduct of Proceedings in the Competition Tribunal (“**the Rules**”), against the decision of the Competition Commission, published in terms of section 10(7) of the Act in the Government Gazette

No. 52013 on 31 January 2025, granting an exemption submitted by the 2nd and 3rd Respondents to the 1st Respondent in terms of section 10(1) of the Act.

TAKE NOTICE FURTHER that the grounds of appeal, and a summary of the facts and contentions relied upon, are set out below:

1. On 17 October 2022, the 2nd and 3rd Respondents submitted an exemption application to the Commission in terms of section 10(1) of the Act. The application sought exemptions allowing the 2nd and 3rd Respondents and its members to engage collectively in respect of the following practices / agreements for a period of five (5) years:

1.1. To collectively coordinate, communicate and exchange information to design guideline rate cards with minimum rates for Performers as related to the skill and experience of a Performer when they provide intellectual property services in the entertainment industry;

1.2. To collectively coordinate, negotiate and conclude collective agreements as relating to trading conditions in industry standard agreements with Production Houses, Broadcasters, Studios, Advertisers, or Private companies;

1.3. To collectively negotiate and implement standardised trading terms in in the industry standard contracts between Performers and Production Houses, Broadcasters, Studios, Advertisers or Private companies); and

- 1.4. To pool resources in order to achieve all of the above to benefit Performers whilst still maintaining the individual brands of the Applicants.
2. The 2nd and 3rd Respondents submitted that the objectives which the exemption would contribute to are those set out in –
 - 2.1. section 10(3)(b)(ii) of the Act, namely promotion of the effective entry into, participation in or expansion within a market by small and medium businesses, or firms controlled or owned by historically disadvantaged persons; and
 - 2.2. section 10(3)(b)(v) of the Act, namely competitiveness and efficiency gains that would promote the expansion of the entertainment industry.
3. The 2nd and 3rd Respondents submitted that the conduct may constitute a prohibited practice in terms of section 4(1)(a), 4(1)(b)(i) and section 5(1) of the Act, in that, its members are competitors or potential competitors in the market for the provision of intellectual property services in the entertainment industry. In addition, the agents and performers are in a vertical relationship with production houses, broadcasters, studios, advertisers and/or private organisations.
4. The 1st Respondent alleges that its assessment revealed that:-
 - 4.1. The conduct of the 2nd and 3rd Respondents, their members and other market participants may result in contraventions of section 4(1)(a) and/or section 4(1)(b)(i), and alternatively section 5(1) of the Act.

4.2. The exemption if granted, may achieve the objectives of Section 10(3)(b)(ii) and 10(3)(b)(v) of the Act.

5. The Appellants appeal the decision on the basis that the Commission –

5.1. erred in finding that the exemption, if granted, may achieve the objectives of Section 10(3)(b)(ii), namely that the agreement and practice concerned, or category of agreements or practices concerned, contributes to the promotion of the effective entry into, participation in or expansion within a market by small and medium businesses, or firms controlled or owned by historically disadvantaged persons;

5.2. erred in finding that the exemption, if granted, may achieve the objectives of Section 10(3)(b)(v), namely that the agreement or practice concerned, or category of agreements or practices concerned, contributes to competitiveness and efficiency gains that promote employment or industrial expansion;

5.3. erred by failing to conduct a full and/or appropriate market analysis which includes all direct and indirect market participants;

5.4. erred by accepting the proposed market definition (“the market of the provision of intellectual property services in the entertainment industry”), thereby not properly defining and identifying the relevant parameters of

competition, thereby conducting a flawed market assessment and not engaging with the appropriate industry stakeholders;

5.5. erred by failing to fairly engage with all industry stakeholders when conducting its assessments and investigations.

6. In summary, the Appellants submit that –

6.1. The requirements for granting of an exemption have not been met by the 2nd and 3rd Respondents;

6.2. The Commission's decision to grant the exemption application will promote anti-competitiveness and adversely skew the market;

6.3. The Commission's decision to grant the 2nd and 3rd Respondents an exemption ought to be revoked in terms of section 10(5)(a).

TAKE NOTICE FURTHER that the Appellants seek an order revoking the exemption in respect of the practices / agreement identified under the application, which exemption has been granted for a period of 5 (five years).

TAKE NOTICE FURTHER that in terms of rule 39 of the Rules, the Commission is required to file a record of the exemption proceedings within 20 business days after being served with a copy of this notice of appeal.

TAKE NOTICE FURTHER that the Appellants will expand upon and supplement the grounds of appeal, and the facts and contentions relied upon above, on receipt of the Commission's record, and subsequently when filing its heads of argument in respect of the appeal.

DATED AT **PRETORIA** ON THIS 28th DAY OF FEI



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The 2nd Respondent

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