

**NOTICE 859 OF 2010****NOTICE OF AN APPLICATION FOR AN EXEMPTION IN TERMS OF SECTION  
10(1)(a) OF THE COMPETITION ACT 89 OF 1998:  
GRAIN SOUTH AFRICA**

An application for an exemption from the provisions of the Competition Act 89 of 1998, as amended ("the Competition Act") has been filed with the Competition Commission of South Africa ("the Commission") by Grain South Africa, in terms of Section 10(1)(a) of the Competition Act.<sup>1</sup>

Grain South Africa is a non-profit organization that exists independently of its members as a registered company and promotes the collective interests of grain producers in South Africa.

The application for the exemption is in respect of a proposed scheme by Grain South Africa and its members to establish an export pool aimed at exporting surplus maize from South Africa for a specified period of time in terms of section 16 and 17 of the Marketing of Agricultural Products Act 47 of 1996. Grain SA has alleged that the local maize market is currently out of balance with supply exceeding demand. Grain SA estimates that between the 2007/2008 and the 2010/2011 marketing seasons the domestic carry out figures of maize increased from just over one million tons to more than three million tons of maize. This has allegedly resulted in declining producer prices and a decrease in productivity. Pursuant to this, production has become unprofitable, with approximately 40% of grain farmers being negatively affected and many have been forced to exit the market. According to Grain SA, an attempt to deal with the surplus maize through normal free market activities has failed.

Grain South Africa has therefore approached the Commission amongst other initiatives, with a proposed scheme to create a coordinated platform in order to establish a temporary export pool that can export surplus maize from South Africa. In terms of the scheme, a portion of the current surplus will be isolated from inland trade with the sole purpose of export. This portion will not be available for local trading and maize producers will be free to deposit maize within the pool on a voluntary basis. This will largely involve Grade 1 maize.

Specifically, Grain South Africa has requested that it be permitted to engage in the following activities to achieve its objective -

- Create a pool where a portion of the current surplus is isolated from inland trade with the sole purpose to export. Administration of the pool will be conducted by a body established by Grain South Africa and registered as an article 21 company.
- Participation in the pool will be voluntary and governed by formal contracts between the parties who pledge maize and the section 21 company
- Engagement with other role players such as financiers and agri-businesses as service providers and partners in the export pool.
- Appoint agents to export the maize on behalf of the export pool

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<sup>1</sup> Competition Commission case no. 2010Jul5262

- Engage with and encourage people in the same line of business (competitors) to reach an agreement in terms of the export pool in order to determine, distribute and publish prices and/or allocate markets.

The exemption is sought for a period of two years.

Grain South Africa submits that the collective agreements between its members and shareholders would contravene section 4(1)(a) alternatively section 4(1)(b) of the Competition Act which is a *per se* prohibition that cannot be defended on efficiency, technological or pro-competitive grounds. Grain South Africa avers that the above conduct is however necessary to attain the objective stipulated under section 10(3)(b) of the Act, namely, that such an export pool scheme would contribute to one or all of the following objectives:

- i) The maintenance or promotion of exports
- ii) The change in productive capacity necessary to stop decline in an industry
- iii) The economic stability of an industry designated by the Minister, after consulting the Minister responsible for that industry.

In accordance with the provisions of Section 10(6)(a) the Competition Act, notice is hereby given of the above application for exemption. Interested parties can make written submissions to the Commission as to why the exemption should not be granted as required by section 10(6)(b) of the Competition Act. Such submissions must reach the Commission within 20 (twenty) business days from the date of this Notice and should be directed to:

Ms Lameez Vania/ Mr Sipho Mtombeni  
Enforcement and Exemptions Division  
Competition Commission  
Telephone: 012 394 3293 / 012 394 3190  
E-mail: [LameezV@compcom.co.za](mailto:LameezV@compcom.co.za)/ [SiphoM@compcom.co.za](mailto:SiphoM@compcom.co.za)

In correspondence, kindly refer to case number: 2010JUL5262