General Notices • Algemene Kennisgewings

DEPARTMENT OF TRADE AND INDUSTRY

NOTICE 1230 OF 2015

COMPETITION COMMISSION

APPLICATION FOR AN EXEMPTION

1. Notice is hereby given in terms of section 10(6)(a) of the Competition Act, No. 89 of 1998, as amended ("the Act") that the South African Petroleum Industry ("SAPIA"), has applied to the Competition Commission ("the Commission"), in terms of section 10(1) of the Act, to be exempted from certain provisions of Chapter 2 of the Act. SAPIA is the representative association of the petroleum industry. It was formed to, *among others*, promote understanding of the industry's contribution to economic and social progress with all its stakeholders.

2. SAPIA members participate in the petroleum industry by sourcing raw materials, importing, manufacturing and supplying petroleum products. The following are the integrated members of SAPIA which hold both a refining or manufacturing licences: BP Southern Africa (Pty) Ltd; Chevron South Africa (Pty) Ltd; Engen Petroleum Ltd; Sasol Ltd; Shell South Africa Marketing (Pty) Ltd and Shell South Africa Refining (Pty) Ltd; Total South Africa (Pty) Ltd; and The Petroleum Oil and Gas Corporation of SA (Pty) Ltd t/a PETROSA. Non- integrated members of SAPIA hold wholesaling licences only, and do not own oil refineries. No exemption is requested in respect of wholesale, commercial or retail activities of SAPIA members. More information about SAPIA and its members is available at www.sapia.co.za

3. The Exemption Application covers a range of agreements and practices which are required to ensure continuity and stability of liquid fuels supply to various sectors and the geographic locations of the South African economy. The application relies on the objective set out in Section 10(3)(b)(iv) of the Act, SAPIA asserts that the category of the agreements and practices concerned contributes to the economic stability of the petroleum industry.

4. The petroleum industry was designated by the Minister of Trade and Industry for purposes of Section 10(3)(b)(iv) of the Act on 05 June 2009. Subsequently on 22 December 2015, the Minister of Economic Development Department also designated the industry for a 6 (six) months period ending on 30 June 2016.

5. The scope of the exemption application includes agreements and practices which exist in each value exist in each of the areas of the supply chain and the levels of co-operation and co-ordination required between participants in each of these areas. The stages of the supply chain, which are described as: inbound logistics (i.e., obtaining raw material); manufacturing; primary distribution; terminal and depot operations; the Southern Tank Farm Agreement; Port operations; Joint bunkering services; Airport fueling services. No exemption is requested in respect of wholesale, commercial or retail activities.

6. The other conduct for which exemption is requested involves the forums created by the Department of Energy for purposes of overseeing the national liquid fuels supply position in order to anticipate, detect and react to threats to security of supply. The practices required to enable SAPIA, its members and other stakeholders in the liquid fuels supply chain to engage collectively with the Department of Energy and other government departments in order to assist government with the planning and implementation of industry policy initiatives which impact security of supply.

7. These practices and/or agreements are briefly explained below:

Inbound Logistics/Obtaining Raw Materials

8. Inbound logistics refers to the process of either obtaining inputs for production of liquid fuels (crude oil and natural gas) or obtaining refined liquid fuels from foreign suppliers. The practices for which exemption is sough under this category includes: co-loading crude oil; co-loading of imported refined liquid fuels; the Single Buoy Mooring Facility ("SBM"); Port facilities; coastal shipping and coastal shipping meeting.

Co-Loading and Co-Freighting of Crude Oil Agreement

9. The parties have entered into Co Freight Agreement which provides for the coordination of crude oil imports between participants for the operation of ports access, discharge and loading facilities with the following objectives: setting and sharing of freight costs; ensuring efficient port facilities; participation in efficient scheduling of berth access, and ensuring most efficient scheduling of berth access and most efficient utilization of the infrastructure and flow of liquid fuels between the ports, terminal depot and manufacturing facilities.

Co-Loading and Co-Freighting of Imported refined Liquid Fuels

10. No formal agreements or practices have been established for the co-loading and co-freighting of refined liquid fuel. However, SAPIA states that it may be appropriate in future for a co-loading agreement for refined liquid fuel imports to be established along the lines of the crude oil co-loading agreement referred to above.

The Single Buoy Mooring Facility ("SBM")

11. Under this agreement, oil refiners are required to cooperate and co-ordinate their activities in various ways, SAPIA states the following:

11.1 Management of the SBM requires co-ordination and co-operation between the appointed manager and the participants who wish to use the SBM.

11.2 Efficient use of the SBM requires that an operating schedule be drawn up reflecting different oil refiners' respective requirements. Information must be exchanged in order to schedule berth access and use of discharge facilities.

11.3 Knowledge of these details allows firms to schedule their deliveries to avoid demurrage, underutilization of the SBM and to manage crude oil levels in their storage tanks and at their refineries. This avoids bottlenecks at primary stage of the supply chain.

Southern Tank Farm ("STF") Agreement

12. As part of these operations and as a condition of the STF Agreement, volume and planning information is shared during scheduling, these include operations strategic

plans, methods of maintenance, loading planning, long term maintenance planning for budget purposes, costing, maintenance and back changes or recoveries and core contractors or bidding processes. Information is also shared in respect of losses, costing and recoveries.

Port Facilities

13. When importing and receiving refined liquid fuel at ports, oil companies must interact with each other in relation to the use of port facilities including berths, off-loading equipment and shore tankage. This interaction is important irrespective of whether or not the oil companies have their own manufacturing facilities.

Coastal Shipping and the Coastal Shipping Meeting

14. This meeting provides for "joint planning and co-ordination in the scheduling of coastal shipping arrangements, and the exchange of information necessary for the Ship Schedulers Meeting to take place effectively."

Production and Manufacturing plant shutdowns

15. SAPIA indicates that it is necessary for manufacturing plants to shut down from time to time in order to effect upgrades, maintenance, changes to liquid fuel specifications in line with legislative requirements or deal with crisis situations. In order to manage shutdowns, it is necessary for the oil refiners to schedule planned shutdowns in advance. This planning requires the exchange of certain information and an element of coordinated maintenance planning. This entails both planned and unplanned shutdowns.

Primary Distribution

16. SAPIA indicates that liquid fuels are moved in bulk from production and import facilities to secondary terminals and depots. The modes of transport are by pipeline, by rail, by road and by coastal vessels. Members of SAPIA need to cooperate and co-ordinate their activities to ensure efficient distribution of liquid fuels.

Access to pipelines and tankage facilities

17. The right of access to supply and tankage infrastructure is protected by section 20(1) of the Petroleum Pipelines Act 60 of 2003. Members of SAPIA need to cooperate and co-ordinate their activities to access pipelines and tankage facilities in an agreed manner.

Depot Infrastructure

18. According to SAPIA, operations at depots need to be coordinated and are normally managed by one company. That host company's employees monitor the volumes held by each "accommodated" competitor in the depot tanks and organize the schedule in terms of which each "accommodated" member can draw down from those volumes.

19. Save for where the retail outlets run out of fuel due to supply problems at or into a depot and the matter is raised in the LPT, there is no co-ordination between oil companies in activities beyond the delivery point at the depots or terminals.

Liquid Fuel supply to airports – OR Tambo International Airport ("ORTIA")

20. The practice for which exemption is sought under this category involves the practices relating to the operations of ORTAFS and CTIAFS as described in this application, in terms of which the participants share information relating to the costs, volumes and other technical elements of those operations.

Joint Bunkering Services ("JBS")

21. Bunkering refers to the supplying of bunker fuel oil to ships. The JBS is responsible for the storage, management and co-ordination of operations for the supply of bunker fuels to ships (both local and international) that have procured marine fuels from the participants. Participants operate on an unincorporated joint venture basis.

22. In Richards Bay (which is managed by Engen) the JBS participants are BP, Chevron, Engen, Shell and Total. In Cape Town (which is managed by Chevron) the JBS participants are BP, Chevron and Engen.

Possible contravention as identified by the Applicant

23. SAPIA members acknowledge that there is a possibility that their conduct could be found to be in breach of section 4 of the Act. Thus to remedy the potential concerns that might

arise as a result of these agreements/practices, SAPIA is proposing, *among other*, the following conditions:

23.1 Competing participants in exempt agreements and practices may not share competitively sensitive information, except for the purposes described in the exemption application.

23.2 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 DoE or NERSA.

23.3 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.

24. SAPIA seeks this Exemption for a period of five (5) years, starting from the date of approval of the application by the Commission; should the Commission approve the application.

25. The Notice is hereby given in terms of section 10(6)(b) of the Act to allow interested parties 20 business days from the date of the publication to make written representations to the Commission as to why the Exemption should or should not be granted.

Such representations must be directed to either Mr. Themba Mahlangu and/or Ms. Selelo Ramohlola on the following electronic mailing addresses, ThembaM@compcom.co.za; SeleloR@compcom.co.za, respectively.

In correspondence kindly refer to the following Case No: 2015Dec0741