

No. 831

31 October 2014

NOTICE IN TERMS OF SECTION 10(7) OF THE COMPETITION ACT 89 OF 1998 (AS AMENDED):

CONDITIONAL EXEMPTION GRANTED TO: AFRICAN MARINE PRODUCTS (PTY) LTD; CAPE LOBSTER EXPORTERS ASSOCIATION; OVENSTONE AGENCIES (PTY) LTD; PREMIER FISHING SA (PTY) LTD; OCEANA LOBSTER LTD (HEREINAFTER COLLECTIVELY REFERRED TO AS "THE APPLICANTS")

EXEMPTION GRANTED

Notice was given in the Government Gazette on 20 September 2013 (Government Notice 695 of 2013) that the Applicants applied to the Competition Commission (the "Commission") for an exemption from the application of the provisions of Chapter 2 of the Competition Act, in terms of Section 10(1)(a) of the Competition Act 89 of 1998, as amended (the "Competition Act") for purposes of marketing and exporting of lobster (includes both the South Coast and West Coast Rock Lobster) in foreign markets.

The Applicants sought to be exempted from certain provisions of Section 4 of the Competition Act. The exemption was sought for a period of ten (10) years. The Applicants based their application on the premise that they had engaged in information sharing of sensitive business information and sought to exempt their conduct on the basis that it was necessary to continue with that practice, and the practice of information exchange contributes to the objective of maintenance and promotion of exports, as set out in section 10(3)(b)(i) of the Competition Act.

Notice is hereby given in terms of Section 10(7) of the Competition Act, that the Commission has, in response to the above mentioned application, granted the Applicants a conditional exemption in terms of Section 10(2)(a) of the Competition Act for a period of **five (5) years, commencing on 30 June 2014 and ending on 30 June 2019**, subject to the following conditions:

- Applicants must establish a subcommittee or other body similar in structure and nature within the West Rock Lobster Association for purposes of promoting and marketing of all South African harvested lobster¹ species;
- Such a subcommittee must be established within a period of a year from the date of the granting of the exemption;
- The membership to that committee shall be open to all South African lobster harvesters and exporters, in particular SMME's and Black owned firms, thus to allow equal access to the exchanged information;
- Any information that needs to be shared relating to marketing and exporting of South Coast and West Coast Rock Lobster between and amongst the exporters of lobster will be shared within the auspices of the committee and/or in the presence as well as with the knowledge of all the members to the committee and no direct contact between the Applicants concerning sharing of information with regard to lobster exports will be allowed;
- Any discussions or information exchange that takes place amongst the members of the committee for the purposes of complying with the exemption granted will be limited to activities relating to marketing and export of lobster.

The exemption will allow for exporters of lobster fish to share and exchange information that pertains to global market conditions for the sale of lobster, prevailing prices of lobster, production plans, volumes of lobster imports in the markets they export into, joint marketing trips, catch statistics internationally and market developments. The practice of information sharing between the Applicants is considered by the Commission to be in contravention of Sections 4(1)(b)(i) and (ii) of the Competition Act.

The Commission conducted an investigation to establish whether the activities the Applicants were engaging in were necessary to satisfy the objective set out in section 10(3)(b)(i) of the Act, that is to contribute to the promotion and maintenance of exports. The Commission is satisfied that the Applicants will contribute to the promotion and maintenance of exports within the Republic, in that; the information sharing amongst the Applicants will lead to information symmetry between the South African exporters and the foreign buyers which will afford the South African exporters a leverage when negotiating and concluding sale agreements with the foreign buyers. This would allow for South

¹ It includes both the South Coast and West Coast Rock Lobster.

African exporters to fetch the best possible prices in the global market for the supply of lobster, which will contribute to tax revenues payable to the Republic, and thus contribute to the growth of the South African economy. The Commission also found that the exempted conduct does not have an impact on competition in the domestic market for the marketing of lobster fish.

In terms of section 10(8) of the Competition Act, the Applicants or any other person with substantial financial interest or affected by this decision may appeal it to the Competition Tribunal in the manner prescribed.

Further queries should be directed to:

Ms. Thandile Charlie

Competition Commission of SA

Enforcement and Exemptions Division,

Private Bag X23,

Lynnwood Ridge, 0040

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In correspondence kindly refer to the following case number: 2013JUL0332