

Court issues interim interdict against FlySafair

An interim interdict has been granted against Safair Operations (Pty) Limited ('FlySafair') by the North Gauteng High Court which prohibits FlySafair from selling tickets and starting with its operations. This order* will remain in place until the Air Services Licensing Council's decision, to grant Safair its scheduled licence, has been reviewed by the High Court.

The urgent interdict was filed by Comair and Skywise on the basis that FlySafair did not comply with local legislation which stipulates that 75% of its shareholding be held by South Africans and that such persons must have active and effective control of the airline.

"As countries protect the ownership of their mineral resources and marine territories, so too is the air space of a country regarded as a national asset. The rights of foreign owned airlines to operate in other countries are regulated by treaties such as the Bilateral Air Service Agreement as well as local legislation (South African Air Services Licensing Act No 115 of 1990) which states that operators should have a majority local shareholding," says Erik Venter, CEO of Comair.

Venter further added that Comair and Skywise, following the granting of the scheduled licence to FlySafair, requested that FlySafair not commence with its operations, pending the review of the Air Services Licensing Council's decision. FlySafair however chose not to comply with this request leaving Comair and Skywise with no option but to bring an application for an interim interdict.

"Comair welcomes competition in the South African aviation market, as evidenced by the fact that Comair did not object to the recent Skywise licence application, but strongly believes that our market should not be exposed to exploitation by foreign owned airlines. More importantly, we believe that the economic value of South Africa's air space and the image and sustainability of our industry should be protected."

Comair offered to honour tickets purchased on FlySafair at face value during the interdict hearing, and this has been granted as one of the conditions of the court order. Comair will endeavor to take all reasonable steps to accommodate passengers with a FlySafair ticket on the date and at the price specified on the ticket.

Comair and FlySafair are currently working on the process whereby Comair will re-accommodate FlySafair ticket holders on its flights. Affected FlySafair customers will be advised as soon as the process has been finalised. The process will also be communicated via various media channels.

**The Order states:*

1. *The first respondent, Safair Operations (Pty) Limited, is interdicted and restrained, pending the finalisation of the application for review from operating a class S1 air service pursuant to the decision of the second respondent made on 14 August 2013.*

2. *The second applicant, Comair Limited, is directed to take all reasonable steps within its power to provide to every person holding a ticket to travel on the first respondent's proposed class S1 air service, at no additional cost whatsoever to each such person, alternative means of undertaking and completing on the date or dates stated in such ticket, the journey or journeys by air contemplated in such ticket.*
3. *For the purpose of paragraph 2 of this order, "reasonable steps" shall include the obligation, at the cost of the second applicant, to charter or otherwise procure the use of and make available as many aircraft as may be necessary to enable each such ticket holder to undertake and complete, on the date or dates stated in such ticket, the journey or journeys by air contemplated in such ticket.*

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