
GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF ECONOMIC DEVELOPMENT**NO. 22****20 JANUARY 2017**

Date: December 2016

COMPETITION COMMISSION**NOTICE IN TERMS OF SECTION 10(7) OF THE COMPETITION ACT 89 OF 1998 (AS AMENDED): SOUTH AFRICAN PETROLEUM INDUSTRY ASSOCIATION GRANTED CONDITIONAL EXEMPTION**

On 22 December 2015, the South African Petroleum Industry Association ("SAPIA") and its members applied to the Competition Commission of South Africa ("Commission") in terms of Section 10(1)(b) of the Competition Act No 89 of 1998, as amended (the "Act") to be exempted from certain provisions of Section 4 of the Act. The exemption was sought for a period of five (5) years from 1 January 2016 ending on 31 December 2020.

Notice is hereby given in terms of Section 10(7) of the Act, that the Commission has extended the SAPIA exemption with 12 (twelve) months starting from 01 January 2017 ending 31 December 2017 on the same terms and conditions as published in Government Gazette No.34651 of 7 October 2011.

The exemption granted by the Commission covers a wide range of agreements and practices which, according to SAPIA, are required to ensure the continuity and stability of liquid fuels supply to various sectors and geographic locations of the South African economy. In particular, the exemption covers agreements and practices in the petroleum and refinery industry which are considered by the Commission to be in contravention of Sections 4(1)(a) and (b) of the Act.

The Commission has previously, in response to the above mentioned application, granted SAPIA a conditional exemption in terms of Section 10(2)(a) of the Act for a period of 6 (six) months starting from 01 January 2016 and ending on 30 June 2016. Following the expiry of the exemptions, the Commission further extended the conditional exemption until 31 December 2016. SAPIA based its application on the premise that the aforesaid agreements and practices are

required to obtain the objective set out under Section 10(3)(b)(iv) of the Act. This is after the Minister of Economic Development Department has designated the petroleum and refinery industry for a period of 6 (six) months starting from 01 January ending on 30 June 2016. Following, the expiry of the exemption and the industry designation, Economic Development Department granted SAPIA a further industry designation ending on 31 December 2016.

The Economic Development Department has recently granted SAPIA a further industry designation starting from 01 January 2017 ending 31 December 2017.

The Commission is satisfied that SAPIA's exemption will contribute towards maintaining the economic stability of the petroleum and refinery industry for the period starting on 01 January 2017 and ending on 31 December 2017.

SAPIA or any other person with substantial financial interest affected by this decision may appeal it to the Competition Tribunal in the prescribed manner in terms of Section 10(8) of the Act.

Further queries should be directed to either:

Mr Themba Mahlangu / Ms Selelo Ramohlola
Competition Commission of SA
Enforcement and Exemptions Division,
Private Bag X23,
Lynnwood Ridge, 0040

Email: ThembaM@compcom.co.za / SeleloR@compcom.co.za

In correspondence kindly refer to the following case number: 2015Dec0741

ANNEXURE

The exemption has been granted subject to the following conditions:

Preamble

The conditions below only apply for the purpose and duration of the exemption application. The exemption application relates to the cooperation agreements and/or practices between SAPIA and its members at the following stages of the liquid fuels supply chain: **Inbound logistics; primary distribution; terminal and depot operation and the specific shared services such as the airport fuelling services and the port joint bunkering services.** The exemption does not extend to the **wholesale, commercial and retail trade** of the supply chain.

1. *The exemption is granted on the basis of the facts and the existing agreements and practices described in the application. Should the facts and existing agreements and practices change materially, including any change caused by the proposed addition of a new participant to an exempt agreement or practice or the conclusion of a new agreement, the Commission should be notified of such change. Any new agreement which affects the agreements and practices described in the exemption application, or any amendment or addendum to agreements contained in the application shall not be of force or effect until approved by the Commission.*
2. *SAPIA and its members and any other approved participants in exemption agreements and practices may not share competitively sensitive information, except for the purposes described in the exemption application.*
3. *If:*
 - 3.1 *a party to an agreement or practice at any stage of the liquid fuels supply chain also acts as an operator of the infrastructure or coordinates the joint use of a facility to which that agreement or practice relates; and*
 - 3.2 *it is necessary for that operating party to be provided with disaggregated volume information of other participants, or any other information which may lead to a substantial lessening or prevention of competition;*

- 3.3 *then the operating party must not share that information with the other participants, unless sharing the information is necessary to ensure security, stability and continuity of liquid fuels supply, or is necessary for strictly operational purposes.*
- 3.4 *The employees of any operating party who receive such information shall ensure that the information is held, maintained and used separately, confidentially and on a need to know basis only.*
4. *SAPIA and its members may not share information relating to setting of margins, imposition of levies and / or approval of tariffs, unless required to do so by the Department of Energy or National Energy Regulator of South Africa.*
5. *SAPIA and its members and any other approved participants are required to comply in all material respects with all statutes, regulations and policies which have the force of law, and which directly relate to competition in the petroleum refining and marketing industry in South Africa. These industry regulations include but are not limited to: the Petroleum Products Amendment Act (58 of 2005), the Petroleum Pipelines Act (60 of 2003), the National Ports Act (12 of 2005), and Regulations in terms of the Petroleum Pipelines Act and the National Ports Regulations.*
6. *SAPIA must open up its membership to accommodate both existing and potential marketers in the petroleum and refinery market on fair, reasonable and transparent grounds.*