

GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 3122

8 March 2023

**INVITATION FOR THE PUBLIC TO COMMENT ON THE DRAFT BLOCK
EXEMPTION REGULATIONS FOR ENERGY SUPPLIERS, 2023**

1. By virtue of the powers vested in me in terms of section 10(10) of the Competition Act No.89 of 1998, as amended (the Competition Act), I, Ebrahim Patel, Minister of Trade, Industry and Competition, after consultation with the Competition Commission, hereby publish for public comments the draft regulations in terms of section 78(1) of the Act as set out in the Schedule hereto.
2. The purpose of these Regulations is to exempt a category of agreements or practices by Energy and Related Product and Service Suppliers from the application of sections 4 and 5 of the Act in response to the Electricity Supply Constraint:
 - 2.1 solely with the purpose of promoting collaboration to:
 - 2.1.1 increase and optimise the supply of energy in the market; or
 - 2.1.2 reduce costs of energy supply.
 - 2.2 in order to contribute to regulatory measures aimed at the prevention of the escalation of the Electricity Supply Constraint to a total blackout as contemplated in the declaration of a national state of disaster published in Government Notice 48009 of 9 February 2023.
3. Stakeholders and interested persons are invited to submit comments in writing on the proposed regulations within a period of 15 days of the publication of this notice to the Minister of Trade, Industry and Competition, for the attention of Ms Aldene Appolis, email: AAppolis@thedtic.gov.za or Mr Ivan Galodikwe, email: IGalodikwe@thedtic.gov.za OR hand delivered at 3rd Floor, Block E, 77 Meintjies Street, Sunnyside, 0132.

**EBRAHIM PATEL****MINISTER OF TRADE, INDUSTRY AND COMPETITION****DATE:** 8/3/2023

ENERGY SUPPLIERS BLOCK EXEMPTION 2023

The Minister of Trade, Industry and Competition has, under section 10(10) read with section 78(1) of the Competition Act, 1998 (Act No. 89 of 1998) as amended, intends to make the following Regulations:

SCHEDULE

Definition

1. In these Regulations any word or expression to which a meaning has been assigned in the Act shall bear that meaning and, unless the context otherwise indicates –
 - 1.1. **“Act”** means the Competition Act No. 89 of 1998, as amended;
 - 1.2. **“Energy and Related Products and Services Suppliers”** means Firms that are suppliers of Energy and Related Products and Services, including all forms of energy supply;
 - 1.3. **“Energy and Related Products and Services”** means all forms of energy supply (including electricity, natural gas, liquified petroleum gas, diesel, liquified natural gas, paraffin), related products (e.g. inverters, batteries, solar panels, wind turbines, generators), inputs (e.g. coal) or services (e.g. storage, installation) in the supply of the energy to energy users;
 - 1.4. **“Electricity Supply Constraint”** means constraints in the supply of national energy requirements through the national grid;
 - 1.5. **“Firm”** has the same meaning as defined in section 1(xiii) of the Act;
 - 1.6. **“HDP firms”** means firms owned and controlled by historically disadvantaged persons in terms of section 3(2) of the Act;
 - 1.7. **“Minister”** has the same meaning as defined in the Act;
 - 1.8. **“national state of disaster”** means the national state of disaster relating to the Electricity Supply Constraint declared in Government Gazette No. 48009 of 9 February 2023;
 - 1.9. **“SMMs”** means small business, micro business or medium-sized business as defined by the Minister in Government Gazette No.987 of 12 July 2019 or its successor in title, or business, as the context dictates and as defined by section 1 of the Act;
 - 1.10. **“the Commission”** means the Competition Commission, a juristic person established in terms of section 19 of the Act; and
 - 1.11. **“the dtic”** means the Department of Trade, Industry and Competition.

Purpose

2. The purpose of these Regulations is to exempt a category of agreements or practices by Energy and Related Product and Service Suppliers from the application of sections 4 and 5 of the Act in response to the Electricity Supply Constraint:
 - 2.1. solely with the purpose of promoting collaboration to:
 - 2.1.1. increase and optimise the supply of energy in the market; or

2.1.2. reduce costs of energy supply.

2.2. in order to contribute to regulatory measures aimed at the prevention of the escalation of the Electricity Supply Constraint to a total blackout as contemplated in the declaration of a national state of disaster published in Government Notice 48009 of 9 February 2023.

Category of agreements or practices exempted

3. Subject to regulations 4 and 6, the Minister hereby exempts the following categories of agreements or practices among Energy and Related Product and Service Suppliers:

3.1. Agreements or practices concluded among Energy and Related Product and Service Suppliers with the sole purpose of increasing supply capacity in the market and optimising energy supply, including but not limited to:

3.1.1. Joint investment in shared energy infrastructure; or

3.1.2. Joint financing and risk-sharing in energy projects; or

3.1.3. Joint training and skills development; or

3.1.4. Collaboration on optimising the level and timing of energy supply to the national grid.

3.2. Agreements or practices concluded among Energy and Related Product and Service Suppliers with the sole purpose of reducing the cost or improving the efficiency of energy supply, including but not limited to:

3.2.1. Joint negotiation and purchasing of energy supply inputs and related products or services; or

3.2.2. Joint procurement and the sharing of security services for purposes of securing infrastructure.

Exclusions

4. These Regulations exclude:

4.1. Any discussion and/or agreement on fixing of the selling prices of goods and services to customers or consumers; and

4.2. Collusive tendering.

HDP and SMME Participation

5. HDP Firms and SMMEs must be afforded an opportunity to opt-in to agreements or practices entered into in terms of this Regulation.

Prior approval by the Commission

6. Energy and Related Product and Service Suppliers that wish to enter into agreements or engage in practices covered by the exemption contained in these Regulations must apply in writing to the Commission for approval of the agreement or practice before implementation.
7. The Commission may:
 - 7.1. grant approval in writing if the agreement or practice falls within the scope of these Regulations with or without conditions necessary to ensure that the collaboration among Energy and Related Product and Service Suppliers is limited to the agreements or practices contemplated in regulation 3; or
 - 7.2. decline approval in writing if the agreement or practice does not fall within the scope of these Regulations.
8. No agreement or practice contemplated in these Regulations may be implemented unless approved by the Commission in terms of regulation 7.
9. The Commission must make the decision contemplated in regulation 7 within 30 business days of receipt of the application for approval of the agreement or practice.
10. If the Commission has not made a decision within the period contemplated in regulation 7, the application shall be regarded as having been approved.

Revocation of approval

11. The Commission may revoke the approval granted in terms of regulation 7 if:
 - 11.1. there is a breach of conditions made in terms of sub-regulation 7.1; or
 - 11.2. the collaboration among the Firms exceeds the exemption granted in terms of these Regulations; or
 - 11.3. the approval was granted on the basis of false information; or
 - 11.4. the reason for granting the approval no longer exists.

Scope of the exemption

12. The scope of these Regulations is limited only to agreements or practices specified under regulation 3, and which have the sole purpose of responding to the Electricity Supply Constraint as set out in regulation 2.

Monitoring

13. Energy and Related Product and Service Suppliers who participate in any agreements or practices falling within the scope of these exemptions must notify the Commission and the dtic of the agreement or practice within 30 business days of its implementation via the following:

13.1. Notification to the Commission should be sent to exemption.conditions@compcom.co.za

13.2. Notification to the dtic should be sent to exemption.conditions@thedtic.gov.za

14. Energy and Related Product and Service Suppliers must keep minutes of meetings held and written records of any agreements or practices entered into in terms of these Regulations.

15. The Commission may, at any time, request minutes of meetings and written records of any agreements or practices entered into in terms of these Regulations.

Amendments to Regulations

16. The areas of collaboration exempted in these Regulations may be expanded or reduced by the Minister by notice published in the Government Gazette in terms of these Regulations.

Short Title

17. These Regulations shall be called the Energy Suppliers Block Exemption, 2023.

Commencement and duration

18. These Regulations come into effect on the date of publication in the Government Gazette.

19. These Regulations remain in operation for as long as the declaration of a national state of disaster published in Government Notice 48009 of 9 February 2023 subsists or are withdrawn by the Minister, whichever comes earlier.