

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 2047

29 April 2022

COMPETITION COMMISSION

NOTICE IN TERMS OF SECTION 10(7) OF THE COMPETITION ACT 89 OF 1998 (AS AMENDED): THE ABALONE FARMERS ASSOCIATION OF SOUTH AFRICA GRANTED CONDITIONAL EXEMPTION

1. On 13 June 2016, the Abalone Farmers Association of South Africa (“AFASA”) and its members, hereafter jointly referred to as (“**the Applicants**”) filed an application for exemption (“**the application**”) in terms of section 10(1)(b) of the Competition Act No 89 of 1998, as amended (“the Competition Act”) to be exempted from certain provisions of Chapter 2 of the Competition Act for a period of ten (10) years commencing on the date of approval of the application by the Competition Commission (“the Commission”).
2. The Exemption application concerns the Applicants’ intentions to engage in meetings and communicate on prices and market conditions as competitors in the abalone industry. The engagements will involve the Applicants coordinating their efforts in respect of sales into certain international markets through sharing information on prevailing prices, feedback regarding information received from agents on prices, estimates of abalone stock available, volumes of abalone product exported and the volumes of abalone stockholding of the international competitors.
3. The Application was based on the premise that the proposed exemption is required in order to obtain the objectives contained in sub-section 10(3)(b)(i) and (iii) of the Competition Act, namely the maintenance or promotion of exports and change in the productive capacity in order to stop a decline in the industry.
4. The Commission’s preliminary findings revealed that the exemption is likely to achieve the objectives set out in paragraph 3 above. However, the Commission’s investigation also

revealed that there is no meaningful transformation in the abalone industry. To address this, the Commission requested AFASA to develop an industry plan that will facilitate transformation in the abalone industry, through partnering with government and other relevant stakeholders.

5. In light of the above, the Commission decided to grant AFASA a conditional exemption in terms of Section 10(2)(a) of the Competition Act for a period of 6 (six) months starting from 04 December 2018 and ending on 30 June 2019. Following the expiry of this short-term conditional exemption and upon request by AFASA, the Commission extended AFASA's exemption several times with the last one ending on 31 March 2022. This was done to allow for the development of an industry plan that will facilitate transformation in the abalone sector and ultimately achieve the outcomes or objectives of the Competition Act.
6. The Commission considered AFASA's submissions and the inputs by other industry stakeholders pertaining to transformation of the abalone industry. After consideration of the exemption application and all undertakings made by AFASA pertaining to transformation of the abalone industry, the Commission has decided to grant AFASA a conditional exemption.
7. Notice is hereby given in terms of Section 10(7) of the Competition Act that the Commission in response to the aforesaid application has granted an exemption to AFASA for a period of five (5) years, from 1 April 2022 to 31 March 2027 with the conditions listed below as Annexure 1. The exemption will be subject to monitoring mechanisms which the Commission has put in place to ensure that the objectives set out in the application are met by the exemption
8. AFASA 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 Competition Act.
9. Any queries in this regard should be directed to

Ms Nonjabulo Sambo / Mr. Tlabo Mabye
Competition Commission South Africa

Market Conduct Division
Private Bag X23
Lynnwood Ridge
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Email: NonjabuloS@compcom.co.za / TlaboM@compcom.co.za

In correspondence kindly refer to the following case number: 2016Jun0286

Error! Reference source not found.: **EXEMPTION CONDITIONS**

Definitions

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

- i. **"AEC"** means the Abalone Export Council
- ii. **"AFASA"** means the Abalone Farmers Association of South Africa;
- iii. **"Applicants"** mean AFASA and its members;
- iv. **"Approval date"** means the date referred to in the Competition Commission's Clearance Certificate
- v. **"Beneficiaries"** mean Doring Bay, Somlolo Investment Holdings and Mamjoli Marine
- vi. **"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;
- vii. **"Competition Act"** means the Competition Act 89 of 1998, as amended;