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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

ECONOMIC DEVELOPMENT DEPARTMENT**NO. 1386****25 OCTOBER 2019**

COMPETITION COMMISSION

NOTICE IN TERMS OF SECTION 10(7) OF THE COMPETITION ACT 89 OF 1998 (AS AMENDED): THE ABALONE FARMERS ASSOCIATION OF SOUTH AFRICA GRANTED CONDITIONAL EXEMPTION

1. On 13 June 2016, the Abalone Farmers Association of South Africa (“AFASA”) and its members, hereafter jointly referred to as (“**the Applicants**”) filed an application for exemption (“**the application**”) in terms of section 10(1)(b) of the Competition Act No 89 of 1998, as amended (“the Competition Act”) to be exempted from certain provisions of Chapter 2 of the Competition Act for a period of ten (10) years commencing on the date of approval of the application by the Commission.
2. The Exemption application concerns the Applicants’ intentions to engage in meetings and communicate on prices and market conditions as competitors in the abalone industry. The engagements will involve the Applicants coordinating their efforts in respect of sales into certain international markets through sharing information on prevailing prices, feedback regarding information received from agents on prices, estimates of abalone stock available, volumes of abalone product exported and the volumes of abalone stockholding of the international competitors.
3. The Exemption was sought for a period of ten (10) years and was based on the premise that the proposed exemption is required in order to obtain the objective contained in sub-section 10(3)(b)(i) of the Competition Act, namely the maintenance or promotion of exports.

4. The Commission's investigation revealed that the conduct of AFASA's members would result in a contravention of Section 4 of the Competition Act, as the application relates to information exchange agreements and/or practices between parties in a horizontal relationship. The Commission's investigation revealed that the exemption if granted, may enable the abalone industry to achieve favorable and stable prices leading to the promotion and maintenance of exports.
5. Further, the Commission's investigation revealed that there is no transformation in the abalone industry. To address this, the Commission met with AFASA on the 4th of December 2018 whereby it was agreed that AFASA would develop an industry plan that will facilitate transformation in the abalone industry, through partnering with government and other relevant stakeholders. To allow the process to take place, the Commission granted two consecutive short-term exemptions with the latest one ending on the **30th of September 2019.**
6. On the 12th of July 2019, AFASA submitted an Industry Transformation Plan in support of its exemption application. After considering the Industry Transformation Plan, the Commission has decided to grant AFASA a conditional exemption for a period of 1 (one) year, effective from **01 October 2019** up to **30 September 2020.**
7. The Commission will continue to monitor the impact of the exemption on the abalone industry and the implementation of the Industry Transformation Plan by AFASA in order to decide on the next course of action.
8. Notice is hereby given in terms of section 10(7) of the Competition Act that the Commission has in response to the aforesaid application, granted the exemption to the Applicants for 12 (twelve) months with the following conditions:

Definitions

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

- i. "**AEC**" means the Abalone Export Council

- ii. “**AFASA**” means the Abalone Farmers Association of South Africa;
- iii. “**Applicants**” mean AFASA;
- iv. “**Approval Date**” means the date referred to in paragraph 6 above;
- v. “**Beneficiaries**” mean Doring Bay, Somlolo Investment Holdings and Mamjoli Marine
- vi. “**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;
- vii. “**Competition Act**” means the Competition Act 89 of 1998, as amended;
- viii. “**Exemption Application**” means the application submitted by AFASA on 14 June 2016 in terms of section 10(3)(b)(i) of the Competition Act, 89 of 1998, for the “*maintenance or promotion of exports*”;
- ix. “**Exemption Period**” means a 1 (one) years period for which the Exemption Application will be granted;
- x. “**Exemption**” means to exempt conduct otherwise prohibited in terms of Chapter 2 of the Competition Act if it is required to achieve identified socio-economic aims;
- xi. “**HDIs**” means historically disadvantaged individuals;
- xii. “**Stakeholders**” collectively means AFASA, Suppliers, divers, processors, Applicants and any other rights holder in the abalone industry;
- xiii. “**Suppliers**” mean South African abalone farmers and South African exporters of any abalone product

PREAMBLE

- (i) **WHEREAS** the Conditions stipulated below only apply to the proposed scope of the Exemption Application filed by the Applicants and for the duration of the Exemption granted by the Commission;

- (ii) **AND WHEREAS** the proposed sharing of competitively sensitive market information shall fall under two broad types of conduct described as: (i) the exchange of pricing and volume information, and (ii) the formal management of an exchange of information, relating to both local and international information, implemented through the distribution of pricing and quantity indices, industry reports and regular, minuted meetings between participants in the industry;
- (iii) **AND WHEREAS** the proposed sharing of competitively sensitive market information comprises of the following:
- Cross-checking and verifying information provided by international agents with other South African farmers and exporters of abalone;
 - Current export order requests, stock availability, production and capacity constraints;
 - Pricing of particular product forms of abalone in export markets;
 - Pricing and quantity information relating to international competitors; and
 - International market conditions;
- (iv) **AND WHEREAS** AFASA agrees to notify the Commission in writing of any material changes to their proposed practices in relation to abalone farming, processing and marketing activities within South Africa. Any new arrangement which affects the practices described in the Exemption Application, or any material changes to the practices contained in the Exemption Application shall not be of force or effect until approved in writing by the Commission;
- (v) **AND WHEREAS** the Exemption granted herein to AFASA shall only be applicable to practices falling within the jurisdiction of the Commission; and

WHEREFORE the Commission will grant the Exemption in terms of section 10(2)(a) of the Competition Act subject to the following conditions:

LIST OF CONDITIONS

1. The Exemption shall be granted for a period of one year commencing from **01 October 2019** up to **30 September 2020**.
2. Membership to AFASA will not be a prerequisite for the ability to share and obtain competitively sensitive market information. The benefits which accrue from the Exemption as well as the competitively sensitive market information shared will be available to all Stakeholders.
3. The AEC will be an independent and objective body through which the facilitation of the information sharing takes place, as per the Exemption. The AEC will facilitate all formal meetings to be held in relation to these Conditions and will be the body to which Stakeholders report when they have shared competitively sensitive market information outside of the formal meetings. Participation through the AEC must include all Stakeholders.
4. The Exemption applied for and granted by the Commission relates to the coordination of efforts in respect of sales into certain international markets through the sharing of information on prevailing prices, feedback from information received from agents on prices, estimates of abalone stock available, volumes of abalone product exported and the volumes of abalone stockholding of the international competitors.
5. There will be no undocumented contact between any Stakeholders in the industry with regard to the sharing of competitively sensitive market information. Any competitively sensitive market information that needs to be shared relating to marketing and export of abalone between and amongst Stakeholders must be shared with the AEC before the next formal Stakeholder meeting. Further, all telephonic information must be shared in writing.
6. The information to be shared at the meetings will comprise of data on export pricing, order and stocks in order to allow for the collation and dissemination of historical and current export trends and analysis of the international market. Discussions at meetings will concern wider export strategies around pricing and volume information that has been provided in the monthly pricing and quantity indices. Stakeholders will be permitted to impart experience, knowledge and general market intelligence obtained from their respective operations.
7. The AEC will be responsible for the distribution of the documented exchanges of competitively sensitive market information, as well as the pricing and quantity indices. The

AEC will constantly update the contact list so as to ensure that the indices and all accounts of competitively sensitive market information exchanged are delivered to all Stakeholders.

8. AFASA will spend:

8.1 R 5 million per year on 1 100 HDIs on general training during the period of the Exemption; and

8.2 At least R 2.4 million on training at tertiary level on HDI employees at management level during the period of the Exemption.

9. Members of AFASA will supply 50 000 spat and 25 000 juvenile animals (for the ranching project) per month to Doring Bay, Somlolo Investment Holdings and Mamjoli Marine for the duration of the Exemption.

10. Members of AFASA will provide the exemption beneficiaries with information around security implementation and security infrastructure.

11. The AEC will provide financial subsidy amounting to R17 500 on an annual basis to Doring Bay to assist with laboratory testing and export compliance.

12. AFASA will provide technical support and skills transfer to Doring Bay and Mamjoli Marine for the duration of the Exemption.

13. I&J will charge Doring Bay less 5% of the current processing fee plus inflation adjustment for the duration of the Exemption.

14. I&J will assist Doring Bay with the setting of the dried processing facility as per the MOU between I &J and Doring Bay.

15. I&J will sell Doring Bay's abalone available stock should Doring request them to do so.

16. Abagold will assist Mamjoli Marine with its business plan and skills development strategy.

17. Wild Coast Abalone will be a technical partner of Somlolo Investment holdings for the purposes of abalone farming in the Eastern Cape
18. Where a Stakeholder contacts the AEC directly, such communication shall be reported to all Stakeholders via an email or by means of the distribution of an industry report on an ad hoc basis.
19. The Exemption shall be applicable solely to the wholesale price of abalone. All other costs, such as packaging costs and processing cost, shall be specific to the respective Stakeholder's operating costs. All other relevant costs shall continue to be set independently.
20. Stakeholders will use the information given above in respect of their own independent business decisions including abalone prices and inventory.
21. Any discussions or information exchange that takes place through the AEC for the purposes of complying with the Exemption granted will be limited to activities as described above.

MONITORING MECHANISM

22. The AEC together with AFASA, must jointly submit a report to the Commission at the end of the 11th (eleventh) month of the Exemption detailing the extent to which they have implemented the Industry Transformation Plan and have complied with these Conditions. The report must include *inter alia*:
 - 22.1 Abalone export prices and volumes; and
 - 22.2 The manner in which the exemption has enabled historical disadvantaged individuals to enter and/or participate in the abalone industry.
23. AFASA together with the beneficiaries must submit a report to the Commission detailing how AFASA has provided technical support and skills transferred to the beneficiaries.
24. All the Suppliers will need to depose an affidavit 11th (eleventh) month of the Exemption, confirming that they have not had undocumented exchanges of competitively sensitive market information with another Supplier and provide such affidavits to the Commission.

25. The applicants can apply to extend, on good cause shown, and the Commission can extend the Exemption if so required.
26. AFASA 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 Competition Act.
27. Any queries in this regard should be directed to

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Market Conduct Division
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0040

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In correspondence kindly refer to the following case number: 2016Jun0286

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