
GENERAL NOTICES

NOTICE 1623 OF 2009

COMPETITION COMMISSION

APPLICATION FOR AN EXEMPTION

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 Petroleum Industry Association ("SAPIA") and its members have applied to the Competition Commission ("the Commission"), in terms of Section 10(1) of the Act, to be exempted from certain provisions of Chapter 2 of the Act. SAPIA is the representative association of the petroleum industry. It was formed to represent the common interests of the petroleum refining and marketing industry in South Africa, and to promote understanding of the industry's contribution to economic and social progress with all stakeholders.

SAPIA's members participate in the petroleum industry by sourcing raw materials, importing, manufacturing and supplying petroleum products. The following companies are members of SAPIA and parties to the exemption application:

- BP Southern Africa (Pty) Ltd
- Chevron South Africa (Pty) Ltd
- Engen Petroleum Ltd
- Sasol Ltd
- Shell South Africa Marketing (Pty) Ltd and Shell South Africa Refining (Pty) Ltd
- Total South Africa (Pty) Ltd
- The Petroleum Oil and Gas Corporation of SA (Pty) Ltd t/a PETROSA

The exemption application also extends to various subsidiary and affiliate companies of the applicants which are involved in the business and conduct described but are not members of SAPIA themselves.

The exemption application covers a range of agreements and practices which are required to ensure the continuity and stability of liquid fuels supply to the various sectors and geographical locations of the South African economy. The application relies on the objective set out in Section 10(3)(b)(iv) of the Act and SAPIA asserts that the category of agreements and practices concerned contribute to the economic stability of the petroleum industry. The petroleum industry was designated by the Minister of Trade and Industry for purposes of Section 10(3)(b)(iv) of the Act on 05 June 2009.

The scope of the exemption application includes the following agreements and practices:

1. The Co-freighting Agreement dated 10 September 2008 and the draft agreement dated 28 July 2009.
2. The practices of co-loading and co-freighting of crude oil including:
 - a. The co-ordination of crude oil & finished liquid fuels imports between participants for the operation of port access, discharge and loading facilities.

3. The agreements between the relevant applicants in relation to the Single Buoy Mooring facility ("SBM"), being the:
 - a. SBM Co-ownership Agreement, with annexures – currently in draft
 - b. SBM Management Agreement with annexures – currently in draft;
 - c. SBM Rules – currently in draft.
4. The practices of coordination by co-freighting arrangements and co-management of the SBM.
5. The practices of joint refinery coordination including the sharing of information regarding refinery production, capacity constraints, unit problems, duration and stock position.
6. The coordination by the applicants of supply to optimize the use of logistics infrastructure for transport of liquid fuels to depots and terminals.
7. The coordination of activities including the practice of sharing the following information with the Department of Energy (DoE) and each other:
 - a. Regularly updated information of the type contained in the "dashboard"
 - b. liquid fuel stocks held by each oil company at various sites in the country;
 - c. schedules for actual and intended distribution of liquid fuels through coastal shipping, pipelines, rail and road.
 - d. Product exchanges and accommodation arrangements.
 - e. Plans that may affect the ability of the industry to optimise the available logistical infrastructure capacity and/or to meet market demand.
8. The practices of industry to, on a regular basis and between senior supply managers, share information and coordinate approaches to address the following:
 - a. Manage communications regarding supply issues with SAPIA and DoE.
 - b. Monitor the impact of imports, exports and refinery shutdowns on supply.
 - c. Manage availability of tankcars with Transnet Freight Rail (TFR).
 - d. Review the performance of TFR and Transnet Pipelines Limited (TPL).
9. Joint venture and accommodation agreements between participants for the use and operation of terminals and depots which service geographic areas and specific installations (including airports) within South Africa.
10. The practices of coordinating and sharing information in respect of:
 - a. The general operations of such depots, terminals and installations;
 - b. Schedules of injections and discharges from storage facilities;
 - c. costs associated with depot operations, accommodation agreements, and
 - d. monitoring of stock levels.
11. The Southern Tank Farm (STF) agreement dated 12 October 1978