

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 5160

30 August 2024

COMPETITION COMMISSION

NOTICE IN TERMS OF SECTION 10(7) OF THE COMPETITION ACT 89 OF 1998 (AS AMENDED):
SOUTH AFRICAN PETROLEUM INDUSTRY ASSOCIATION GRANTED CONDITIONAL EXEMPTION

On 28 October 2019, the South African Petroleum Industry Association ("SAPIA") and its members applied to the Competition Commission of South Africa ("Commission") in terms of section 10(1)(b) of the Competition Act 89 of 1998, as amended ("the Act") to be exempted from certain provisions of section 4 of the Act ("2020 Exemption Application").¹

Notice is hereby given in terms of section 10(7) of the Act that the Commission has granted SAPIA a conditional exemption in respect of its 2020 Exemption Application for a period of twenty-three (23) months from 01 August 2024 up to and including 30 June 2026, which is expiry date is in line with the designation status granted by the Minister of Trade, Industry and Competition granted to the South African petroleum industry.²

The exemption granted by the Commission covers a wide range of agreements and practices which, according to SAPIA, are required to ensure the continuity and stability of liquid fuels supply to various sectors and geographic locations of the South African economy. In particular, the exemption covers agreements and practices in the petroleum and refinery industry which are considered by the Commission to be in contravention of sections 4(1)(a) and (b) of the Act. SAPIA based its application on the premise that the aforesaid agreements and practices are required to obtain the objective set out under section 10(3)(b)(iv) of the Act.

The exemption is granted on the terms and conditions out in the Annexure attached hereto. SAPIA 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 Act.

Further queries should be directed to Mr. Marlon Dasarath at MarlonD@compcom.co.za.

¹ See Commission Case Number 2020OCT0044

² See Government Gazette No. 50680 of 21 May 2024

In correspondence, kindly refer to the following case number: 2020OCT0044

ANNEXURE - CONDITIONS

Definitions

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

- i. **“Applicants”** means SAPIA and its members;
- ii. **“Commission”** means the Competition Commission of South Africa, established in terms of section 19(1) of the Competition Act;
- iii. **“Commencement Date”** means the date on which the Government Gazette is published, which announces the conditional granting of the Exemption and wherein the Conditions are contained, in terms of section 10(7) of the Competition Act;
- iv. **“Commercially Sensitive Information”** means trade, business or industrial information which has a particular economic value to a firm and its business strategy and is generally not available or known by others.
- v. **“Competition Act”** means the Competition Act 89 of 1998, as amended;
- vi. **“Conditions”** means the conditions documented herein to which the Exemption is subject;
- vii. **“DMRE”** means the Department of Minerals, Resources and Energy;
- viii. **“Exemption”** means the Exemption to be granted in terms of section 10(2)(a) of the Competition Act under case number 2020OCT0044;
- ix. **“Exemption Application”** means the application filed by SAPIA in terms of section 10 of the Competition Act, on 28 October 2020;
- x. **“Liquid Fuel”** means petrol, diesel, jet fuel, IP/K, LPG, and heavy fuel meeting one of a number of specifications each appropriate to a given position in the supply chain;
- xi. **“Petroleum Industry”** means the industrial cluster that manufactures, imports, wholesales, distributes and retails Liquid Fuels, together with such associated industries as may be considered integral to the execution of those goals;
- xii. **“SAPIA”** means South African Petroleum Industry Association NPC representing the collective interests of its members.

The exemption has been granted subject to the following conditions -

Preamble

The conditions below only apply for the purpose and duration of the exemption application. The exemption application relates to the cooperation agreements and/or practices between SAPIA and its members at the following stages of the liquid fuels supply chain: **inbound logistics; primary distribution; terminal and depot operation and the specific shared services such as the airport fuelling services and the port joint bunkering services.**

Whereas the scope of the Exemption also covers interactions between firms in the Petroleum Industry which are aimed at monitoring, preventing and mitigating Liquid Fuel supply emergencies, as well as participation in meetings requested by the DMRE in respect of government policy initiatives relating to security of Strategic Stocks, Biofuels and Cleaner Fuels, this exemption does not extend to the wholesale, commercial and retail trade of the supply chain.

1. This conditional exemption is granted and aligned with the period for which the Minister of the Department of Trade, Industry and Competition has granted designation status to the South African petroleum industry i.e. until 30 June 2026.
2. The exemption is granted on the basis of the facts and the existing agreements and practices described in the application. Should the facts and existing agreements and practices change materially, including any change caused by the proposed addition of a new participant to an exempt agreement or practice or the conclusion of a new agreement, the Commission should be notified of such change. Any new agreement which affects the agreements and practices described in the exemption application, or any amendment or addendum to agreements contained in the application shall not be of force or effect until approved by the Commission.
3. For the avoidance of doubt, the Commission grants exemption to SAPIA, subject to the conditions contained in this document, only for –
 - (i) SAPIA participation and involvement in regular bi-monthly meetings of the Heads of Supply (“HOS”) Committee, which is chaired and controlled by the DMRE. It is understood that the HOS forum aims is to monitor developments in the national liquid fuels supply position to anticipate and prevent potential disruptions and emergencies. The issues typically covered

by an HOS meeting include –

- a. Sharing and updating the refinery shutdown schedule;
 - b. Sharing information regarding any unexpected events at individual refineries that could develop into threats to supply security;
 - c. General feedback from Transnet on the status of pipeline, rail and port infrastructure, highlighting any potential issues that could threaten supply;
 - d. Specific feedback from Transnet on the status of liquid fuel transport infrastructure at ORTIA, and
 - e. Feedback from Transnet on any on-going infrastructure developments that may have an impact on security of supply.
- (ii) SAPIA participation and involvement in the meetings of the Logistics Planning Team (“**LPT**”) Committee, which is chaired by the DMRE where it plays a coordinating and controlling role to address specific issues that threaten or disrupt supply or have already caused a supply problem and require remedial action. That is, when a serious threat to security of supply arises, urgent meetings of the LPT are convened by DMRE, which can occur on **a daily basis**. It is understood that may be requested by the DMRE include –
 - a. Current and forecasted demand;
 - b. Product sourcing plans (import and production plans);
 - c. Transportation capabilities and performance;
 - d. Stock holdings at key points;
 - e. Planned and unplanned refinery shutdowns;
 - f. Logistics constraints, and
 - g. Other operational issues.
- (iii) SAPIA engagements and involvement in its Security of Supply Committee (“**SOC**”) meetings on the basis that the SOC meetings are conducted on the same principles as the HOS forum, with the same objectives and same level of transparency and competition law compliance observed in the HOS i.e. with no information about prices, customers or competitive strategy being disclosed;
- (iv) SAPIA attendance and participation in meetings requested and chaired by the DMRE only

for the purposes of developing and implementing government policies in respect of Biofuels, Cleaner Fuels and Strategic Stocks; and

- (v) SAPIA interactions relating to **“Day-to-day Activities”** previously exempted by the Commission around the operation of -
- a. Co-loading and co-freighting;
 - b. The Single Buoy Mooring facility located south of Durban;
 - c. Southern Tank Farm located in Durban;
 - d. Durban Port Operations;
 - e. Cape Town Port Operations;
 - f. Mossel Bay Port Operations;
 - g. East London Port Operations;
 - h. PE Port Operations;
 - i. Coastal shipping;
 - j. Pipelines;
 - k. Depots;
 - l. OR Tambo International Airport;
 - m. Cape Town International Airport; and
 - n. Joint bunkering services.
4. SAPIA and its members and any other approved participants in exemption agreements and practices may not share competitively sensitive information, except for the purposes described in the exemption application.
5. If:
- 5.1. a party to an agreement or practice at any stage of the liquid fuels supply chain also acts as an operator of the infrastructure or coordinates the joint use of a facility to which that agreement or practice relates; and
 - 5.2. it is necessary for that operating party to be provided with disaggregated volume information of other participants, or any other information which may lead to a substantial lessening or prevention of competition;

- 5.3. then the operating party must not share that information with the other participants, unless sharing the information is necessary to ensure security, stability and continuity of liquid fuels supply, or is necessary for strictly operational purposes.
 - 5.4. The employees of any operating party who receive such information shall ensure that the information is held, maintained and used separately, confidentially and on a need to know basis only.
6. SAPIA and its members may not share information relating to setting of margins, imposition of levies and / or approval of tariffs, unless required to do so by the DMRE, Port Regulator or National Energy Regulator of South Africa.
7. SAPIA and its members and any other approved participants are required to comply in all material respects with all statutes, regulations and policies which have the force of law, and which directly relate to competition in the petroleum refining and marketing industry in South Africa. These industry regulations include but are not limited to: the Petroleum Products Amendment Act (58 of 2005), the Petroleum Pipelines Act (60 of 2003), the National Ports Act (12 of 2005), and Regulations in terms of the Petroleum Pipelines Act and the National Ports Regulations.
8. It is specifically recorded that the exemption granted by the Commission does not preclude any firm from participating in any exempt activities, and applies equitably to all industry players to ensure security of supply of liquid fuels in South Africa. Participation in the industry by small, medium and micro enterprises and firms owned or controlled by historically disadvantaged persons shall not be inhibited by the exempt conduct.
9. SAPIA must continue to open up its membership to accommodate both existing and potential marketers in the petroleum and refinery market on fair, reasonable and transparent grounds.
10. SAPIA shall keep agendas and minutes of all meetings held in respect of conduct exempted by the Commission which, for the avoidance of doubt, includes the HOS, LPT and SOC discussions and meetings that were requested, convened, initiated, chaired etc. by the DMRE and held in respect of proposed government's Cleaner Fuels, Strategic Stocks and Biofuels policies.
11. SAPIA shall submit reports on a six (06) monthly basis to the Commission from the granting of this Exemption, confirming and explaining compliance with these Conditions.

- 11.1. Each report shall be submitted to the Commission by no later than a calendar month after the six (06) month anniversary of the granting of this Exemption and shall relate to compliance with each aspect of these condition for the preceding six (06) month period.
 - 11.2. For the sake of clarity, the first report will be due on 28 February 2025, and shall cover the period from 01 August 2024 up to and including 31 January 2025. The second report will be due on 31 August 2025, and will cover the period 01 February 2025 to 31 July 2025.
12. The reports contemplated within this clause shall include in particular (but not limited to) -
 - 12.1. description of the nature, purpose, use and frequency of the Commercially Sensitive Information that was exchanged between the Applicants during the period that the report relates;
 - 12.2. a description of the nature, purpose, use and frequency of the Commercially Sensitive Information that was exchanged between the Applicants and the appointed independent third party(s) during the period that the report relates;
 - 12.3. A description of any emergencies that occurred during the period that the report relates that triggered the need for special or extraordinary HOS and LPT meetings to be convened. This description shall include the type of information that was exchanged, and what actions were taken, to mitigate those emergencies, if any; and
 - 12.4. all agendas and minutes described in clause 10 above which are relevant to meetings that took place during the period that the report relates.