

**NOTICE 275 OF 2005**

## COMPETITION COMMISSION .

**NOTICE IN TERMS OF SECTION 10(7) OF THE COMPETITION ACT 89 OF 1998 (AS AMENDED): REFUSAL TO GRANT EXEMPTION**

Notice was given in the Government Gazette on 12 March 2004 (Notice 347, in Gazette No.26112) that Transnet Limited, acting through its South African Port Operations Division (herein referred to as "SAPOD) had applied to the Competition Commission ("the Commission") for an exemption from certain provisions of Chapter 2 of the Competition Act, as amended ("the Act") in respect of a single agreement ("the Agreement"), in terms of section 10 of the Act.

The agreement is contained in a Memorandum of Agreement ("MOA) entered into in 2002 by SAPOD with two companies active in the export of woodchips, being Central Timber Co-operative ("CTC) and Mondi Limited trading as Silvacel ("Silvacel"). The agreement commenced on 01 July 2002 and (subject to certain provisions allowing for earlier termination) would endure for ten years.

In terms of section 10(2)(b)(ii) of the Act, the Commission must refuse to grant an exemption if the agreement for which the exemption *is* sought "does not constitute a prohibited practice in terms of ~~this~~ Chapter" (i.e. Chapter 2).

The Commission has, after consideration of the agreement and investigation of the effects of ~~its~~ operation, concluded that the agreement does not constitute a prohibited practice in terms of Chapter 2 of the Act.

Accordingly, SAPOD's application for exemption must be refused, and it is therefore unnecessary and it would be inappropriate for the Commission to go on to consider the ground advanced for exemption, namely that the agreement contributes to and is required to attain the objective of "maintenance or promotion of exports" referred to in section 10(3)(b)(i) of the Act,

The Commission hereby gives Notice in terms of section 10(7) of the Act, that the exemption has been refused in terms of section 10(2)(b)(ii) of the Act, as the agreement for which exemption is sought, does not constitute a prohibited practice in terms of Chapter 2 of the Act.

Notice is further hereby given in terms of section 10(8) of the Act, that SAPOD, or any other person with a substantial financial interest affected by the

abovementioned decision of **the** Commission, may appeal the decision to the Competition Tribunal in the prescribed manner.

Notice *is* further given in terms of section 10(9) of the Act, that at any time after refusing to grant an exemption in terms of section 10(2)(b)(ii), the Commission may withdraw its notice of refusal to grant the exemption in the prescribed manner and reconsider the application *for* exemption.

**Any** queries in this regard **should** be directed to the Manager, Enforcement and Exemptions, Private **Bag** X23, Lynnwood Ridge, 0040; or at facsimile 012 394 4264, citing case number 2004Feb865.