

**DEPARTMENT OF TRADE AND INDUSTRY  
DEPARTEMENT VAN HANDEL EN NYWERHEID**

No. 830

31 October 2014

**NOTICE IN TERMS OF SECTIONS 10(7) OF THE COMPETITION ACT NO 89 OF 1998  
(AS AMENDED)**

**SOUTH AFRICAN SQUID EXPORTERS ASSOCIATION (2013JUN0262)**

**EXEMPTION GRANTED**

Notice was given in the Government Gazette on 20 September 2013 (Government Notice 695 of 2013) that the South African Squid Exporters Association ("SASEA") filed for exemption from the provisions of Chapter 2 of the Competition Act No 89 of 1998, as amended (the "Competition Act")<sup>1</sup>, in terms of Section 10(1)(b) with the Competition Commission (the "Commission").

SASEA made the application in terms of section 10(3)(b)(i) and (ii) of the Competition Act, which makes provision for a firm to apply for an exemption if the purpose of their conduct is to maintain or promote exports and to promote the ability of historically disadvantaged persons to become competitive. SASEA sought the above exemption for a period of ten (10) years.

SASEA filed the application on behalf of its members requesting to be exempt from the provisions of section 4 of the Competition Act. Specifically, SASEA had requested that it and its members be permitted to collect, collate and disseminate up-to-date and current market sensitive information on the demand and supply conditions in the South African Squid market.

Notice is therefore given in terms of section 10(7) of the Competition Act that the exemption application by SASEA has been granted for the collection, collation and dissemination to its members of up-to-date and current market sensitive information for a period of **five (5) years commencing on 30 June 2014 and ending on 30 June 2019**, subject to the following conditions:

- Membership to SASEA and hence the ability to share and obtain market related information will not be exclusive and any South African Squid exporter may become a member.
- SASEA will collate and exchange real time information regarding pricing and quantity related information on a weekly basis for the three month period December to February and on a monthly basis for the five month period July to November. Information regarding the condition of the market and pricing and quantity information relating to international competitors and international market conditions will be collated and exchanged on an ad hoc basis. This information will be available to all members.
- There will be no direct contact between members of SASEA in regard to sharing market sensitive information. Sharing of market sensitive information may only take place through SASEA.
- An independent person will be appointed, within a period of one (1) year, to verify and disseminate the information and ensure anonymity for all information circulated amongst SASEA members.

<sup>1</sup> Competition Commission case no. 2013Jun0262.

- Members of SASEA will use the information given above in respect of their own independent business decisions including squid prices and inventory.

The Commission's analysis of the exemption application found that the conduct by SASEA would amount to a contravention of section 4(1)(b)(i) and (ii) of the Competition Act, a *per se* contravention which does not allow for efficiency justifications.

In relation to the grounds upon which SASEA relied for their application, the following findings were made:

- In terms of section 10(3)(b)(i), the purpose of the exemption must be the promotion or maintenance of exports. The Commission found that the conduct sought to be exempt would contribute to this objective.
- In terms of section 10(3)(b)(ii), the purpose of the exemption must be the promotion of *small businesses* or *firms* controlled by *historically disadvantaged persons* ("HDPs"). The Commission found that SASEA failed to demonstrate that the conduct would contribute to this objective.

The Commission's investigation revealed that South African exporters are at a clear disadvantage when negotiating with foreign buyers due to information asymmetry. Foreign buyers possess greater information regarding market conditions, which is used to depress the price South African exporters can fetch. Therefore the exempt conduct will provide South African exporters with a platform to overcome these information asymmetries that exist in relation to the foreign market, thus strengthening their bargaining position and improving their competitiveness.

The Commission also considered submissions received from a number of stakeholders in the Squid industry. The submissions were mixed, with some supportive of the application and others not. The Commission is however satisfied that the concerns raised have been adequately addressed.

Notice is therefore given in terms of section 10(8) of the Competition Act that any person with a substantial financial interest affected by the abovementioned decision may appeal the decision to the Competition Tribunal in the prescribed manner.

Any queries in this regard should be directed to:

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In correspondence, kindly refer to case no. 2013Jun0262