

**NOTICE 927 OF 2014****COMPETITION COMMISSION****APPLICATION FOR AN EXEMPTION**

Notice is hereby given in terms of section 10(6) of the Competition Act, No. 89 of 1998, as amended ("the Competition Act"), that the Southern Africa Milk Co-operative Limited ("Samilco") has applied to the Competition Commission ("the Commission") to be exempted from the provisions of Chapter 2 of the Competition Act. Samilco is an agricultural co-operative established in terms of the Co-operatives Act, No. 91 of 1981. Samilco represents approximately 251 dairy farmers located in the Eastern Cape and Western Cape provinces of South Africa.

Subsequent to its exemption applications for the collective price bargaining and information sharing functions on behalf of its members (as described in the Notice 856 of 2013), Samilco has expanded the scope of its exemption applications to include a practice related to the aforementioned functions, namely the "equalisation function". The equalisation function is a system developed and implemented by Samilco on behalf of its members, in terms of which each milk farmer's raw milk supply contract with the milk processor stipulates a volume quota, which the milk farmer is obliged, in terms of its raw milk supply contract with the milk processor, to supply to the processor on a monthly basis ("contract volumes"). The contract volumes are agreed upon by the milk processor and the milk farmer based on the milk farmer's previous year's raw milk production and the milk processor's estimated raw milk requirements for the coming year. Farmers who produce raw milk in excess of the agreed quota ("surplus volumes") can sell some or all of such surplus volumes to the relevant processor, but at a lower price as compared to prices obtained for contract volumes.

In terms of the equalization function, Samilco assists members who have produced raw milk in excess of their contract volumes by re-distributing the surplus volume to another milk farmer in the region who has produced less than his contract volumes, thus enabling such milk farmers to meet their contract volumes. The redistribution of surplus volumes enables milk farmers with surplus raw milk to obtain contract volume prices for their raw milk instead of lower surplus volume prices.

This conduct may amount to a contravention of the provisions of sections 4(1)(a), 4(1)(b)(i) and/or 4(1)(b)(ii) of the Competition Act.

Samilco has filed an exemption in terms of which it seeks the Commission to exempt its equalisation function, on the grounds set out in section 10(3)(a) and (b)(ii) & (iv) of the Competition Act. Section 10(3)(a) and (b)(ii) & (iv) of the Competition Act state the following:

*"The Competition Commission may grant an exemption in terms of subsection (2)(a) only if-*

- (a) any restriction imposed on the firms concerned by the agreement or practice concerned, or category of either agreements or practices concerned, is required to attain an objective mentioned in paragraph (b); and*
- (b) the agreement or practice concerned, or category of agreements or practices concerned, contributes to any of the following*
  - (i). ...; or*
  - (ii). Promotion of the ability of small business...to become competitive; or*
  - (iii). ...; or*
  - (iv). The economic stability of any industry designated by the minister, after consulting the Minister responsible for that industry."*

In accordance to section 10(6) of the Competition Act, notice is hereby given of the abovementioned exemption application to allow interested parties to make written representations to the Commission as to why the exemption should or should not be granted. All representations must reach the Commission within 20 business days from the date of the publication of this notice.

Such representations should be directed to:

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**Ronald Rateiwa and Louise du Plessis**

**Competition Commission South Africa**

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