



KRIEK WASSENAAR & VENTER ING
PROKUREURS - ATTORNEYS

Our ref: PJ Wassenaar/ QB1184

Your ref:

18 December 2023

THE AIR SERVICE LICENSING COUNCIL
c/o DEPARTMENT OF TRANSPORT
FORUM BUILDING
159 STRUBEN STREET
PRETORIA

By e-mail: DomesticCouncil@dot.gov.za
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Sir / Madam

In re: Air Service Licensing Council - legality of inclusion of B-BBEE and transformation requirements during consideration of Domestic Air Service License Applications

1. We act on behalf of Sakeliga NPC, a non-profit business interest organisation with supporters across various industries in South Africa. Our client is raising concerns about the Air Service License Council's (Council) practices in licensing air services.
2. Sakeliga's supporters in the air services industry report undue pressure from the Council. Instead of focusing on ensuring safety and reliability in the provision of air services, the Council has seemingly started to emphasise ownership structures, commitment to transformation, and adherence to broad-based black economic empowerment (B-BBEE) principles during license applications.
3. Operators are apparently required to submit a transformation plan and commit to improving their B-BBEE scores, seemingly as part of their licensing applications. Operators have reported council members criticising corporate structures, regardless of current participation in empowerment schemes.
4. Furthermore, it seems that Council members have implied that an applicant's license approval hinges on an applicant's transformation commitments. Operators have apparently been warned that non-compliance with B-BBEE and a refusal to set and meet acceptable transformation commitments will negatively affect future applications.

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5. Upon review of the relevant legislation and regulations, we have found no authorisation for the Council's self-arrogated power to demand transformation commitments or information regarding B-BBEE. These threats, whether explicit or implied, fall wholly outside of the scope and objects of the Act.
6. Sakeliga insists that there is no legal justification for the Council to request information beyond the Act's section 16(4) license criteria.
7. We have been instructed to demand that the Council:
 - 7.1 refrain from demanding transformation commitments and B-BBEE information from applicants applying for a license under the Air Service Licensing Act 115 of 1990;
 - 7.2 provides an undertaking that it will not pressure applicants applying for a license under the Air Service Licensing Act 115 of 1990, to increase their current B-BBEE scores, or to participate in any transformation schemes created or considered by Council;
 - 7.3 refrain from, directly or indirectly, implying to applicants that they should comply with any of the matters discussed in paragraphs 7.1 and 7.2 above, or that compliance with such demands will be taken into account by the Council when making a decision on any application before it under the Act;
 - 7.4 provides an undertaking that it will not penalise an applicant in the awarding of any license because of an applicant's level of participation in B-BBEE or any other transformation objectives considered by the Council or its members.
8. We request a response by **5 January 2023**. Failing thereto, our client will have no choice but to conclude that the Council will be persisting with the aforementioned conduct, which our client deems to be *ultra vires*, unconstitutional and unlawful. Our client's right to approach the court for urgent and/or other relief remains strictly reserved.

Yours faithfully,



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