

**DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION**

**NO. 3820**

**25 August 2023**

COMPETITION COMMISSION SOUTH AFRICA

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

1. Notice is hereby given in terms of section 10(6)(a) of the Competition Act, No. 89 of 1998, as amended ("the Competition Act") that, the South African Guild of Actors ("SAGA") and its members and the Personal Managers Association ("the PMA") and their members (collectively referred to as the "Applicants") has applied to the Competition Commission ("the Commission") for an exemption in terms of Sections 10(3)(b)(ii) and 10(3)(b)(v) of the Competition Act.
2. On 17 October 2022, SAGA and the PMA filed for an exemption in terms of section 10(1) of the Competition Act which allows a firm to apply to the Commission to exempt an agreement, a practice and/or a category of agreements from the provisions of Chapter 2 of the Competition the Act.
3. SAGA and the PMA are non-profit organisations registered with the Companies and Intellectual Property Commission under registration number 2012/1073405/108. SAGA was established in 2012 with the main purpose being to represent and protect the legal and economic rights of professional performers in the film, television, stage, commercial, voice over and corporate sectors. SAGA's principal place of business at 357 Cork Avenue, Ferndale Randburg.
4. The PMA was established in 1980 with its main objective to implement and facilitate ethical best practice, cooperation and communication among agents/managers and all role-players in the entertainment industry for the benefit and betterment of professional performers and the industry. PMA's principal place of business at 93 Clovelly Road, Greenside, Johannesburg.
5. SAGA membership is open to final year students at tertiary institutions studying performing arts, aspirant professionals in the early stages of their career, and any actor legally entitled to work in South Africa, who is engaged or about to be engaged as an actor in the film/television/theatre/radio industry. PMA membership is open to professional performers' agencies in South Africa.
6. In their exemption application, SAGA and PMA rely on the objectives set out in:
  - 6.1 Section 10(3)(b)(ii) of the Competition Act, which allows for 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; and
  - 6.2 Section 10(3)(b)(v) of the Competition Act, which allows the competitiveness and efficiency gains that promote employment or industrial expansion.
7. SAGA and PMA submit that in the case of Performers, standardised agreements may, on the face of it, substantially lessen or prevent competition but may aid the industry with the promotion of employment and expansion of Performers in the entertainment industry immensely.
8. The exemption application covers the following practices by SAGA and PMA:
  - 8.1. 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;

- 8.2. 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;
- 8.3. 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
- 8.4. to pool resources in order to achieve all of the above to benefit Performers whilst still maintaining the individual brands of the Applicants.
9. SAGA and the PMA are not competing associations, but they represent competing Performers (persons). In the case of SAGA, it represents individual Performers who mostly are historically disadvantaged persons. In the case of the PMA, it represents Agents/Managers who are contracted to individual Performers and receive a commission for managing the Performers. Accordingly, the above conduct(s) may constitute a prohibited practice and contravention of Sections 4(1)(a), 4(1)(b)(i), and 5(1) of the Competition Act.
10. SAGA and the PMA submit that the conduct is necessary to achieve the objectives under Sections 10(3)(b)(ii) and 10(3)(b)(v) of the Competition Act. It is imperative that the exemption be granted so as to allow the Applicants through their collective coordination, communication, exchange of information on trading conditions in standard agreements and in developing minimum fees rate cards would enable a platform to negotiate trading conditions for Performers that ensures effective entry, participation and expansion of junior, intermediate, and senior performers, who mostly are historically disadvantaged persons, within the market of the provision of intellectual property services in the entertainment industry. The rate cards and the standardised trading conditions in standard agreements would transform an industry that has been plagued by Performers who are not, at times, remunerated correctly and/or are pressured into accepting remuneration/fees that do not ensure their effective participation in the entertainment industry thus meaningful transformation of the sector in terms of remuneration or fees, particularly for historically disadvantaged persons.
11. SAGA and the PMA are requesting the Commission to grant them an exemption of 5 (five) years from date of the Commission's decision.
12. Notice is hereby given in terms of section 10(6)(b) of the Competition Act to allow interested parties twenty (20) business days from the date of the publication of this notice to make written representations to the Commission as to why the exemption should, or should not, be granted.
13. All representations, queries and submissions must be directed to:

Ms Nyadzani Mabasa/ Mr Godknows Giya

Competition Commission South Africa

Market Conduct Division

Private Bag X23

Lynnwood Ridge

0040

or by email: GodknowsG@compcom.co.za / NyadzaniM@compcom.co.za

In correspondence kindly refer to the following case number: 2022OCT0030