

Brussels, 14/09/2023

**Case Number: 2022OCT0030 - Submission on NO. 3820: Notice in terms of Section 10(6) of the Competition Act 89 of 1998 (as amended): The South African Guild of Actors and the Personal Managers Association**

The present submission is made on behalf of the International Federation of Actors, a global trade union federation representing performers worldwide. It represents hundreds of thousands of performers on both stage and screen from some 80 countries around the world. FIA is a recognised Global Union Federation (GUF) affiliated to the Council of Global Unions, as part of the International Arts and Entertainment Alliance (IAEA).

We write in support of the request from our affiliate the South African Guild of Actors (SAGA) for an exemption in terms of section 10(1) of the Competition Act of South Africa. We believe that such an exemption will make a material difference towards the stated aim of aiding the industry with the promotion of employment and expansion of Performers in the entertainment industry in South Africa.

We consider that experience and good practice from countries with thriving and expanding entertainment industries illustrates this case. These production hubs show the potential for collective bargaining to create the conditions for employment to expand and industry to flourish. From an international perspective, collective bargaining of conditions enhances the viability of a given location by creating predictability and stability. Where large international productions may access a local, stable and skilled workforce, with clear and predictable costs and conditions, this creates an attractive location, where work maybe solidly planned and disputes are unlikely. This increases competitiveness and many of the major production hubs globally (such as the US or the UK) conduct very high levels of production, entirely bound by the terms and conditions that are collectively bargained.

Canada is another such thriving production hub, where FIA's affiliate ACTRA has long enjoyed the power to organise and bargain on behalf of the independent contractors who make up the acting workforce in Canada and who are comprehensively covered by a range of agreements across all parts of the sector. Recent developments in both the EU and New Zealand also point to the willingness of competition law authorities to recognise the weak market position of the solo-self-employed contractors in the sector and to accommodate collective negotiation to improve their working conditions. This is detailed in the recently issued (September 2022) Communication from the European Commission: [Guidelines on the application of Union competition law to collective agreements regarding the working conditions of solo self-employed persons](#) 2022/C 374/02.

The New Zealand Government also issued a new bill in September, the [Screen Industry Workers Bill](#), which equally creates a framework to allow the collective bargaining of terms and conditions for all occupations across the local screen industry workforce composed of independent contractors. European countries Ireland and the Netherlands had also enacted national level legislation to allow such collective bargaining prior to the development of the 2022 Guidelines.

In pursuing an exemption from the Competition Act, SAGA is seeking to address an issue that has affected some FIA's affiliates: namely that the application of competition law has constituted an obstacle to the collective bargaining of terms and conditions for the largely freelance workforce of performers whom they represent. The work of performers is, by its nature, often intermittent and short-term and has evolved to be increasingly so (the former culture of certain long-term contracts for dancers or actors has in a permanent troupe greatly diminished and work is mostly project-based.) Performers tend to be highly skilled and passionately dedicated to their work, often willing to accept conditions that are not sustainable in the long-term. This workforce of highly motivated, independent contractors is increasingly the norm across many countries. Where no collective representation and collective bargaining for this workforce is possible, there are serious implications for the sustainability of work, as well as for the general organisation and competitiveness of the sector.

Meeting at the International Labour Organisation (ILO) in February of 2023, the tripartite social partners in the Media, Arts and Entertainment sector at their [technical meeting on the future of work in the sector](#) jointly acknowledged that "Social dialogue, including collective bargaining, plays a fundamental role in building a sustainable and professional industry, facilitating equal access to technologies, fostering entrepreneurship, promoting transition to formality and prevention of informalization, and promoting effective and inclusive labour market institutions and a safe and healthy work environment." (Para 10. Joint Conclusions). They further urged governments to take action to ensure such collective bargaining is possible emphasising their duty to "create an enabling environment for effective social dialogue in all its forms, and take action to ensure effective recognition of the right to collective bargaining in the arts and entertainment sector." (Para 19). Addressing the competition law obstacle is key to creating this enabling environment. This point was explicitly made in the [2014 Points of Consensus](#) adopted at the Global Dialogue Forum for the Media, Arts and Entertainment sector which stated that "Governments need to apply intellectual property protection laws and to ensure that competition legislation does not obstruct the right of media and culture workers to freedom of association or to engaging in social dialogue with their social partners."(Para 7)

Where there is no possibility of establishing such collectively bargained minimums, individual actors bargain on the basis of their personal clout and, almost inevitably, this means they are faced with a take it or leave set of conditions and the threat that anyone else may be willing to take their job more cheaply. Buying power is entirely concentrated on the industry side and acquiescence with conditions is imposed by that fact. In that scenario, several key elements that may be achieved via collectively bargained conditions are lost. These include

minimum levels of remuneration that allow for sustainable careers in the sector: including entry, participation and expansion of junior, intermediate and senior performers. Without these, careers are short with performers leaving in droves after a few years when they may wish to take on financial commitments for family reasons, with the resulting loss of talent and experience. De facto, this also often bars performers who are historically disadvantaged or from less privileged socio-economic backgrounds from being able to envisage a career in the sector. It also removes the regulation of health and safety and working time and other workplace protections that can be made to address specific sectoral needs through collective bargaining and that are not adequately dealt with in general purpose regulation. The power imbalance also creates a sector which is more prone to bullying and harassment.

Collective bargaining in the sector also opens the doors to joint development by industry partners of structures and mechanisms that will allow the sector to thrive. Commonly, such structures internationally have included training funds, set up and managed by social partners and tailored social security schemes and contributions, creating greater stability and sustainability for workers in the sector.

We look forward to the decision of the Competition Commission South Africa and commend the course of action submitted by SAGA as the best pathway to a robust and resilient creative industry in South Africa offering real opportunity for the country's many talented performers.

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