

NOTICE 130 OF 2012**NOTICE IN TERMS OF SECTION 10(7) OF THE COMPETITION ACT 89 OF 1998 (AS AMENDED): REFUSAL TO GRANT AN EXEMPTION**

Notice was published in the Government Gazette of 26 March 2010 (Government Notice 262 of 2010) regarding an application received from Spring Lights Gas (Pty) Ltd ("SLG") for an exemption in terms of section 10 of the Competition Act, no. 89 of 1998, as amended ("the Act").

In its application SLG sought an exemption until the end of 2020 from section 4 of the Act in order to continue a market or customer allocation arrangement ("the arrangement") it has with Sasol Gas Ltd ("Sasol"). In terms of this arrangement, Sasol refrains from actively competing for SLG's customers in KwaZulu-Natal. In an investigation of the relationship between SLG and Sasol Gas the Competition Commission ("the Commission") found that the arrangement, referred to above, contravenes section 4(1)(b)(ii) of the Act.

SLG argued in its application that this arrangement is, as per section 10(3)(a) of the Act, required to contribute to the objective stated in section 10(3)(b)(ii), which is: The promotion of the ability of small businesses, or firms controlled or owned by historically disadvantaged individuals, to become competitive. SLG believes that it will not be able to compete against Sasol until it achieves greater operational scale.

In its assessment of this application the Commission concluded that SLG is a firm controlled or owned by historically disadvantaged individuals. The Commission has nevertheless decided not to grant the exemption, for the following reasons.

First, SLG has enjoyed approximately ten years of protection from competition, during which time it has secured a firm foothold in the KwaZulu-Natal gas market. SLG is also financially and administratively independent. The Commission is of the view that greater competition in future, rather than continued protection, will contribute the most to improving SLG's competitiveness. It will also deliver dividends to gas customers in KwaZulu-Natal. SLG has therefore not convinced the Commission that the arrangement is *required* to contribute to SLG's ability to become competitive. The application therefore does not meet the requirement of section 10(3)(a) of the Act.

Second, the submissions received by the Commission from customers and a competitor in KwaZulu-Natal, as well as from the National Energy Regulator of South Africa ("the NERSA"), all argued that the application should not be granted.

Third, the Commission supports the objectives of the Gas Act, no. 48 of 2001 ("the Gas Act"), and of the Gas Regulator, which forms part of the NERSA. The Gas Act promotes, *inter alia*, the development of competitive markets for gas and gas services, and requires the

Gas Regulator to, *inter alia*, promote competition in the gas industry. Exempting an arrangement between competitors that eliminates competition between them frustrates the attainment of these objectives.

Fourth, the Commission is confident that the NERSA has the power, under the existing and future regulatory frameworks governing South Africa's gas markets, to prevent abusive market conduct. This, combined with the Competition Act itself, will ensure the continuation of a level playing field on which SLG and other licensees in the KwaZulu-Natal gas market may continue to grow. The Commission wishes to emphasise the importance of effective, forward-looking, pro-competitive sector regulation in growing and developing South Africa's gas markets.

Notice is further hereby given in terms of section 10(8) of the Act that the firm concerned, or any other person with a substantial financial interest affected by this decision, may appeal to the Competition Tribunal in the prescribed manner.

Further queries should be directed to:

Mr Phil Alves / Mr Liberty Mncube
Competition Commission of South Africa
Enforcement and Exemptions Division
Private Bag X23,
Lynnwood Ridge, 0040
Telephone: (012) 394 3447 / (012) 394 3324
Facsimile: (012) 394 4447 / (012) 394 4324
Email: phila@compcom.co.za / libertym@compcom.co.za

In correspondence kindly refer to the following case number: 2009Dec4805