

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 773

27 August 2021

COMPETITION COMMISSION SOUTH AFRICA

NOTICE IN TERMS OF SECTION 10(7) OF THE COMPETITION ACT 89 OF 1998, (AS AMENDED): 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. For completeness, the conditions and monitoring mechanisms are attached below as ANNEXURE 1.

9. Notice is hereby given in terms of Section 10(7) of the Competition Act regarding the Commission's decision to grant the extension of this exemption. The Applicants and any other person with a substantial material interest affected by this decision may appeal to the Competition Tribunal in the prescribed manner in terms of Section 10(8) of the Competition Act.

Further queries should be directed to:

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In correspondence kindly refer to the following case number: 2020Aug0064

ANNEXURE 1**Definitions**

The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings –

- i. **“SASA”** means South African Sugar Association;
- ii. **“Approval Date”** means the date referred to in the Competition Commission’s Clearance Certificate;
- iii. **“Commission”** means the Competition Commission of South Africa a statutory body established in terms of section 19 of the Competition Act 89 of 1998 (as amended) with its principal place of business at Block C, Mulayo Building, the dti Campus, 77 Meintjies Street, Sunnyside, Pretoria;
- iv. **“Competition Act”** means the Competition Act 89 of 1998, as amended;
- v. **“DTIC”** means the Department of Trade, Industry and Competition
- vi. **“DTIC facilitator”** means a facilitator appointed by the DTIC
- vii. **“Effective Date”** means the date on which these conditions shall become effective, being the approval Date.
- viii. **“Exemption”** means to exempt conduct otherwise prohibited if it is required to achieve identified socio-economic aims;
- ix. **“Applicants”** Means SASA and all its’ members including the South African Sugar Millers Association (“SASMA”), the South African Cane Growers Association (“SACGA”) and the South African Farmers Development Association (“SAFDA”), as well as their respective members;

Conditions

Price Restraint

1. There will be no co-ordination or information exchange between Millers regarding actual prices charged to wholesalers, retailers and industrial sugar users. Millers must still make independent decisions on actual prices and/or increases to be implemented in line with the commitments in the Exemption Application.

Small-scale grower retention and support

2. The information shared is limited specifically to costs of production and volume outputs;
3. All information shared in this regard, by and between the Growers must be done so anonymously;
4. The shared information should be aggregated per region.

Managed Industry Restructuring

5. A DTIC facilitator must be present at all meetings where information is to be shared.
6. All information shared must not be unjustifiably disaggregated, in relation to the objectives set out in the Master Plan.
7. No information is to be retained or distributed to individuals outside the structures/committees created by SASA.
8. All necessary information to be shared must be submitted individually to SASA for collation.
9. All information shared must be pre-approved by the DTIC facilitator.

SACU Harmonization

10. A DTIC facilitator must be present at all meetings where information is to be shared for the purposes of SACU Harmonization.
11. All necessary information to be shared must be submitted individually to SASA for collation.
12. All information shared must be pre-approved by the DTIC facilitator.

Monitoring Mechanisms

Producer Price Restraint

13. Each South African Miller must individually provide the Commission with a report at the end of May 2022 and a subsequent report at the end of May 2023, confirming compliance with the commitments set out in paragraph 6.1.2 of the Application, namely:
 - 13.1. Prices of sugar to retailers, wholesalers and industrial sugar users were never increased at a level that exceeds annual CPI, on an annual weighted average basis.
 - 13.2. Price increases have not occurred more than twice a year at predictable and evenly spaced intervals. Price increases to industrial users were only implemented outside of the peak trading periods of October to December (inclusive) and the four weeks preceding the Easter Weekend and including the Easter school holidays.
 - 13.3. Price increases to bulk industrial sugar users were notified at least 60 days in advance of implementation.

Small scale grower retention and support

14. SASA must provide the Commission with a report at the end of May 2022 and a subsequent report at the end of May 2023, which sets out:

- 14.1. The nature/type of information exchanged in relation to the objectives of the small-scale Growers retention and support;
 - 14.2. Justifications regarding the information shared for the objective set out and justifications for the format in which it was shared; and
 - 14.3. What interventions and plans, emanating from the information exchange were developed and implemented during the exemption period.
15. In addition to the above, SASA must ensure that minutes of all meetings held in respect of small-scale Grower retention and support are recorded and submitted to the Commission together with the compliance reports outlined above.

Managed Industry Restructuring

16. SASA must provide a report to the Commission by the end of May 2022 and a subsequent report at the end of May 2023, confirming:
- 16.1. The nature of information shared for the purposes of managed restructuring;
 - 16.2. Justifications regarding the information shared for the objective set out and justifications for the format in which it was shared;
 - 16.3. Plans developed and implemented during the exemption period; and
 - 16.4. Any competitively sensitive information was shared through appropriate structures/committees created by SASA.
17. In addition to the above, SASA must ensure that minutes of all meetings held in respect of managed restructuring are recorded and submitted to the Commission together with the compliance reports outlined above.

SACU Harmonisation

18. SASA must provide a report to the Commission by the end of May 2022 and a subsequent report at the end of May 2023, confirming:

18.1. The nature of information shared for the purposes of SACU Harmonisation;

18.2. Justifications regarding the information shared for the objective set out and justifications for the format in which it was shared;

18.3. Plans put in place emanating from the information shared; and

18.4. Any competitively sensitive information was shared through appropriate structures/committees created by SASA.

19. In addition to the above, SASA must ensure that minutes of all meetings held in respect of SACU Harmonisation are recorded and submitted to the Commission together with the compliance reports outlined above.