

## DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 1178

06 NOVEMBER 2020

## COMPETITION COMMISSION SOUTH AFRICA

**NOTICE IN TERMS OF SECTION 10(7) OF THE COMPETITION ACT 89 OF 1998, (AS AMENDED): SOUTH AFRICAN SUGAR ASSOCIATION – CONDITIONAL EXEMPTION GRANTED**

1. On 17 August 2020, the South African Sugar Association (“SASA”) and its members, hereinafter jointly referred to as (“the Applicants”) filed an application for an exemption (“the application”) in terms of Section 10(3)(b)(iv) of the Competition Act No 89 of 1998, as amended (“the Competition Act”). The exemption was requested for a period of one year up to and including 30 June 2021.
2. SASA is a statutory body established in terms of Section 2(1) of the Sugar Act No. 9 of 1978 (“the Sugar Act”). It provides a variety of services to its members in order to support the functioning of the regulatory framework within which the industry operates, and acts as a representative of the industry in relation to engagements with external stakeholders. SASA’s members comprise of two levels of the value chain, namely Growers and Millers and are made up of the associations which represent the interests of those levels. These are (1) the South African Sugar Miller’s Association (“SASMA”), (2) the South African Cane Growers Association (“SACGA”) and (3) the South African Farmer’s Development Association (“SAFDA”).
3. The application emanates from the fact that, on 23 June 2020, the Minister of Trade, Industry and Competition (“Minister”), after consultation with the Minister of Agriculture, Land Reform and Rural Development, designated the sugar industry in terms of Section 10(3)(b)(iv) of the Competition Act for a period of 12 months, commencing on 1 July 2020. This designation is meant to offer support of the economic development, growth, transformation and stability of the sugar industry in line with the objectives of the proposed South African Sugarcane Value Chain Master Plan to 2030 (“Sugar Master Plan”).
4. In their application, the Applicants relied on the objectives set out in Section 10(3)(b)(iv) of the Competition Act which allows an exemption of agreements and/or practices that contribute to the economic stability of any industry designated by the Minister after consulting the Minister responsible for that industry.
5. The scope of the application for exemption is in terms of agreements and/or practices in the industry to:

- 5.1. restrain producer price increases of sugar in terms of timing, notice and manner of implementing such price increases;
  - 5.2. share competitively sensitive information and in light of that information, engage regarding various options for interventions that could be implemented to support small-scale growers and ensure that they become a sustainable part of the sugar supply chain, in line with the objectives of the Sugar Master Plan;
  - 5.3. share competitively sensitive information of the various sugar industry participants, including growers, millers and refiners and in light of that information engage on the various means by which the industry could implement a restructuring of the nature contemplated in the Sugar Master Plan; and
  - 5.4. share competitively sensitive information with the Eswatini Sugar Association (including in relation to production volumes, local and export sales volumes, notional pricing, and identification of diversification opportunities) and in light of this information engage with the Eswatini Sugar Association to achieve policy harmonisation to the mutual benefit of each country's sugar producers.
6. The Commission's investigation revealed that:
- 6.1. the agreements and/or practices which the Applicants sought to be exempted from, would likely contravene Sections 4(1)(a) and 4(1)(b)(i) and 4(1)(b)(ii) of the Competition Act, as the agreements and/or practices relate information exchange and coordination between parties in a horizontal relationship;
  - 6.2. the exemption is likely to contribute to the economic stability of the sugar industry; and
  - 6.3. the exemption can be used as an instrument for transformation and the opening of the sugar industry to previously disadvantaged individuals, particularly small-scale sugarcane growers.
7. Based on the investigation findings, the Commission has decided to grant SASA and its members a conditional exemption from **the Approval Date** up to and including **31 June 2021**.
8. The exemption is granted based on the information submitted to the Commission by SASA and other stakeholders. Therefore, this exemption does not immunise SASA and any of its

members from being investigated and prosecuted under the Competition Act for any conduct outside the scope of the exemption application.

9. The exemption is granted with Conditions and Monitoring Mechanisms attached hereto as Annexure 1 to ensure that the objectives set out in the application are met by SASA and its members.
10. Notice is hereby given in terms of Section 10(7) of the Competition Act regarding the Commission's decision to grant this exemption. The Applicants and any other person with a substantial material interest affected by this decision may appeal to the Competition Tribunal in the prescribed manner in terms of Section 10(8) of the Competition Act.

Further queries should be directed to:

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**In correspondence kindly refer to the following case number: 2020Aug0064**

## ANNEXURE 1: CONDITIONS AND MONITORING MECHANISMS

### Definitions

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

- i. **“SASA”** means South African Sugar Association;
- ii. **“Approval Date”** means the date referred to in the Competition Commission’s Clearance Certificate;
- iii. **“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;
- iv. **“Competition Act”** means the Competition Act 89 of 1998, as amended;
- v. **“DTIC”** means the Department of Trade, Industry and Competition;
- vi. **“DTIC facilitator”** means a facilitator appointed by the DTIC;
- vii. **“Effective Date”** means the date on which these conditions shall become effective, being the approval Date;
- viii. **“Exemption”** means to exempt conduct otherwise prohibited if it is required to achieve identified socio-economic aims; and
- ix. **“Applicants”** Means SASA and all its’ members including the South African Sugar Millers Association (“SASMA”), the South African Cane Growers Association (“SACGA”) and the South African Farmers Development Association (“SAFDA”), as well as their respective members.

### Conditions

#### *Price Restraint*

1. There will be no co-ordination or information exchange between Millers regarding actual prices charged to wholesalers, retailers and industrial sugar users. Millers must still make independent decisions on actual prices and/or increases to be implemented in line with the commitments in the Exemption Application.

*Small-scale grower retention and support*

2. The information shared is limited specifically to costs of production and volume outputs;
3. All information shared in this regard must be done so anonymously;
4. The shared information should be aggregated per region.

*Managed Industry Restructuring*

5. A DTIC facilitator must be present at all meetings where information is to be shared.
6. All information shared must not be unjustifiably disaggregated, in relation to the objectives set out in the Master Plan.
7. No information is to be retained or distributed to individuals outside the structures/committees created by SASA.
8. All necessary information to be shared must be submitted individually to SASA for collation.
9. All information shared must be pre-approved by the DTIC facilitator.

*SACU Harmonization*

10. A DTIC facilitator must be present at all meetings where information is to be shared for the purposes of SACU Harmonization.
11. All necessary information to be shared must be submitted individually to SASA for collation.
12. All information shared must be pre-approved by the DTIC facilitator.

**Monitoring Mechanisms***Producer Price Restraint*

13. Each South African Miller must individually provide the Commission with a report at the end of May 2021, confirming compliance with the commitments set out in paragraph 6.1.2 of the Exemption Application, namely:

- 13.1. Prices of sugar to retailers, wholesalers and industrial sugar users were never increased at a level that exceeds annual CPI, on an annual weighted average basis.
- 13.2. Price increases have not occurred more than twice a year at predictable and evenly spaced intervals. Price increases to industrial users were only implemented outside of the peak trading periods of October to December (inclusive) and the four weeks preceding the Easter Weekend and including the Easter school holidays.
- 13.3. Price increases to bulk industrial sugar users were notified at least 60 days in advance of implementation.

*Small scale grower retention and support*

14. SASA must provide the Commission with a report at the end of May 2021, which sets out:
  - 14.1. The nature/type of information exchanged in relation to the objectives of the small-scale Growers retention and support;
  - 14.2. Justifications regarding the information shared for the objective set out and justifications for the format in which it was shared; and
  - 14.3. What interventions and plans, emanating from the information exchange were developed and implemented during the exemption period.
15. In addition to the above, SASA must ensure that minutes of all meetings held in respect of small-scale Grower retention and support are recorded and submitted to the Commission together with the compliance report outlined above.

*Managed Industry Restructuring*

16. SASA must provide a report to the Commission by end of May 2021 confirming:
  - 16.1. The nature of information shared for the purposes of managed restructuring;
  - 16.2. Justifications regarding the information shared for the objective set out and justifications for the format in which it was shared;
  - 16.3. Plans developed and implemented during the exemption period; and

- 16.4. Any competitively sensitive information was shared through appropriate structures/committees created by SASA.
17. In addition to the above, SASA must ensure that minutes of all meetings held in respect of managed restructuring are recorded and submitted to the Commission together with the compliance report outlined above.

*SACU Harmonisation*

18. SASA must provide a report to the Commission by end of May 2021 confirming:
- 18.1. The nature of information shared for the purposes of SACU Harmonisation;
  - 18.2. Justifications regarding the information shared for the objective set out and justifications for the format in which it was shared;
  - 18.3. Plans put in place emanating from the information shared; and
  - 18.4. Any competitively sensitive information was shared through appropriate structures/committees created by SASA.
19. In addition to the above, SASA must ensure that minutes of all meetings held in respect of SACU Harmonisation are recorded and submitted to the Commission together with the compliance report outlined above.