
GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

ECONOMIC DEVELOPMENT DEPARTMENT

NO. 794

01 JULY 2016

COMPETITION COMMISSION**NOTICE IN TERMS OF SECTION 10(7) OF THE COMPETITION ACT 89 OF 1998 (AS AMENDED): THE WESTERN CAPE CITRUS PRODUCERS FORUM GRANTED CONDITIONAL EXEMPTION****CASE NUMBER: 2015Oct0555**

1. On 12 February 2016, the Competition Commission ("the Commission") published a notice in the Government Gazette (Government Gazette No. 39679, Notice 3 of 2016) in respect of the application for an exemption by the Western Cape Citrus Producers Forum ("the WCCPF") from certain provisions of Chapter 2 of the Competition Act, No 89 of 1998, as amended ("the Act"). The WCCPF has applied for a third exemption to allow its member growers to continue with their coordination of export activities of citrus fruit beyond the expiry of the current exemption. In particular, the WCCPF has applied for an exemption to coordinate logistical, marketing and sales support for its member growers who all export citrus fruits to the United States of America ("the USA").
2. Notice is hereby given in terms of Section 10(7) of the Act that the Commission has, in response to the above application, granted the WCCPF a conditional exemption for a period of three (3) months, commencing on 14 June 2016 to 16 September 2016.
3. In granting the exemption, the Commission has concluded that the export activities of the WCCPF constitute a prohibited practice, in contravention of Sections 4(1)(b)(i) and 4(1)(b)(ii) of the Act. The Commission is however satisfied that the conduct of the WCCPF has contributed towards the maintenance or promotion of exports in South Africa. Thus meeting the objective set out in Section 10(3)(b)(i) of the Act.
4. In addition, the Commission considered the following factors:
 - 4.1. The Commission found that the cost of exporting citrus fruits to the USA is much higher than exports to other destinations. This is due to the use of conventional bulk reefer vessels ("reefer vessels") that are much bigger and more expensive to

operate than a normal container shipment. As such, individual member growers find it difficult to export citrus fruits to the USA in the absence of a joint export pool. The Commission has therefore concluded that economies of scale are imperative in ensuring that member growers export profitably and share the costs involved in the export process.

- 4.2. Further the Commission's investigation found that there are delays in offloading container liners in some harbours in the USA. This is due to infrastructure limitations and the fact that each container is viewed as a separate and single unit as opposed to a reefer vessel where the whole shipment is viewed as a single unit. It is as a result of this that container liners take longer to offload than reefer vessels. The delays experienced in offloading container liners negatively affect the quality of fruit.
5. It should be noted that in terms of Section 10(8) of the Act, the WCCPF or any other person with substantial financial interest affected by the Commission's decision may appeal it to the Competition Tribunal in the prescribed manner.
6. The exemption application has been granted subject to the following conditions:

Preamble

The conditions below apply for purposes and duration of the exemption. The exemption relates to the cooperation agreements and/or practices by the WCCPF and its member-growers in respect of their co-ordination of export activities of citrus fruit to the USA market.

Conditions to the exemption:

- 1. The exemption is granted on the basis of the facts and the existing agreements and practices described in the application. Should the facts and existing agreements and practices change materially /or significantly, including any change caused by the proposed addition of a new participant to an exempt agreement or practice or the conclusion of a new agreement, the Commission should be notified of such change. Any new agreement which affects the agreements and practices*

described in the exemption application, or any amendment or addendum to agreements contained in the application shall not be of force or effect until approved by the Commission.

- 2. The exemption only applies to the export activities of citrus fruit by the WCCPF and its member-growers destined for the USA market. The exemption does not apply to citrus fruit sold locally or exported to any other market (such as Africa, Europe and Asia).*
- 3. The WCCPF and its member-growers, or any other (approved) participants in the exempt agreements and practices, may not share competitively sensitive information such as pricing and volumes, except for purposes described in the exemption application.*
- 4. The joint negotiation of tariffs by the WCCPF applies to reefer vessels. The WCCPF may however engage in the joint tariff negotiations in respect of containers on behalf of its member growers provided citrus fruit is being exported to new destination ports in the USA. The WCCPF is therefore required to give an update of export volumes on new destination port on an annual basis.*
- 5. The WCCPF must open up its membership to accommodate both existing and potential exporters of citrus fruit to the USA market on fair, reasonable and transparent grounds.*

Enquiries in this regard may be addressed to: **Mrs Mamontshi Keleme** Competition Commission of SA; Enforcement and Exemptions Division, Private Bag X23, Lynnwood Ridge, 0040; Email: mamontshik@compcom.co.za Or by facsimile: (012) 394 2829