

**NOTICE 489 OF 2006**

Date: **16 March 2006**

**COMPETITION COMMISSION****APPLICATION FOR AN EXEMPTION**

Notice is hereby given in term of section **10(6)**(a) of the Competition **Act**, No. 89 of 1998, **as** amended ("the Competition **Act**"), that the Association of Shipping Lines (herein referred to as "ASL") has applied to the Competition Commission, in terms of section **10(1)(b)** of the Competition Act, for a category of agreements or practices to be exempted from certain provisions of Chapter 2 of the **Act**. **ASL** is an association of shipping lines whose vessels use one or more ports in the **South African / Mozambiquen Seaboard (Walvis Bay / Nacala range)**.

ASL has applied for an exemption regarding the following agreements and/or practices:

- 1) with regard to the provision of liner and ancillary activities:
  - a) all agreements **and** practices exempted in respect of services between South Africa and:
    - i) the United States of America (United States Shipping **Act** of 20 March **1984**);
    - ii) the European Union (European Council Regulation **4056/86**);
    - iii) all other countries (European Council Regulation **4058/88**);
  - b) **all** agreements between Shipping Lines and Customers that are permissible in terms of the law of the country to or from which the particular service is provided to or from South Africa;
  - c) at the request **of** a shipper, the conclusion of contracts between the shipper concerned and a group of carriers;
  - d) information exchange, discussion and evaluation between Shipping Lines servicing substantially the same trade:
    - i) of aggregated capacity utilization **and** market size data by trade and on a region/zone to region/zone basis (historic data with a month's delay);
    - ii) of commodity developments by trade (based on data aggregated with a month's delay);
    - iii) of aggregate supply and demand data by trade/commodity, forecasts in respects of demand by trade and commodity being published;
    - iv) Lines will obtain their own market share by trade, by region, and by port (data aggregated with a month's delay);

- v) Price index differentiated by type of equipment (eg. reefer, dry) and/or trade (data aggregated with a quarterly delay), which information will be made publicly available;
  - vi) Surcharges and ancillary charges based on publicly available and transparent formulae, the details of which are to be discussed with shippers, and the joint implementation thereof;
- 2) Consortium agreements between vessel-operating carriers providing international shipping services, which are stated as technical, operational and/or commercial arrangements, with the exception of price fixing and would focus on the following practices:
- a) the joint operation of transport services which comprise any of the following activities:
    - i) the coordination and/or joint fixing of sailing time-tables and determination of ports of call;
    - ii) the exchange, sale or cross-chartering of space or slots on vessels;
    - iii) the pooling of vessels and/or port installations;
    - iv) the use of joint operations offices;
    - v) the provision of containers, chassis and other equipment and/or the rental, leasing or purchase contracts for such equipment;
    - vi) the use of a computerised data exchange system and/or joint documentation system
  - b) capacity adjustments, as long as such arrangements do not concern the non-utilisation of operating capacity where parties refrain from using a certain percentage of the capacity of vessels operated:
  - c) the joint operation or use of port terminals and related services, such as lighterage or stevedoring services and inland services;
  - d) the participation in cargo, revenue and/or net revenue pools;
  - e) the exercise of joint voting rights held by the Consortium in the Conference within which its members operate;
  - 9 a joint marketing structure and/or the issue of a joint bill of lading:
  - g) an obligation on members of the Consortium to use vessels allocated to the Consortium and to refrain from either chartering space on vessels belonging to third parties or assigning space to other vessel-operating carriers.

Since the members of **ASL** are in a horizontal relationship, being a relationship between firms operating at the same level of a market, these agreements or practices might constitute restrictive horizontal practices as contemplated and/or prohibited in Chapter 2 of the Competition Act. **ASL** therefore applies for an exemption from the provisions of Section 4(1)(a) and/or Section 4(1)(b)(i) and (iii) of the Competition Act.

ASL is seeking an exemption for a period of 30 years and it bases its application on the premise that the maintenance of efficient and low-cost sea transport services is of an increasing importance for economies integrated into the international trading system, particularly for economies such as South Africa, which is separated from major markets by significant transport distance.

The Competition Act provides, in section 10(3)(b), for four grounds on which an exemption application may be granted and it is argued that three of these grounds in particular are relevant, namely:

- The maintenance and promotion of exports [section 10(3)(b)(i)];
- Promotion of the ability of small businesses, or firms controlled or owned by historically disadvantaged persons, to become competitive [section 10(3)(b)(ii)]; and
- The economic stability of any industry designated by the minister, after consulting the Minister responsible for that industry [section 10(3)(b)(iv)].

interested parties may, in terms of section 10(6)(b) of the Competition Act, within 20 business days from the date of this notice, make written representations to the Commission why the exemption should not be granted.

Such representations may be directed to the Manager: Enforcement and Exemptions, Private Bag X23, Lynnwood Ridge, 0040, or by facsimile to number (012) 394 4272.

In correspondence kindly refer to case number Case No. 2005Nov1961.