

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 699

6 August 2021

SOUTH AFRICAN SUGAR ASSOCIATION – EXTENSION OF CONDITIONAL EXEMPTION GRANTED

1. On 17 August 2020, the South African Sugar Association (“SASA”) and its members, hereinafter jointly referred to as (“the Applicants”) filed an application for an exemption in terms of Section 10 of the Competition Act No 89 of 1998, as amended (“the Competition Act”). The exemption was requested for a period of one year, from the date of the application up to and including 30 June 2021.
2. SASA is a statutory body established in terms of Section 2(1) of the Sugar Act No. 9 of 1978 (“the Sugar Act”). SASA provides a variety of services to its members in order to support the functioning of the regulatory framework within which the industry operates, and acts as a presentative of the industry in relation to engagements with external stakeholders. SASA’s members comprise of two levels of the value chain, namely Growers and Millers and are made up of the associations which represent the interests of those levels. These are (1) the South African Sugar Miller’s Association (“SASMA”); (2) the South African Cane Growers Association (“SACGA”); and (3) the South African Farmer’s Development Association (“SAFDA”).
3. The exemption application was brought in terms of Section 10(1) of the Competition Act which allows a firm to apply to the Commission to exempt an agreement, a practice and/or a category of agreements from the provisions of Chapter 2 of the Competition the Act. SASA relied on the objective set out in Section 10(3)(b)(iv) of the Competition Act, which allows an exemption of agreements and/or practices that contribute to the economic stability of any industry designated by the Minister of Trade, Industry and Competition (“Minister”).
4. The exemption application covered the following practices by SASA and its members:
 - 4.1. restrain producer price increases of sugar in terms of timing, notice and manner of implementing such price increases;
 - 4.2. share competitively sensitive information and in light of that information, engage regarding various options for interventions that could be implemented to support small-scale growers and ensure that they become a sustainable part of the sugar supply chain, in line with the objectives of the Sugar Master Plan;
 - 4.3. share competitively sensitive information of the various sugar industry participants, including growers, millers and refiners and in light of that information engage on the various means by which the industry could implement a restructuring of the nature contemplated in the Sugar Master Plan; and

- 4.4. share competitively sensitive information with the Eswatini Sugar Association (including in relation to production volumes, local and export sales volumes, notional pricing, and identification of diversification opportunities) and in light of this information engage with the Eswatini Sugar Association to achieve policy harmonisation to the mutual benefit of each country's sugar producers.
5. The Commission's investigation resulted in the following findings:
 - 5.1. the conduct of SASA's members would result in a contravention of Section 4 of the Competition Act as the application relates to coordination and information exchange between parties in a horizontal relationship;
 - 5.2. the exemption may contribute to the economic stability of the sugar industry; and
 - 5.3. the exemption can be used as an instrument for transformation and the opening up of the sugar industry to previously disadvantaged individuals, particularly small-scale sugarcane growers, in line with the objectives of the Competition Act.
6. Based on these findings, the Commission granted the Applicants a conditional exemption up to and including 30 June 2021. The exemption was subject to monitoring mechanisms which the Commission put in place to ensure that the objectives set out in the application are met within the scope of the exemption. The decision of the Commission was published in Government Gazette No. 43872 on 06 November 2020.
7. Subsequently, on 07 June 2021, the Applicants submitted an application requesting the Commission to extend their conditional exemption by 24 months (i.e. up to 30 June 2023) in light of the Minister's extension of the designation of the sugar industry to 30 June 2023 as published in Government Gazette No. 44653 on 3 June 2021. The scope of the application remains unchanged as set out above and the basis for the request is to accommodate additional time required to achieve the economic stability of the sugar industry.
8. After due consideration of the above, the Commission has decided to grant SASA and its' members an extension of the conditional exemption, up to and including 30 June 2023. The conditions and monitoring mechanisms will remain the same as those gazetted on 06 November 2020.