

**NOTICE 710 OF 2011**

Date: 03 October 2011

**COMPETITION COMMISSION****NOTICE IN TERMS OF SECTION 10(7) OF THE COMPETITION ACT 89 OF 1998 (AS AMENDED): SAPIA GRANTED CONDITIONAL EXEMPTION**

On 19 April 2010, the South African Petroleum Industry Association and its members (herein referred to as "SAPIA") applied to the Competition Commission ("the Commission"), in terms of Section 10(1)(b) of the Competition Act, No.89 of 1998, as amended ("the Act"), to be exempted from the provisions of Section 4 of the Act. The exemption was sought for the period following the end of the short-term exemption which was granted to SAPIA by the Commission for purposes of the 2010 Soccer World Cup, being 31 August 2010 and continuing until 31 December 2015.

Notice is hereby given in terms of Section 10(7) of the Act that the Commission has, in response to the aforesaid application, granted SAPIA conditional exemption, **commencing on 03 October 2011 and ending on 31 December 2015.** The exemption covers a wide range of agreements and/or 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.

The agreements and/or practices which have been exempted contravene Sections 4(1)(a) and 4(1)(b)(i) of the Act. However the Commission is satisfied that these agreements and/or practices will contribute towards maintaining the economic stability of the petroleum and refinery industry by reducing the risks of fuels supply interruption, thus meeting the objective set out in Section 10(3)(b)(iv) of the Act.

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

The exemption was 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 exempt 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;*

*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.*

*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 NERSA.*
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.*
7. *SAPIA will provide the Commission with regular updates regarding the implementation of the Department of Energy's 'Energy Security Master Plan' (ESMP).*

Further queries should be directed to either:

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**In correspondence kindly refer to the following case number:2010Apr5041**