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## GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

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### DEPARTMENT OF ECONOMIC DEVELOPMENT

NO. 917

21 AUGUST 2020

### NOTICE IN TERMS OF SECTION 10(6) OF THE COMPETITION ACT NO. 89 OF 1998 (AS AMENDED)

#### THE COMPETITION COMMISSION OF SOUTH AFRICA

#### NOTICE OF APPLICATION FOR AN EXEMPTION

1. Notice is hereby given in terms of section 10(6)(a) of the Competition Act, No 89 of 1998, as amended (the Act) that the South African Sugar Association (**SASA**) has applied to the Competition Commission (Commission), in terms of section 10(1) of the Act, to be exempted from certain provisions of Chapter 2 of the Act.
2. SASA is a statutory body established in terms of section 2(1) of the Sugar Act No. 9 of 1978 (Sugar Act). SASA's members are the South African Sugar Millers' Association (**SASMA**), the South African Cane Growers' Association (**SACGA**), and the South African Farmers' Development Association (**SAFDA**).
3. SASA's key statutory functions include the following:
  - 3.1 determination of the quantities of sugar required for the local and export market, and for the determination of the recoverable value price;
  - 3.2 allocation of local and export market quotas to each miller based on that miller's share of total production;
  - 3.3 determination of notional prices in the local market for sugar and molasses;
  - 3.4 removal of surplus sugar from the domestic market into the world market through a single export desk managed by SASA;
  - 3.5 determination of the sugar industry's net divisible proceeds for each year (from both domestic and export sugar sales); and
  - 3.6 distribution of proceeds from domestic and export sales between millers.
4. SASA also 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 and in order to promote industry affairs more generally.

5. SASMA represents the interests of all sugar millers and refiners in South Africa. SACGA ensures equitable and fair representation of all growers in the industry. SAFDA is a registered not-for-profit development association of farmers.
6. The application for exemption is in of agreements and/or practices in the industry to: (i) share competitively sensitive information; and (ii) in light of that information, engage regarding various options for the industry and its participants with a view to formulating agreed strategies or plans on certain issues (including for example a managed reduction and/or reallocation of capacity).
7. More specifically, the Commission is requested to exempt:
  - 7.1. the agreement and/or practice among South African sugar producers to exercise price restraint by:
    - 1) not increasing their prices of sugar to retailers, wholesalers and industrial sugar users at a level that exceeds annual consumer price index increases on an annual average weighted basis;
    - 2) implementing price increases no more than twice a year, at predictable and evenly spaced intervals;
    - 3) only implementing price increases to industrial users 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; and
    - 4) notifying bulk industrial sugar users of price increases at least 60 days in advance of implementation.
  - 7.2. the agreement and/or practice among (i) SASA; (ii) SASA's members, SASMA, SACGA and SAFDA; and (iii) the members of SASMA, SACGA and SAFDA to formulate a plan 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 South African Sugarcane Value Chain Master Plan to 2030 (**Sugar Master Plan**) by:
    - 1) sharing competitively sensitive information regarding growers' cane production costs, subject to appropriate information sharing protocols; and

- 2) in light of this information, engaging on the various options for interventions that could be implemented in pursuit of these objectives (including cost and/or price interventions in favour of small-scale growers).

7.3. the agreement and/or practice among (i) SASA; (ii) SASA's members, SASMA, SACGA and SAFDA; and (iii) the members of SASMA, SACGA and SAFDA to formulate an industry restructuring plan of the nature contemplated in the Sugar Master Plan by:

- 1) sharing competitively sensitive information of the various sugar industry participants (including growers, millers and refiners), subject to appropriate information sharing protocols; and
- 2) in light of this information, engaging on the various means by which the industry could implement such a restructuring (including through targeted reduction and diversification of specific capacity identified at various levels of the sugarcane supply chain, collective procurement by industry participants, and rationalisation of industry functions).

7.4. the agreement and/or practice among (i) SASA; (ii) SASA's members, SASMA, SACGA and SAFDA; and (iii) the members of SASMA, SACGA and SAFDA to:

- 1) 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
- 2) in light of this information, engage with the Eswatini Sugar Association on the various means by which the two countries could achieve policy harmonisation to the mutual benefit of their respective sugar producers (including through coordinating supply into the SACU market, preferential access to export markets, use of port facilities, pursuing joint or complementary diversification opportunities, and joint financing).

8. The exemption sought in respect of paragraphs 7.2, 7.3 and 7.4 above is limited to the sharing of information and the development of small-scale grower development, industry restructuring plans and policy harmonisation plans, respectively.

9. SASA submits that the conduct outlined above may result in the contravention of section 4(1)(b)(i) of the Act and that such conduct is necessary to attain the objective stipulated under section 10(3)(b)(iv) of the Act in that it contributes to the objective to support the economic development, growth, transformation and stability of the sugar industry in line with the objectives of the proposed Sugar Master Plan.
  
10. SASA is requesting the Commission to exempt the above conduct of its members for a period of 12 months, ending on 30 June 2021.
  
11. Notice is hereby given in terms of section 10(6)(b) of the Act to allow interested parties twenty (20) business days from the date of the publication of this notice to make written representations to the Commission as to why the exemption should, or should not, be granted.
  
12. Such representations must be directed to:

**Tlabo Mabye**

Market Conduct Division

Competition Commission

[TlaboM@compcom.co.za](mailto:TlaboM@compcom.co.za) and [ccsa@compcom.co.za](mailto:ccsa@compcom.co.za)

In correspondence kindly refer to Case No: **2020AUG0064**