

## DEPARTMENT OF AGRICULTURE, LAND REFORM AND RURAL DEVELOPMENT

NO. 351

23 April 2021

**LAND REFORM (LABOUR TENANTS) ACT, 1996 (ACT NO. 3 OF 1996)**

Notice is hereby given, in terms of Section 17 (2) (c) of the Land Reform (Labour Tenants) Act, 1996 (Act No 3 of 1996) ("the LTA"), that an Application for acquisition of land was lodged with the Director General of the Department of Land Affairs by the Applicants, and in respect of the Property set out in the Schedule.

Any party who may have an interest in the above-mentioned Application is hereby invited to make written representations to the Director General, within 30 days from the publication of this Notice. The representations must be forwarded to:

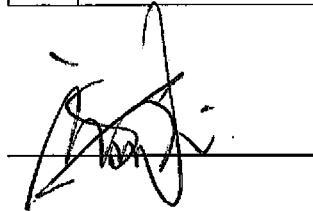
The Director General  
c/o Deputy Director: Tenure Systems Reform  
Department of Rural Development and Land Reform

**SCHEDULE****Applicants:**

<b>No.</b>	<b>Name and Surname</b>	<b>Identity Number</b>
1.	SPRINGBOK MOKWENA	441125 5232 089,
2.	JOHANNES MOTAU	651216 5661 081,
3.	OUPA GEELBOOI MTSWENI	650612 5316 083,
4.	PETROS SUKAZI	680617 5306 087,
5.	PETROS MADONSELA	560413 5632 085,
6.	SIPHO MASINA	630701 5637 088,
7.	SAMSON NGOMA	430116 5274 083,
8.	JERRY MABHENA	540719 5268 083,
9.	AMOS SHONGWE	590519 5512 087,
10.	JOHANNES NKUNA	480529 5458 085,
11.	JAPIE MAHLANGU	650209 5543 087,
12.	LUCAS MAREDI	560920 5690 087,
13.	RICHARD SIMELANE	680828 5484 085,
14.	ROY MTHEMBU	720911 6095 084,
15.	ISAAC NKOSI	770515 5594 085,
16.	JOSEPH MOSOLODI	580503 5333 084,
17.	DIVILIOUS NTSHALINTSHALI	640312 5443 085,
18.	JOHANNES MTHOMBENI	380125 5194 084,
19.	MOSES SHONGWE	431120 5327 080,
20.	JOHANNES MALAZA	610507 5569 088,
21.	APRIL RUDOLF SKOSANA	760407 5542 086,

22.	DAVID TWINS ZULU	660505 5548 085,
23.	KLEINBOOI SKOSANA	440802 5459 083,
24.	ISAAC MPHUTI	670606 5638 088,
25.	ISAAC MTHEMBU	530501 5623 083,
26.	JEREMIAH M MAVIMBELA	491229 5201 083,
27.	JEREMIAH MATUNJWA	550701 5458 085,
28.	JOHAN CHRISTMAS DUBE	301225 5378 087,
29.	FANIE SHONGWE	761225 5968 088,
30.	GEELBOOI MOTAU	380219 5213 083,
31.	GERT JONCERS	670901 5144 082,
32.	THOMAS PHOCA	580902 5240 085,
33.	DANIEL MASANGU	561228 5584 089,
34.	ANDRIES MAREDI	650503 5440 082,
35.	LUCAS MOTAU	731129 5700 086,
36.	ADAM MTHOMBENI	600717 5526 085,
37.	ALBERT MLOTSHWA	541008 5539 084,
38.	AARON MASEKO	510403 5179 089,
39.	JOSEPH SIBANYONI	740920 5520 087,
40.	AARON HLATSHWAYO	730520 5289 081,
41.	APRIL MOTAU	611224 5341 083,
42.	MOSES MNGOMEZULU	780730 5319 080,
43.	JOHN MTHAMBO	651020 5539 085,
44.	SHORTIE GABRIEL	571023 5199 089,

No.	Property Description	Locality (District)	Current Title Deed No	Current Owner	Bonds and Restrictive Conditions (Interdicts)
1	Portion 12 and R/E of portion 37 of the Farm Driefontein 153 IS	Nkangala	T771/2012	ANTON PELSER EIENDOMS TRUST	



For DIRECTOR-GENERAL: DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM

SIGNED BY: *Nemafandani*  
DEPUTY DIRECTOR: TENURE SYSTEMS REFORM, DULY AUTHORISED

## DEPARTMENT OF AGRICULTURE, LAND REFORM AND RURAL DEVELOPMENT

NO. 352

23 April 2021

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**The Director General**  
**c/o Deputy Director: Tenure Systems Reform**  
**Department of Rural Development and Land Reform**  
 Provincial Shared Service Centre: Mpumalanga  
 Directorate: Tenure Systems & Implementation  
 Private Bag X7261  
 Witbank  
 1035  
 Tel: 013 655 1000

**SCHEDULE****Applicants:**

No.	Name and Surname	Identity Number
1.	MPHOLO PIET MTSWENI	4305235323085
2.	JOHANNES MSONGELWA MASOMBUKA	3412205147080
3.	JOHANNES JOHN MAHLANGU	5812235339085
4.	MSINDO WELLEM MAHLANGU	4004165836085
5.	JABULANI ABEL NKOSI	5903045396083
6.	APRIL RAMKAT SIBANYONI	6711035425087
7.	ABHAM NTAYI SIBANYONI	6408285542089
8.	MALANGENI JEREMIAH MASOMBUKA	4309125327081
9.	THIMOTY JOHN MASEKO	3606165344087
10.	ISAAC JABU MAHLANGU	6610075412080
(Hereinafter referred to as "the Applicants")		

**Property:**

No.	Property Description	Locality (District)	Current Title Deed No	Current Owner	Bonds and Restrictive Conditions (Interdicts)
1	Portion 4 of the farm Driefontein 372 JS, 625.2998ha	Nkangala	T10695/2012	1. REYNDERS HENDRIK JOHANNES JACOBUS	

  
For DIRECTOR-GENERAL: DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORMSIGNED BY: 

DEPUTY DIRECTOR: TENURE SYSTEMS REFORM, DULY AUTHORISED

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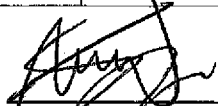
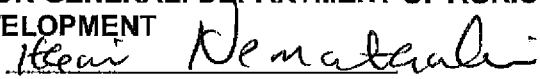
**The Director General**  
**c/o Deputy Director: Tenure Systems Reform**  
**Department of Agriculture, Land Reform And Rural Development**  
 Nkangala District Shared Services Centre,  
 Private Bag X 7261  
 Witbank  
 1035  
 Tel: 013 655 1000

**SCHEDULE****Applicants:**

No.	Name and Surname	Identity Number
1.	MABIZO AARON SKOSANA	2506285107086,
2.	LUKAS BALENI	5810115287085,
3.	AARON MTSWENI	6805045332083,
4.	MONYANGENI SAMSON MASANGO	4105165206080,
5.	KOKONI SAMUEL MTSWENI	5207215498089,
6.	ELIAS BOETIE SIBANYONI	6212245487082,
(Hereinafter referred to as "the Applicants")		

**Property:**

No.	Property Description	Locality (District)	Current Title Deed No	Current Owner	Bonds and Restrictive Conditions (Interdicts)
1	R/E of Portion 02 of the farm Springboklaagte 416 JS	Nkangala	T7441/2010	1. MAFUBE COAL MINING PTY LTD	

  
 For **DIRECTOR-GENERAL: DEPARTMENT OF AGRICULTURE, LAND REFORM AND RURAL DEVELOPMENT**  
 SIGNED BY:   
**DEPUTY DIRECTOR: TENURE SYSTEMS REFORM, DULY AUTHORISED**

## DEPARTMENT OF ECONOMIC DEVELOPMENT

NO. 354

23 April 2021



**competitioncommission**  
**south africa**

## **CONCLUSION OF THE LAND BASED PUBLIC PASSENGER TRANSPORT MARKET INQUIRY**

**March 2021**

### **SUMMARY OF THE FINDINGS AND RECOMMENDATIONS**

#### **Background**

1. On 10 May 2017, the Competition Commission (the Commission), in exercising its powers under Section 43B of the Competition Act No 89 of 1998 (the Act), published a notice that it would conduct a Market Inquiry into the land-based public passenger transport sector (the Inquiry). The Terms of Reference (ToRs) for the Inquiry were also gazetted on the same day. The Commission has identified the public passenger transport sector to include road and rail based public passenger transport, as relevant to this Inquiry. The modes of transport covered in the ToRs are buses (excluding cross-border services), taxis (minibus, metered taxis, e-hailing) and commuter rail (excluding tourist rail).
2. The Inquiry was initiated because the Commission was of the view that there are features, or a combination of features, in the passenger public transport sector that were distorting or inhibiting competition. The Commission made this assessment based on several complaints in the industry, as well as complaints lodged with the Commission by some stakeholders.

3. In addition, the transport sector is one of the priority sectors of the Commission. South Africans spend a significantly high proportion of disposable income on public transport (over 20 per cent) against a benchmark of 10 per cent for developing countries. The implication is that any resolution on identified impediments in the public transport sector may have benefits in the long run.
4. Public transportation is also key to sustainable economic growth in any country. Developing and maintaining transport infrastructure and providing an effective and efficient public transport system can create employment, improve efficiency across the economy, and ensure sustainable development by reducing carbon emissions from private vehicles in congested urban spaces. Statistics South Africa (2015) highlights that minibus taxis are the most commonly used mode of public transport in South Africa, accounting for 66.5 per cent of households that use public transport. The bus and rail modes account for 23.6 per cent and 9.9 per cent, respectively.
5. Government has also dedicated Outcome 6 to promoting, “an efficient, competitive and responsive economic infrastructure network”. Transport-related infrastructure and mobility of commuters contribute to the achievement of Outcome 6. Different spheres of government play a role in pursuit of achieving Outcome 6, as will be elaborated in this report.
6. The ToRs identified the central role of public transport in providing meaningful mobility for most of the population, in pursuit of economic participation. The ToRs identified the following broad themes as the rationale for initiating the Inquiry:
  - 6.1. Price setting mechanisms: Analysing different price setting mechanisms for all modes of public transport and their impact on competition;
  - 6.2. Price regulation: Examining applicable price regulations and their impact on competition;
  - 6.3. Route allocation, licensing and entry regulations: Assessing the impact of regulations, including route allocation, licensing and entry requirements on intermodal and intramodal competition;
  - 6.4. Allocation of operational subsidies: Assessing the impact of operational subsidies on some modes of public transport, and its impact on both intramodal and intermodal competition;
  - 6.5. Transport planning: Evaluating the impact of government’s transport planning framework on dynamism, efficiency and competition; and

- 6.6. Transformation: Assessing transformation issues, including ownership patterns in the public transport industry.
7. The reports have been separated for ease of articulation - the main report focuses on the traditional markets (i.e. minibus, bus and rail), whilst the second report has a specific focus on e-hailing and metered taxi services. The Commission is of the view that the dynamics of competition between the metered taxis and e-hailing services are driven largely by technological developments.

## **MAIN REPORT FINDINGS AND RECOMMENDATIONS**

8. The full report with all findings and recommendations can be accessed from the Competition Commission's website at <http://www.compcom.co.za/wp-content/uploads/2021/04/PTMI-Non-Confidential.pdf>

### **Major Findings**

#### **Is public transport in South Africa considered as a network or system?**

9. The Commission finds that there is lack of integration in the public transport system and this is worsened by the persistent inequality between modes (i.e. minibus taxi and BRT) and within modes (i.e. Gautrain and Metrorail). The stark differences in infrastructure investment, service levels and quality standards in the modes is an impediment to integration. The differences in service levels further deepens the socioeconomic divide in the society, as public transport is now catering for different classes.
10. Another example of the lack of integration is in the provision of rail services by both Metrorail and Gautrain in Gauteng. This is not an efficient utilisation of limited government funding, as both services are subsidised. Metrorail is operated at a national level and Gautrain at a provincial level, and ideally commuter rail should be provided by one entity at lower levels of government to derive economies of scale and foster integrated planning.
11. Integration of transport modes has not yet been achieved in South Africa, and this is further exacerbated by the way subsidies are transferred to the different spheres of government.

### **Impact of spatial planning on public transport**

12. The system of apartheid in South Africa left a legacy of social segregation which resulted in black people settling far away from economic hubs. Spatial planning problems are still



lingering in the democratic South Africa, because of limited land available closer to economic opportunities.

13. Subsidies more broadly assist workers to reach places of work, and this has inherently created two peak periods in the day – morning and evening peak – with idle capacity during off-peak. The problem with only two peak periods in a day is that this results in inefficiencies in the subsidy framework, as the assets are idle during off-peak periods.

**What informs the current subsidy regime?**

14. Government currently does not have a subsidy policy which provides justification for some modes of transport being subsidised while others are not. The Commission notes the effort by government to change the subsidy framework through the development of the subsidy policy.
15. Different subsidies are allocated to different spheres of government and given the intergovernmental coordination failures, value for money is compromised (from duplicated effort due to lack of integration), and economies of scale from a planning perspective is lost. Other modes of transport are subsidised while others are not.
16. For instance, the Commission finds that the IRPTN/BRT system in its current format has led to several inefficiencies, due to low passenger numbers. This results in under-recovery of revenue. In some instances, wrong corridors were chosen for the first phase of the implementation of the IRPTN system. The chosen corridors had low density routes, and low passenger volumes. In some cities, it is evident that no feasibility studies or needs assessments were conducted to justify the implementation of the system.
17. For contracted commuter bus services, provinces are entrusted with the responsibility for managing the contracts. During the transition from the apartheid regime, government continued with the bus contracts. As a provisional measure, before the finalisation of the contracting system, government signed interim contracts with bus operators that were already part of the subsidy system. However, the majority of these contracts have now been in existence for over 21 years without being put on tender.
18. Commuter rail is subsidised across the world for economic, social and environmental reasons. In South Africa, Metrorail services are considered a social service and are thus provided in the interest of the public. However, Metrorail is inefficient in the provision of urban rail commuter services. There are several challenges that constrain the quality of the

service – including continuous breakdown of trains, unreliable services, and fare evasion by passengers.

19. Contrary to the social service provided by Metrorail, the main objective of the Gautrain was to reduce traffic congestion in Gauteng, thus providing an alternative for private motor vehicle users. Gautrain provides a superior service that benefits a smaller proportion of the commuters, despite significant subsidies provided by government. Rail (both Gautrain and Metrorail) accounts for around 9.9 per cent of commuters yet receives substantial support from government.

#### *Breakdown of subsidy allocation*

20. The minibus taxi industry accounts for approximately 66.5 per cent of commuters, buses 23.6 per cent, and rail 9.9 per cent. There is a skewed relationship between ridership levels and subsidy funding. For instance, minibus taxis only receive 1 per cent of the total subsidy in the form of capital subsidy (taxi recapitalisation).

#### **Regulatory failures compromising minibus taxi operations**

21. The top concern from the taxi industry is that subsidies skew competition in favour of the subsidised services as well as route allocation challenges which fuels violence. Approval of operating licences on routes is primarily the responsibility of the Provincial Regulatory Entities (PREs) with the directives from municipalities (planning authorities). There are significant backlogs in applications and the general time period for the issuing of operating licences is approximately 9 to 18 months in some provinces, as opposed to the 60 days stipulated in the National Land Transport Act.
22. Conflict over routes has plagued the minibus taxi industry for many years. Submissions from the industry indicate that there is currently no framework to guide planning authorities and the PREs in the allocation of new routes arising from the development of new residential areas or shopping malls.

#### **Interprovincial bus services**

23. The Commission finds that certain practices in the provision of interprovincial bus services limit, distort and/or prevent competition between bus operators, for example, abuse and exploitation by large established bus operators to object to applications by new and existing players that try to expand.
24. Interprovincial bus services require access to terminal facilities. PRASA manages most of the terminals in the country, and provides access to these facilities through its division,

PRASA CRES. PRASA is vertically integrated as it runs most of the bus terminal facilities and also active in the interprovincial bus services through its subsidiary Autopax Passenger Services (SOC) Ltd (Autopax). Autopax operates two brands, City to City and Translux.

25. PRASA's presence in (both) the provision of intermodal terminal facilities and the provision of interprovincial bus services is undesirable. Between March 2017 and July 2019, the Commission received five complaints from interprovincial bus operators concerning allegations of, among other things, excessive access fees charged by PRASA for access to loading bays at Park Station. The Commission duly investigated the complaints and found that PRASA has contravened sections 8(1)(c), 8(b) and 8(a) of the Act. Based on these findings, on 07 February 2020, the Commission referred the five complaints to the Competition Tribunal for determination.
26. Based on the information gathered during the Inquiry, the Commission finds that:
  - 26.1. Autopax has the largest debt compared to other operators.
  - 26.2. The Commission has established that Autopax's semi-luxury brand, City to City, has been allocated an exclusive loading area and ticketing office, by PRASA CRES, at Park Station.
  - 26.3. The Commission finds that PRASA constantly provides financial support and bailouts to Autopax which may impact competition.
27. PRASA's ownership of Autopax creates perverse incentives, as PRASA always tries to safeguard and protect the interests of Autopax even in instances where it is not economically justifiable to do so. The interprovincial bus services market is competitive, and the continuous protection and/or bailing out of Autopax seems unjustifiable.

### **Transformation**

28. The Commission's findings in relation to transformation are, there is no or limited transformation within the public transport industry across the value chain (financing, manufacturing, fuel supply etc). Upstream levels of the value chain, such as financing and manufacturing, are not transformed. At an operational and ownership level, the minibus taxi businesses are majority Black-owned.

### **FINAL RECOMMENDATIONS**

29. The Commission published provisional recommendations in February 2020 for public comments. Having considered the comments from stakeholders, the Commission has

identified final recommendations which will improve the functioning of the public transport system.

30. The relationship between PRASA and Autopax raises several concerns for the interprovincial bus industry. It is recommended that DOT must address the conflict of interest between PRASA CRES and Autopax. This can be achieved through, among others, a complete structural separation between the entities. Furthermore, PRASA CRES should ensure that all bus operators are treated in a non-discriminatory manner.
31. The perpetual extension of subsidised bus contracts, without going out on tender, inhibits competition. Where contracts are put out on tender, government (provincial transport departments or the DOT) should consider breaking some of the contracts into smaller contracts in order to create opportunities for new entrants and smaller bus operators. Small and local bus operators should be given preference, given the incumbency advantages enjoyed by the existing large bus operators.
32. To promote the use of public transport as an integrated system and improve coordination, the Commission recommends:
  - 32.1. The establishment of dedicated transport authorities at provincial or metropolitan or district or municipal level, where appropriate.
  - 32.2. Government (national and provincial government) and SALGA to create capacity at local government level to ensure that transport planning is prioritised by municipalities.
33. To facilitate proper functioning of commuter rail services, foster coordination in the rail sector (especially in Gauteng), and improve efficiencies through economies of scale, the Commission recommends the following:
  - 33.1. DOT to develop a policy that ensures efficiency and integrated planning in commuter rail services. This policy may include, among others, integration of Metrorail and Gautrain in Gauteng.
  - 33.2. The DOT and National Treasury should explore alternative funding sources to deal with infrastructure backlogs and new rail infrastructure investments.
34. The Commission notes that government, through the DOT, is currently in the process of developing the subsidy policy. The Commission recommends that the subsidy policy be finalised and consider the following:

- 34.1. Address fragmented subsidies in the public transport sector to improve coordination and correct the skewed distribution of subsidies between urban and rural areas.
  - 34.2. Equitable allocation of subsidies to the taxi industry and rural bus operators.
  - 34.3. Prescribe the conclusion of negotiated contracts (as opposed to tendered contracts) with small bus operators. The negotiated contracts awarded to small bus operators should account for a minimum of 30 per cent of all contracts, and progressively increase over time.
35. With respect to the BRT/IRPTN implementation, the Commission recommends that DOT and National Treasury, should do a complete review of the BRT/IRPTN model taking into account long-term fiscal and financial sustainability; suitability of the model in smaller cities; and inclusion and participation of the minibus taxi industry. In addition, DOT should consider reviewing the 12-year BOC/VOC model, or undertake a study to evaluate if the 12-year model promotes transformation and empowerment.

#### **E-HAILING AND METERED TAXIS REPORT**

36. The full report with all findings and recommendations can be accessed from the Competition Commission's website at <http://www.compcom.co.za/wp-content/uploads/2021/04/PTMI-Non-Confidential.pdf>

#### **Findings**

37. The entry of e-hailing services into South Africa disrupted the business model of metered taxis. The growing popularity of e-hailing services also caught regulatory authorities off-guard, as e-hailing services do not fall under the conventional regulatory framework. Despite the entry of e-hailing services, metered taxis were slow to respond and found it difficult to create their own digital platforms.
38. Digital platforms, such as e-hailing services, thrive on network effects or network externalities. Strong network effects increase barriers to entry into platform markets, because of the "winner takes all" or "winner takes most" phenomenon. The brand loyalty and first-mover advantages enjoyed by pioneers of e-hailing services make it difficult for metered taxi companies – or operators – to launch apps that can successfully compete with established brands.
39. Given these barriers faced by metered taxis and the nature of platform markets, which strive for economies of scale and network effects, metered taxi operators found it very difficult to compete with e-hailing services. The basis for the lack of competition arises from factors such as area restrictions and pricing dynamics, which will be discussed below.

### **The impact of area restrictions and price regulation on competition**

40. The practice note by the DOT makes provision for e-hailing operators to be licensed as metered taxi operators, whilst the National Land Transport Amendment Bill is being considered. At an operational level, metered taxis comply with the legislative restrictions imposed on their licences and operate within the defined radius. In the case of e-hailing services, the radius is not adhered to, because the app used by e-hailing operators allows operators to connect to the nearest passenger outside their municipal boundaries in violation of the licence conditions. The Amendment Bill formalises the distinction between metered taxis and e-hailing operators creating an uneven competitive environment. This distinction is in respect of operational areas (defined for metered taxis vs no restrictions for e-hailing services) as well as price regulation (regulated for metered taxis vs no regulation for e-hailing services).
41. Metered taxi operators have two ways of setting prices (i) regulated fares and (ii) fares determined by the local metered taxi association. The NLTA makes provision for the MEC or Minister, in consultation with the relevant authority, to determine a fare structure for metered taxis. E-hailing services, on the other hand, have adopted a market-based approach in which the fares are determined by the forces of demand and supply.

### **Recommendations**

42. The Commission recommends that the regulatory framework for e-hailing and metered taxis should be uniform to create an even competitive environment. The regulatory dispensation in the Amendment Bill for e-hailing services should be extended to metered taxis in respect of the following:
- 42.1. The Amendment Bill does not impose any area restrictions for e-hailing services and this should be extended to metered taxis to create an even competitive environment.
- 42.2. The Amendment Bill does not regulate fares for e-hailing services and therefore, the Commission recommends that the legislature delete Section 66(3) of the NLTA which allows MEC or Minister together with the planning authority to determine a fare structure for metered taxi services. No price regulation for metered taxis is recommended as the Amendment Bill does not regulate e-hailing fares. This is essential to create an even competitive landscape.
43. **On backlogs of operating licences**, the Commission recommends that capacity at PREs and planning authorities be increased and all existing applications for operating licences.

44. **On empowering metered taxis and e-hailing operators** - metered taxi associations and e-hailing operators should be empowered to represent the interests of the industry in the following manner:
- 44.1. The DOT and PREs should assist the industry to establish a national association of metered taxis and e-hailing operators.
  - 44.2. DOT should assist metered taxis in conducting market research studies, business development, innovation which includes the development and deployment of technology to modernise the metered taxi industry.

#### **ACCESS TO THE FULL REPORT**

45. The full report with all findings and recommendations can be accessed from the Competition Commission's website <http://www.compcom.co.za/wp-content/uploads/2021/04/PTMI-Non-Confidential.pdf>

## DEPARTMENT OF ECONOMIC DEVELOPMENT

NO. 355

23 April 2021

**NOTICE IN TERMS OF SECTION 79(3) OF THE COMPETITION ACT 89 OF 1998, AS AMENDED****Draft Guidelines on local procurement in the implementation of the South African Value Chain Sugarcane Master Plan to 2030**

The Competition Commission ("**Commission**") hereby, in terms of section 79(3) of the Competition Act No. 89 of 1998 (as amended) ("**Act**"), issues draft guidelines on local procurement in the implementation of the South African Value Chain Sugarcane Master Plan to 2030, for public comment.

The Commission invites interested parties to submit written representations on the draft guideline in terms of section 79(3) of the Act within 30 business days from date of publication of this notice in the Government Gazette.

The Draft Guidelines on local procurement in the implementation of the South African Value Chain Sugarcane Master Plan to 2030 is attached hereto and can also be downloaded from [www.compcom.co.za](http://www.compcom.co.za).

Email: KriskaG@compcom.co.za / BakheM@compcom.co.za

Telephone: +27 12 394 3200

Postal address: The Competition Commission South Africa  
Private Bag X23  
Lynwood Ridge, 0040

**CLOSING DATE FOR SUBMISSION OF COMMENTS: 7 JUNE 2021**



File Plan Ref Number: **CM Proiect**



**Guidelines on local procurement in the  
implementation of the South African Value Chain  
Sugarcane Master Plan to 2030**

15 April 2021

Draft

## 1. PREFACE

These Guidelines have been prepared in terms of section 79(1) of the Competition Act No. 89 of 1998 (as amended) (“the Act”) which authorises the Competition Commission (“Commission”) to prepare and issue guidelines to indicate its policy approach on any matter falling within its jurisdiction in terms of the Act. These Guidelines are not binding on the Commission, the Competition Tribunal or the Competition Appeal Court in the exercise of their respective functions in the interpretation of the Act.<sup>1</sup> However, any person interpreting or applying the Act is obliged to take this Guidelines into account.<sup>2</sup>

The purpose of these Guideline is to provide guidance to the sugar industry on collaboration in the implementation of industry commitments to increasing sourcing of local sugar as contemplated in the South African Sugarcane Value Chain Master Plan to 2030 (“the Sugar Master Plan”). On 23 June 2020, the Minister of Trade, Industry and Competition, after consultation with the Minister of Agriculture, Land Reform and Rural Development, granted a designation to the sugar industry in terms of section 10(3)(b)(iv) of the Act for a period of 12 months, commencing on 1 July 2020. The designation is aimed at providing support to the economic development, growth, transformation and stability of the sugar industry in line with the objectives of Sugar Master Plan.

Subsequently, on 16 October 2020, the Commission granted an exemption to the South African Sugar Association (“SASA”), a statutory body established in terms of section 2(1) of the Sugar Act No.9 of 1978, as amended, to enable its members to collaborate in the implementation of the Sugar Master Plan, subject to certain conditions. SASA’s members comprise of the South African Sugar Millers’ Association, the South African Cane Growers Association and the South African Farmers Development Association. As a result, the exemption granted by the Commission only covers the production and milling value chains of the sugar industry.

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<sup>1</sup> Section 79(2)(b) of the Act.

<sup>2</sup> Section 79(4) of the Act.

A key element of the social compact in respect of the commitment to restore the local market and off-take commitments in the Sugar Master Plan is that retail, wholesale and industrial sugar customers, in support of the goals of stabilising and restructuring the sugar industry, will commit to increased sourcing of locally produced sugar for a period of three years.

However, collaboration by retail, wholesale and industrial sugar customers in the implementation of the Sugar Master Plan did not form part of SASA's exemption application to the Commission. Consequently, these Guidelines seek to provide guidance to the sugar industry on collaboration in delivering on industry commitments to increasing sourcing of locally produced sugar in the *implementation* of the Sugar Master Plan. The Commission may from time to time update these Guidelines when necessary.

## 2. DEFINITIONS

Unless the context indicates otherwise, the following terms are applicable to these Guidelines-

- 2.1. **"The Act"** means the Competition Act No. 89 of 1998, as amended;
- 2.2. **"Aggregated information"** means information which does not identify an individual firm's competitively sensitive information;
- 2.3. **"Competitively sensitive information"** means information that is important to rivalry between competing firms and likely to have an impact on one or more of the dimensions of competition (price, output, quality, and innovation). Competitively sensitive information includes, *inter alia*, prices, customer lists, production costs, sales volumes, capacities, investments;
- 2.4. **"The Commission"** means the Competition Commission, a juristic person established in terms of section 19 of the Act empowered to investigate, control and evaluate competition matters in South Africa in accordance with the Act;

- 2.5. **“Disaggregated information”** means information which identifies an individual’s firm’s competitively sensitive information;
- 2.6. **“The DTIC”** means the Department of Trade, Industry and Competition.
- 2.7. **“Firm”** includes a person (juristic or natural), partnership or a trust. This may include a combination of firms that form part of a single economic entity, a division and/or a business unit of a firm; and
- 2.8. **“Guidelines”** mean these guidelines which have been prepared and issued in terms of section 79(1) of the Act.
- 2.9. **“Independent Facilitator”** means a person or firm with no direct or indirect commercial links or otherwise with the industry or the concerned firm, appointed to facilitate the sharing of competitively sensitive information between the DTIC and the industry or the concerned firm.
- 2.10. **“The Minister”** means the Minister of Trade, Industry and Competition;

### 3. INTRODUCTION

- 3.1. According to the Sugar Master Plan the sugar industry is presently in a crisis and is facing a “perfect storm” driving accelerated decline in the industry over the last few years as a result of a number of factors that have combined to reduce local demand in the Southern African Customs Union (SACU) for sugar from 1.65 million to 1.25 million tons per annum, forcing increased exports into a global market where prices are below the local cost of production. Increased exports now mean the industry has to absorb losses of approximately R 2 billion per year.
- 3.2. Due to the nature of the immediate crisis facing the sugar industry, which threatens significant job losses in some of the most vulnerable areas of the country, and may result in the exit from the market of a significant number

of players in the industry including small scale growers and independent millers, the Sugar Master Plan was required to deliver a social compact aimed at, among other things, securing agreement amongst all stakeholders on a intervention plan to pull the industry back from the precipice of collapse.

3.3. The Sugar Master Plan has four main strategic objectives:

3.3.1. To stem the industry decline to preserve 2019 job numbers (estimated 65 000 jobs), and over the long run grow jobs again in a diversified industry based on sugarcane;

3.3.2. Restructure and rebalance industry capacity to reduce inefficiencies, reduce costs and restore competitiveness, reduce reliance on tariff protection and to set the foundations for diversification;

3.3.4. Transformation through inclusive and broad-based participation in the value chain for workers, black and women farmers and black industrialists; and

3.3.5. Invest in globally competitive and sustainable diversified sugarcane-based value-chains.

3.4. The designation granted by the Minister in terms of section 10(3)(b)(iv) of the Act and subsequent the exemption granted by the Commission, is aimed at creating an enabling framework for the sugar industry to *implement the objectives* of the Sugar Master Plan. Although the designation granted by the Minister relates to the sugar industry broadly, only SASA, representing the interests of producers and millers, has applied to the Commission for an exemption. As a result, the exemption granted by the Commission only applies to producers and millers.

- 3.5. However, the Sugar Master Plan accords an important role to downstream players in the sugar industry in the initiative to turn-around the possible collapse of the South African sugar industry. In terms of *Action Commitment 1: restore the local market and off-take commitments*, retail, wholesale and industrial sugar customers, in support of the goals of stabilising and restructuring the sugar industry, committed to **increased sourcing of locally produced sugar** for a period of three years as follows:
- 3.5.1. In year 1, the goal is to restore back to the local market at least 150,000 tons of sugar demand to the local industry in support of which, users commit to sourcing at least 80% of all sugar requirements from the local sugar industry.
- 3.5.2. Increased procurement of locally produced sugar will rise through years 2 and 3 such that by year 3, the goal is that at least 300,000 tons of sugar demand will have been restored to the local sugar industry, in support of which users commit to sourcing at least 95% of all sugar requirements from the local sugar Industry.
- 3.5.3. Increased procurement of local sugar by users beyond year 1 is subject to fulfilment of Master Plan commitments by the other social partners, and is further subject to (1) the threshold exemption level, (2) the rate, and (3) the scope of application of the Health Promotion Levy remaining unchanged from the status quo as at 28 February 2020.
- 3.6. The Sugar Master Plan details and sets out specific stakeholder commitments by retailers and wholesalers, industrial users, the sugar industry, and government to achieve the objective of increasing local sugar procurement.
- 3.7. The achievement of commitments to increase the procurement of locally produced sugar as contemplated in the Sugar Master Plan may require industry collaboration.

#### 4. PURPOSE

- 4.1 These Guidelines are aimed at providing guidance to the sugar industry and government on how the industry can collaborate in implementing the local procurement commitments contained in the Sugar Master Plan in a manner that does not raise competition concerns.
- 4.2 In view of the fact the process of implementation of the Sugar Master Plan is dynamic and iterative in nature, to the extent that other issues may arise in the implementation of the Sugar Master Plan which are not covered in these Guidelines, specific guidance on those issues may be sought from the Commission.

#### 5. LEGAL FRAMEWORK

- 5.1 The legal framework for assessing agreements on collaboration among competitors is found in section 4(1) of the Act. Section 4(1) of the Act states as follows:

*“4. Restrictive horizontal practices prohibited*

*(1) An agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if –*

*(a) It has the effect of substantially preventing, or lessening, competition in a market, unless a party to the agreement, concerted practice, or decision can prove that any technological efficiency or other pro-competitive gain resulting from it outweighs that effect; or*

*(b) it involves any of the following restrictive horizontal practices:*

*(i) directly or indirectly fixing a purchase or selling price or any other trading condition;*

- (ii) dividing markets by allocating customers, suppliers, territories, or specific types of goods or services; or*
- (iii) collusive tendering.”*

- 5.2 Section 4(1)(a) of the Act prohibits an agreement between competitors that has the effect of substantially preventing or lessening competition, unless a party to the information exchange can prove efficiency benefits that arise from the information exchanged.
- 5.3 Section 4(1)(b) of the Act outright prohibits an agreement that involves:
- 5.3.1. the direct or indirect fixing of a purchase or selling price or any other trading condition;
  - 5.3.2. the dividing of markets by allocating customers, suppliers, territories, or specific types of goods or services; and
  - 5.3.3. collusive tendering.
- 5.4 The main difference between section 4(1)(a) and section 4(1)(b) is the opportunity given to parties in terms of section 4(1)(a) to put up an efficiency justification.
- 5.5 Section 4(1)(b) provides for an outright prohibition when an agreement results in the conduct listed under section 4(1)(b) and there is no opportunity for raising efficiency, pro-competitive or technological gains as a defence to the alleged anti-competitive conduct.

## **6 FRAMEWORK FOR COLLABORATION ON LOCAL SUGAR PROCUREMENT**

- 6.1 As discussed in section 3, the Sugar Master Plan sets out a three-year procurement plan for increasing the sourcing of local procurement of sugar with the object of securing the local procurement of at least 150 000 tons in



year 1, increasing in year 2 and restoring at least 300 000 tons in year 3. In order to achieve the 150 000 tons in year 1, retailers, wholesalers and industrial users have committed to sourcing at least 80% of all sugar requirements from the local industry. Similarly, in order to achieve the 300 000 tons in year 3 retailers, wholesalers and industrial users have committed to sourcing at least 95% of all sugar requirements from the local industry.

- 6.2 In the implementation of the three-year procurement plan, the sugar industry commitments made in the Sugar Master Plan necessarily have to be translated in two categories of local procurement targets:

6.2.1 The first category is industry local procurement targets; and

6.2.2 The second category is individual firm local procurement targets.

*The process of setting industry local procurement targets*

- 6.3 The process of setting industry local procurement targets may require discussions among sugar users. These discussions must be led by the DTIC or an independent facilitator appointed by the DTIC. No competitively sensitive-information or disaggregated information must be shared or discussed among users in the collective discussions on industry local procurement targets. Only aggregated information on the percentage and volumes of industry targets on local procurement can be shared and discussed among sugar users. The participation by sugar users in the discussions on industry local procurement targets in the implementation of the Sugar Master Plan does not amount to a contravention of section 4(1) of the Act.

- 6.4 The final industry targets must be determined by the DTIC or a facilitator appointed by the DTIC. In determining the industry targets, the DTIC or a facilitator appointed by the DTIC may obtain competitively-sensitive

information on a bilateral and confidential basis separately from each individual user, and this individual user information may not be shared or discussed in the collective discussions among sugar users.

- 6.5 Sugar users must not engage in collective procurement of sugar from suppliers and such conduct may constitute a contravention of section 4(1) of the Act. To the extent that a need has been identified for collective procurement among a specific category of users such as small retailers and small independent wholesalers to optimise procurement efficiencies, an exemption must be sought from the Commission in terms of section 10 of the Act.

*The process of setting individual firm local procurement targets*

- 6.6 The process of setting individual firm local procurement targets in the implementation of the Sugar Master Plan must be conducted on a bilateral and confidential basis between the DTIC or an independent facilitator appointed by the DTIC and the individual sugar user.
- 6.7 The DTIC or an independent facilitator appointed by the DTIC may obtain competitively-sensitive information from an individual user for the purpose of reaching an agreement with the user on its local procurement target, and this information may not be shared with other market participants. An agreement between the DTIC and a user on its individual local procurement targets does not amount to a contravention of section 4(1) of the Act.
- 6.8 Progress reports on the achievement of milestones set out in the individual firm's local procurement plan in the implementation of the Sugar Master Plan must be submitted to the DTIC on a bilateral and confidential basis.

*Demand forecasting*

- 6.9 The Sugar Master Plan also includes industry commitments to providing timeous demand forecasting guidance to sugar suppliers to facilitate sugar industry planning against local sugar availability and supply commitments.
- 6.10 Individual firm demand forecasts must be provided on a bilateral and confidential basis to the DTIC or an independent facilitator appointed by the DTIC. The DTIC or its appointed facilitator must aggregate the individual firm demand forecasts.
- 6.11 The demand forecasting guidance provided to suppliers by the DTIC or an independent facilitator appointed by the DTIC must only contain aggregated information and must not contain users' individual procurement plans and information.

## **7 CONCLUSION**

- 7.1. These Guidelines set out the Commission's approach to collaboration in the implementation of the sugar industry commitments to increasing local procurement of sugar in support of the objective of stabilising and restructuring the sugar industry within the context of the implementation of the Sugar Master Plan. In accordance with the provisions of section 79(4) of the Act, the Commission will not regard the collaboration on local sugar procurement which is conducted in accordance with these Guidelines as a contravention of section 4(1) of the Act.
- 7.2. These Guidelines do not set out all the permutations of collaboration that may be required to increase local procurement of sugar and do not fetter the discretion of the Commission to consider other forms of collaboration on local procurement on a case-by-case basis, considering the market context and the nature of the collaboration.

- 7.3. Should market participants be uncertain as to whether any other collaboration on increasing local procurement of sugar may potentially contravene the Act, they may approach the Commission for further guidance.

## **8. EFFECTIVE DATE AND UPDATES**

These Guidelines become effective on the date of publication in the Government Gazette and may be updated by the Commission when necessary.

DRAFT

## DEPARTMENT OF ECONOMIC DEVELOPMENT

NO. 356

23 April 2021

## COMPETITION COMMISSION

## NOTICE IN TERMS OF SECTION 10(7) OF THE COMPETITION ACT 89 OF 1998 (AS AMENDED): SOUTH AFRICAN PETROLEUM INDUSTRY ASSOCIATION GRANTED CONDITIONAL EXEMPTION

On 22 December 2015, the South African Petroleum Industry Association ("SAPIA") and its members applied to the Competition Commission of South Africa ("Commission") in terms of section 10(1)(b) of the Competition Act 89 of 1998, as amended ("the Act") to be exempted from certain provisions of section 4 of the Act ("2015 Exemption"). The exemption was sought for a period of 5 (five) years from 1 January 2016 ending on 31 December 2020.<sup>1</sup>

Notice is hereby given in terms of section 10(7) of the Act that the Commission has extended the 2015 Exemption for a further period of 3 (three) months, from 1 April 2021 up to and including 30 June 2021 and on the same terms and conditions as published in Government Gazette No.34651 of 7 October 2011.

The exemption granted by the Commission covers a wide range of agreements and practices which, according to SAPIA, are required to ensure the continuity and stability of liquid fuels supply to various sectors and geographic locations of the South African economy. In particular, the exemption covers agreements and practices in the petroleum and refinery industry which are considered by the Commission to be in contravention of sections 4(1)(a) and (b) of the Act. SAPIA based its application on the premise that the aforesaid agreements and practices are required to obtain the objective set out under section 10(3)(b)(iv) of the Act.

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<sup>1</sup> See Commission Case Number 2015Dec0741

The Commission has previously, in response to the above mentioned application, granted SAPIA a conditional exemption in terms of section 10(2)(a) of the Act for a period of 6 (six) months starting from 01 January 2016 and ending on 30 June 2016. Following the expiry of this short-term conditional exemption, the Commission has extended such exemption several times with the last one ending on 31 March 2021.

This is after the Minister of Economic Development designated the petroleum and refinery industry for a period of 6 (six) months starting from 01 January 2016 ending on 30 June 2016, which was extended to 31 December 2016, 31 December 2017; 31 March 2018; 30 September 2018; 31 March 2019, 30 June 2019, 31 December 2019, 31 December 2020 and further to 31 March 2021.

The Minister of Trade, Industry and Competition has subsequently granted the petroleum industry a 3 (three) month extension in respect of its designation status ending 30 June 2021.

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

Further queries should be directed to either Mr. Marlon Dasarath at [MarlonD@compcom.co.za](mailto:MarlonD@compcom.co.za) or Mr. Ruan Mare at [RuanM@compcom.co.za](mailto:RuanM@compcom.co.za).

**In correspondence, kindly refer to the following case number: 2015Dec0741**

## DEPARTMENT OF MINERAL RESOURCES AND ENERGY

NO. 357

23 April 2021



MINISTER  
MINERAL RESOURCES AND ENERGY  
REPUBLIC OF SOUTH AFRICA

**Electricity Act, 1987 (Act no.41 of 1987)****License fees payable by licensed generators of electricity**

I, Gwede Mantashe, Minister of Mineral Resources and Energy, acting under section 5(b) of the Electricity Act, 1987 (Act No. 41 of 1987), hereby prescribe that a levy of 0.09281 cents per kWh, in respect of electricity generated for supply by licensed generators shall be payable to National Energy Regulator of South Africa, for the period 01 April 2021 to 31 March 2022, by the licensed holders concerned

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above a solid horizontal line.

**MR GWEDE MANTASHE, MP****MINISTER OF MINERAL RESOURCES AND ENERGY****DATE:** 06/04/2021

Department of Mineral Resources and Energy • Departement van Minerale Bronne en Energie • Muhasho wa Zwiko zwa Minerala na Fulufulu • uMnyango Wezimbiwa Nezamandla • Ndzawulo ya Swicelwa na Eneji • Litiko Letetimbiwa Netemandla • UmNyango wemiThombo yezeNjiwa nezaMandla • Kgoro ya Diminerale le Enetši • Lefapha la Dirashwa le Eneji • Lefapha la Diminerale le Maatla • ISebe leziMbiwa naMandla







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