
GENERAL NOTICES • ALGEMENE KENNISGEWINGS

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION**NOTICE 2538 OF 2024****BLOCK EXEMPTION REGULATIONS FOR SMALL, MICRO AND MEDIUM-SIZED BUSINESSES, 2024**

I, Ebrahim Patel, Minister of Trade, Industry and Competition, after consultation with the Competition Commission, hereby in terms of section 10(10) read with section 78(1) of the Competition Act, 1998 (Act No. 89 of 1998) as amended, make the Regulations as set out in the Schedule hereto.

The purpose of the Regulations is to exempt a category of agreements or practices among SMMEs contained in the Schedule hereto from the application of sections 4(1) and 5(1) of the Act.

The Regulations will come into effect on the date of publication hereof in the Gazette.



EBRAHIM PATEL
MINISTER OF TRADE, INDUSTRY AND COMPETITION

23 MAY 2024

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. “**Business customers**” means customers that purchase goods and services for purposes of reselling or as an input into production;

1.3. “**Firm**” includes a person (juristic or natural), partnership or a trust. This may include a combination of firms that form part of a single economic entity, a division and/or a business unit of a firm;

1.4. “**Intermediaries**” means businesses who deliver or otherwise sell another firm's products or services to customers;

1.5. “**Minister**” has the same meaning as defined in the Act;

1.6. “**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;

1.7. “**the Commission**” means the Competition Commission, a juristic person established in terms of section 19 of the Act empowered to investigate, control

and evaluate competition matters in South Africa in accordance with the Act;
and

1.8. “the dtic” means the Department of Trade, Industry and Competition.

Background

2. The Covid-19 pandemic has affected many sectors in the economy, with some sectors showing gains whilst other shrinking. The consequent economic decline threatens job losses across the economy, in some of the most vulnerable areas of the country and may result in the exit from the market of a significant number of players.
3. SMMEs have also been negatively affected by the pandemic as value chains were severely disrupted and consumers shifting to online purchases. The Commission’s recent study on *Measuring Concentration and Participation in the South African Economy: Levels and Trends* also shows that the share of SMMEs on the countries’ aggregate income is comparatively low and declining.
4. In response to the economic consequences of the Covid-19 pandemic, government developed the Economic Reconstruction and Recovery Plan (ERRP) which maps out interventions aimed at promoting inclusive growth and employment in the domestic economy. These Regulations seek to complement the ERRP and other initiatives.

Purpose

5. The purpose of these Regulations is to exempt certain categories of agreements or practices among SMMEs from the application of sections 4 (1) and 5 (1) of the

Act in order to enable collaboration among SMMEs that otherwise would contravene the Act.

6. These categories of agreements or practices are exempted for the sole purpose of stimulating the growth and participation of SMMEs in the economy.

Legal framework

7. The legal framework for assessing horizontal agreements between firms is section 4(1) of the Act, which states as follows:

“4. Restrictive horizontal practices prohibited

(1) An agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if –

(a) It has the effect of substantially preventing, or lessening, competition in a market, unless a party to the agreement, concerted practice, or decision can prove that any technological efficiency or other pro-competitive gain resulting from it outweighs that effect; or

(b) it involves any of the following restrictive horizontal practices:

(i) directly or indirectly fixing a purchase or selling price or any other trading condition;

(ii) dividing markets by allocating market shares, customers, suppliers, territories, or specific types of goods or services; or

(iii) collusive tendering.”

8. The legal framework for assessing vertical agreements between firms is section 5(1) of the Act, which states as follows:

"5. Restrictive vertical practices prohibited

(1) An agreement between parties in a vertical relationship is prohibited if it has the effect of substantially preventing or lessening competition in a market, unless a party to the agreement can prove that any technological, efficiency or other pro-competitive, gain resulting from that agreement outweighs that effect."

Categories of agreements or practices exempted

9. Subject to regulation 10 and 11, the Minister hereby exempts the following categories of agreements or practices among SMMEs from the application of sections 4(1) and 5(1) of the Act:

9.1. Research and development (R&D) agreements which include outsourcing R&D to third parties or cooperation agreements to conduct R&D.

9.2. Production agreements for production of a good or the provision of a service, or toll manufacturing by one firm for another (standalone or on a reciprocal basis) which do not result in the removal of a competitor from the market.

9.3. Joint purchasing agreements which may include collective purchasing by a subset of firms in a market.

9.4. Joint selling of goods or services to and through intermediaries or other business customers by a subset of firms in a market.

9.5. Commercialisation agreements which include co-operation between firms relating to the selling, distribution or promotion of their products. Agreements may cover all commercial aspects or may be limited to one

specific function, such as distribution, after-sales service, or advertising.

9.6. Standardisation agreements which include setting the technical or quality requirements with which current or future products, production processes, services or methods may comply. These agreements may cover technical specifications, environmental performance, grades or sizes of products, or the terms of approval by a regulatory body.

9.7. Collective negotiations with large buyers or suppliers on the terms and conditions for purchasing or supply.

Prior approval by the Commission

10. SMMEs 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.

11. The Commission may:

11.1. 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 SMMEs is limited to the agreements or practices contemplated in regulation 9; and

11.2. decline approval in writing if the agreement or practice does not fall within the scope of these Regulations.

12. No agreement or practice contemplated in these Regulations may be implemented unless approved by the Commission in terms of sub-regulation 11.

13. The Commission must make the decision contemplated in regulation 11 within

30 business days of receipt of the application for approval of the agreement or practice.

14. If the Commission has not made a decision within the period contemplated in regulation 13, the application shall be regarded as having been approved.

Revocation of approval

15. The Commission may revoke the approval granted in terms of regulation 11 if:
- 15.1. there is a breach of conditions made in terms of sub-regulation 11.2;
 - 15.2. the collaboration among SMMEs exceeds the scope of the exemption granted in terms of these Regulations;
 - 15.3. the approval was granted on the basis of false information; and
 - 15.4. the reason for granting the approval no longer exists.

Exclusions

16. These Regulations exclude:
- 16.1. the fixing of the selling prices of goods or services to consumers; and
 - 16.2. collusive tendering.

Scope of the exemption

17. These Regulations only apply to SMMEs.
18. The scope of these Regulations is limited only to agreements or practices specified under paragraph 9 and which have the sole purpose of promoting the activity of SMMEs as set out in paragraphs 5 and 6.

Amendments to Regulations

19. The areas of collaboration exempted in these Regulations may be expanded or reduced, following a notice and comment procedure, by the Minister by notice published in the Government Gazette in terms of these Regulations.

Monitoring

20. The firms which have obtained approval in terms of sub-regulation 11.1 must notify the Commission and **the dtic** of the agreement or practice within 30 business days of implementation.

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

20.2. Notification to **the dtic** should be sent to exemptions@thedtic.gov.za.

21. The firms which have obtained approval in terms of sub-regulation 11.1 must keep minutes of meetings held and written records of any agreements or practices falling within the scope of the exemptions set out in these Regulations.
22. The Commission may, at any time, request minutes of meetings and written records contemplated in regulation 19.
23. The firms which have obtained approval in terms of sub-regulation 11.1 shall comply with the Commission's request for information within 30 days.

Short Title

24. These Regulations shall be called the **Block Exemption Regulations for**

Small, Micro and Medium-Sized Businesses, 2022.**Commencement and duration**

25. These Regulations shall come into effect on the date of publication in the Government Gazette and shall endure for a period of 10 years, which period can be extended by the Minister by notice in the Government Gazette.

Winding down of agreements and practices

26. The Minister shall provide a reasonable opportunity to firms which have obtained approval in terms of sub-regulation 11.1 to wind-down agreements or practices referred to in regulation 9 after the lapse of these Regulations.