

NOTICE 731 OF 2010

Date: 19 July 2010

COMPETITION COMMISSION**APPLICATION FOR AN EXEMPTION**

Notice is hereby given in terms of Section 10(6)(a) of the Competition Act, No. 89 of 1998, as amended ("the Act"), that the South African Petroleum Industry Association ("SAPIA"), its members and specified affiliates have applied to the Competition Commission ("the Commission"), in terms of Section 10(1) of the Act, to be exempted from certain provisions of Chapter 2 of the Act. SAPIA is the representative association of the petroleum industry. It was formed to represent the common interests of the petroleum refining and marketing industry in South Africa, and to promote understanding of the industry's contribution to economic and social progress with all stakeholders.

This notice is published to allow interested parties to make written representations to the Commission as to why the exemption should not be granted. All representations must reach the Commission within 20 business days from the date of the publication of this notice as provided for in terms of Section 10(6)(b) of the Act. Representations must be directed to either of the two Investigators mentioned hereunder.

It is important to note that the Commission had previously granted SAPIA and its members a short-term unconditional exemption in respect of these agreements and practices. The short-term exemption was granted solely for purposes of the 2010 FIFA Soccer World Cup, and would lapse on August 31, 2010. SAPIA is in essence requesting the Commission to grant it a further exemption

The following companies are members of SAPIA and parties to the exemption application:

- BP Southern Africa (Pty) Ltd
- Chevron South Africa (Pty) Ltd
- Engen Petroleum Ltd
- Sasol Ltd
- Shell South Africa Marketing (Pty) Ltd and Shell South Africa Refining (Pty) Ltd
- Total South Africa (Pty) Ltd
- The Petroleum Oil and Gas Corporation of SA (Pty) Ltd t/a PETROSA

As noted above, the exemption application also extends to various subsidiary and affiliate companies which are involved in the business and conduct described but are not members of SAPIA themselves. The following is a list of subsidiaries and affiliate companies covered by this application:

- Shell affiliates
 - Easigas (Pty) Ltd;
 - Shell & BP South African Petroleum Refineries (Pty) Ltd.
- Sasol affiliates

- Sasol Limited and its subsidiaries;
- Sasol Synfuels and its subsidiaries;
- The National Petroleum Refeneries of South Africa (Pty) Ltd;
- Natcos – unincorporated joint venture between Sasol and Total.

The exemption application also covers a range of agreements and practices which, according to SAPIA, are required to ensure the continuity and stability of liquid fuels supply to the various sectors and geographical locations of the South African economy. SAPIA relies on the objective set out in Section 10(3)(b)(iv) of the Act, which makes provision for a firm to apply for an exemption if the purpose of the agreement and/or practice is to contribute towards maintaining the economic stability of an industry. The petroleum industry was designated by the Minister of Trade and Industry for purposes of Section 10(3)(b)(iv) of the Act on 05 June 2009.

Further the application relates to a wide range of liquid fuel products, and covers only agreements and practices which exist in the following stages of the supply chain: **inbound logistics; manufacturing; primary distribution; terminal and depot operation** and specific shared services such as the **airport fueling services** and **port joint bunkering services**.

SAPIA's application does not extend to the wholesale, commercial and retail trade of the liquid fuel supply chain.

The scope of the exemption application includes the following agreements and practices:

1. The Co-freighting Agreement dated 10 September 2008 and the draft agreement dated 28 July 2009.
2. The practices of co-loading and co-freighting of crude oil including:
 - a. The coordination of crude oil & finished liquid fuels imports between participants for the operation of port access, discharge and loading facilities.
3. The agreements between the relevant applicants in relation to the Single Buoy Mooring facility ("SBM"), being the:
 - a. SBM Co-ownership Agreement, with annexures – currently in draft;
 - b. SBM Management Agreement with annexures – currently in draft;
 - c. SBM Rules – currently in draft.
4. The practices of coordination by co-freighting arrangements and co-management of the SBM.
5. The practices of joint refinery coordination including the sharing of information regarding refinery production, capacity constraints, unit problems, duration and stock position.
6. The coordination by the applicants of supply to optimize the use of logistics infrastructure for transport of liquid fuels to depots and terminals.
7. The coordination of activities including the practice of sharing the following information with the Department of Energy (DoE) and each other:
 - a. Regularly updated information of the type contained in the "dashboard";

- b. Liquid fuel stocks held by each oil company at various sites in the country;
 - c. Schedules for actual and intended distribution of liquid fuels through coastal shipping, pipelines, rail and road;
 - d. Product exchanges and accommodation arrangements;
 - e. Plans that may affect the ability of the industry to optimise the available logistical infrastructure capacity and/or to meet market demand.
8. The practices of industry to, on a regular basis and between senior supply managers, share information and coordinate approaches to address the following:
- a. Manage communications regarding supply issues with SAPIA and DoE;
 - b. Monitor the impact of imports, exports and refinery shutdowns on supply;
 - c. Manage availability of tankcars with Transnet Freight Rail (TFR);
 - d. Review the performance of TFR and Transnet Pipelines Limited (TPL).
9. Joint venture and accommodation agreements between participants for the use and operation of terminals and depots which service geographic areas and specific installations (including airports) within South Africa.
10. The practices of coordinating and sharing information in respect of;
- a. The general operations of such depots, terminals and installations;
 - b. Schedules of injections and discharges from storage facilities;
 - c. Costs associated with depot operations, accommodation agreements, and
 - d. Monitoring of stock levels.
11. The Southern Tank Farm (STF) agreement dated 12 October 1978
12. The practices of information sharing and cooperation between the parties to the STF agreement which relate to operations, strategic plans, methods of maintenance; schedule/ loading planning; long term maintenance planning for budget purposes; costing; maintenance and back changes/recoveries; core contractor and bidding processes as well as data sheets in respect of tank stocks, tanker discharges and all feedstock transfers.
13. The following berth agreements for Durban Harbour:
- a. Berth 6 Co-Ownership Agreement, dated 12 May 2009;
 - b. Berth 7 Concession Agreement;
 - c. Berth 8 Concession Agreement; and
 - d. Berth 10 Loading Facility Agreement, dated 8 December 2008.
14. The practice of sharing supply information and coordinating through the meetings between competitors for the security of supply in respect of use of the Durban Port operations,
15. The practice of sharing supply information and coordinating through the meetings between competitors for the security of supply through the Cape Town Port operations, including information related to the following issues: berthing, vessel discharge, vessel loading, and product cross-pumps from the Chevron refinery to the other companies' Cape Town terminals.
16. The agreements relating to the Joint Bunkering Services listed below:

- a. JBS Co ownership and Use agreement dated 27 February 2007 for Durban;
 - b. JBS Management Agreement dated 27 February 2007 for Durban;
 - c. Draft co-ownership and management agreements for Richards Bay and Cape Town.
17. The practices relating to the operations of the Joint Bunkering Services in terms of which the participants share information relating to the costs, volumes and other operations elements of the JBS.
18. The following agreements entered into in respect of operations at ORTIA and CTIA:
- a. Joint Storage and Hydrant System Agreement;
 - b. Airport Into-Plane Service Agreement;
 - c. ACSA Lease Agreement; and
 - d. CTIA Consortium Agreement
19. The practices relating to the operations of ORTAFS and CTIAFS in terms of which the participants share information relating to the costs, volumes and other operations elements of those operations.
20. The practices by the Applicants involving discussing and sharing information with each other and with the DoE, in meetings convened by the DoE and correspondence including the DoE:
- a. Related to the proposals contained in the ESMP;
 - b. Future logistics infrastructure investment;
 - c. Future refining capacity investments;
 - d. Anticipated demand levels;
 - e. Anticipated supply problems;
 - f. Plans sought to be implemented under Project Delta.
21. The practices by the Applicants involving discussing and sharing information with each other in the manner contemplated in the "roles and responsibility matrix" at 7.7 of the Project Definition Report including-
- a. Specific elements of the supply chain and activities required to be carried out in the implementation of various programmes;
 - b. The intended increase of capacity at various levels;
 - c. The allocation of capacity to various modes of transport etc and;
 - d. Requirements for investment in various parts of the infrastructure, both private and public.
22. The practices by the Applicants involving discussing and sharing information with each other in the manner necessary to develop and implement a Cleaner Fuels programme and to effectively reconfigure their refineries to meet new specifications without disrupting supply generally.

The exemption is sought for a period of five (5) years and four (4) months, commencing September 01, 2010 and ending on December 31, 2015.

Once again, it must be emphasised that all representations must reach the Commission within 20 business days from the date of the publication of this notice.

Representations should be directed to either:

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Competition Commission of SA
Enforcement and Exemptions Division,
Private Bag X23,
Lynnwood Ridge, 0040

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In correspondence kindly refer to the following case number: 2010APR5041