competition commission
south africa

Press Release
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COMPETITION COMMISSION GRANTS A SHORT-TERM EXEMPTION TO THE SOUTH AFRICAN SUGAR ASSOCIATION

On 19 October 2020, the Competition Commission granted the South African Sugar Association ("SASA") and its members, hereinafter jointly referred to as the applicants, a conditional exemption until 31 June 2021. The exemption has been granted subject to conditions to ensure that the information SASA and its members share is limited to that which is necessary to give effect to the purposes of the South African Sugarcane Value Chain Master Plan to 2030 ("Sugar Master Plan"), without compromising competition in the long run.

Although the Sugar Master Plan covers the entire sugar value chain, the exemption is, in the main, limited to coordination between millers, growers and refiners but excludes any envisaged coordination between retailers. However, as part of the Sugar Master Plan, retailers and industrial users of sugar have individually committed to minimum levels of offtake from South African millers, growers and/or refiners, which commitments do not need coordination amongst the retailers as well as industrial users.

The applicants filed an application for an exemption in terms of section 10(3)(b)(iv) of the Competition Act No 89 of 1998, as amended, for a period of one year. In the exemption application, the applicants relied on 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 of Trade, Industry and Competition after consulting the Minister responsible for that industry.

The exemption application was therefore filed subsequent to a decision by the Minister of Trade, Industry and Competition to designate 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. The sugar industry was designated after consultation with the Minister of Agriculture, Land Reform and Rural

Development, to offer support of the economic development, growth, transformation and stability of the sugar industry in line with the objectives of the Sugar Master Plan.

The applicants filed the application for exemption on 17 August 2020 to be permitted to enter into agreements or engage in practices in the industry that may contravene the Competition Act, for the applicants to:

1. restrain producer price increases of sugar in terms of timing, notice and manner of implementing such price increases;

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;

2. 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

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.

The Commission’s investigation revealed that 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 to information exchange and coordination between competitors. However, the Commission found that if granted, the exemption is likely to contribute to the economic stability of the sugar industry and can be used as an instrument for transformation and the opening up of the sugar industry to previously disadvantaged individuals, particularly small-scale sugarcane growers.

The Commission has therefore granted the exemption for the period until 31 June 2021, as applied for by the applicants, with the following 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.

The Commission is satisfied that these conditions will limit the sharing of competitively sensitive information but simultaneously permit SASA and its members to share information necessary to achieve the stability of the sector and its eventual recovery. These conditions have monitoring mechanisms attached to ensure that the objectives set out in the exemption application are met by SASA and its members and that the applicants remain within the scope of the exemption.

[ENDS]

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BACKGROUND

The applicants submit that the sugar industry is in a downward trajectory mainly because of drought; low international sugar prices, decline in sales volumes due to sugar tax, and competition from cheap imports. It is estimated that the number of sugar cane Growers has declined by 60% over the past twenty years resulting in a reduction of sugar industry-related jobs by approximately 45%. This has had an overall negative effect on annual sugar production in South Africa which has declined by nearly 25%, from 2.75 million to 2.1 million tons per annum, over the past 20 years.

The Sugar Master Plan, from which the agreements and/or practices which are sought to be exempted stem from, contemplates a social compact between the sugar industry as a whole, Government and other stakeholders in order to facilitate interventions which are aimed at stabilizing the sustainability of the sugar industry for the future. According to the applicants, the implementation of the Sugar Master Plan through an exemption will prevent the collapse of the South African sugar industry and the loss of the material socio-economic benefits that flow from it.

The information submitted by the Applicants and available in the public domain confirms that the sugar industry is in decline in terms of output and sugar growers. As a result, there is a need for the industry to implement measures to avoid or manage the decline. The Sugar Master Plan has been developed in order to:

1. stabilise the industry;

2. restructure industry capacity and costs in an orderly manner to ensure alignment to current and future market size, and establish the appropriate platform for a diversified sugarcane-based value chain by 2030 ("Vision 2030");

3. protect and retain sugarcane value-chain (including upstream and downstream) jobs as far as possible through the transition;

4. secure the foundational role of small-scale growers in the sugarcane value chain, and ensure a balanced approach to supporting small-scale grower sustainability towards Vision 2030;

5. mitigate the impact on workers and small-scale growers of capacity reductions; and

6. ensure that transformation of ownership and participation is significantly advanced through the restructuring and the transition to Vision 2030.

In order to effectively implement the Sugar Master Plan, the applicants need to engage to inter-alia, restrain price increases to stimulate local demand, exchange information to improve efficiencies and manage capacity and offer support to small growers. The co-ordination between (1) the millers and (2) the growers is likely to diminish competition and pose risks to the industry by possibly raising barriers to entry and resulting in high prices to consumers. Notwithstanding this, the Commission is of the view that the granting of the exemption would be beneficial in that, it will enable the South African stakeholders to overcome the risks and challenges which exist in the South African sugar industry, thereby enabling the industry to achieve the objectives of the Sugar Master Plan leading to economic stability and growth in the industry.

The applicants submit that the agreements and/or practices which are sought to be exempted will be implemented over a period of three years. However, given that the Minister's designation of the sector is currently due to end on 30 June 2021, the exemption is requested as such. The applicants anticipate that an application for extension will be made in line with an extension of the Minister's designation period, should the exemption be granted.