

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 3123

8 March 2023

**INVITATION FOR THE PUBLIC TO COMMENT ON THE DRAFT BLOCK
EXEMPTION REGULATIONS FOR ENERGY USERS, 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 Competition 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 Users 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 secure backup or alternative energy supply; or
 - 2.1.2 reduce energy costs; or
 - 2.1.3 promote the optimisation and efficient use 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 USERS 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 Competition 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 Users”** means Firms that are users of energy supply, including all forms of energy supply, and excluding firms involved in the supply of energy, energy supply inputs and ancillary services;
 - 1.3. **“Electricity Supply Constraint”** means constraints in the supply of national energy requirements through the national grid;
 - 1.4. **“Firm”** has the same meaning as defined in section 1(xiii) of the Act;
 - 1.5. **“HDP firms”** means firms owned and controlled by historically disadvantaged persons in terms of section 3(2) of the Act;
 - 1.6. **“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;
 - 1.7. **“Minister”** has the same meaning as defined in the Act;
 - 1.8. **“SMMes”** 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;
 - 1.9. **“the Commission”** means the Competition Commission, a juristic person established in terms of section 19 of the Act; and
 - 1.10. **“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 Users 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 secure backup or alternative energy supply; or
 - 2.1.2 reduce energy costs; or
 - 2.1.3 promote the optimisation and efficient use 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 regulation 4, the Minister hereby exempts the following categories of agreements or practices among Energy Users from the application of sections 4 and 5 of the Act:
 - 3.1. Agreements or practices among Energy Users to secure backup or alternative energy supply through:
 - 3.1.1. Joint procurement of backup or alternative energy supply for purposes of supply to the national grid, including power purchase agreements; or
 - 3.1.2. Sharing of backup and energy generation capacity, including energy generation equipment.
 - 3.2. Agreements or practices among Energy Users to reduce the cost or to promote the efficient use of energy supply through:
 - 3.2.1. Joint negotiation and purchase of energy and related product and service supply, including power purchase agreements; or
 - 3.2.2. Joint financing of backup and alternative energy supply to the national grid; or
 - 3.2.3. Joint purchasing of shared backup and alternative energy generation capacity.
 - 3.3. Agreements or practices among Energy Users to alleviate, contain and minimise the effects of the Electricity Supply Constraint on operations through:
 - 3.3.1. Energy use, saving and optimisation initiatives to limit operational downtime and reduce energy demand; or
 - 3.3.2. Joint procurement and the sharing of security services for purposes of securing shared sites.

Exclusions

4. These Regulations exclude:
 - 4.1.1. The fixing of the selling prices of goods and services to customers or consumers; and
 - 4.1.2. 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.

Scope of the exemption

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

Amendments to Regulations

7. 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.

Monitoring

8. Energy Users 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:
 - 8.1. Notification to the Commission should be sent to exemption.conditions@compcom.co.za.
 - 8.2. Notification to the dtic should be sent to exemption.conditions@thedtic.gov.za.
9. Energy Users must keep minutes of meetings held and written records of any agreements or practices entered into in terms of these Regulations.
10. 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.

Short Title

11. These Regulations shall be called the Energy Users Block Exemption, 2023.

Commencement and duration

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

13. 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.