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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 616 **15 July 2021**

BLOCK EXEMPTION FOR THE SECURITY OF SUPPLY OF ESSENTIAL GOODS, 2021

I, Ebrahim Patel, Minister of Trade, Industry and Competition, after consultation with the Competition Commission, in terms of section 10(10), read with section 78(1) of the Competition Act, 1998 (Act No. 89 of 1998) as amended, made the following Regulations as set out in the Schedule hereto:

The purpose of these Regulations is to exempt a category of agreements or practices amongst firms in the supply chain for essential goods from the application of sections 4 and 5 of the Act in response to disruptions to the supply chains of essential goods within the country.

The regulations will come into effect on the date of publication hereof in the Gazette.

MR EBRAHIM PATEL
MINISTER OF TRADE, INDUSTRY AND COMPETITION

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SCHEDULE

Definition

1. In these Regulations any word or expression to which a meaning has been assigned in the Act shall bear that meaning and, unless the context otherwise indicates –

1.1. **"Act"** means the Competition Act No. 89 of 1998, as amended;

1.2. **"Essential goods"** means basic food and consumer items, emergency products, medical and hygiene supplies (including pharmaceutical products), refined petroleum products and emergency clean-up products. Essential goods include the final good itself as well as all inputs in the supply chain required for the production, distribution and retail of the essential goods; and

1.3. **"Minister"** has the same meaning as defined in the Act.

Purpose

2. The purpose of these Regulations is to exempt a category of agreements or practices amongst firms in the supply chain for essential goods, as set out in Annexure A, from the application of sections 4 and 5 of the Act in response to disruptions to the supply chains of essential goods within the country, solely with the purpose of:

2.1. preventing critical shortages of essential goods within the country; and

2.2. promoting the equitable distribution of scarce essential goods across the country to consumers, especially poorer households, and customers, including small businesses.

Category of agreements or practices exempted

3. The Minister hereby exempts the following categories of agreements or practices by firms in the value chain (i.e. production, distribution and retail) for essential

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goods from the application of sections 4 and 5 of the Act for the sole purpose of responding to actual or anticipated shortages of essential goods in general or in particular areas of the country, and where the essential goods suppliers have notified the Department of Trade, Industry and Competition ("**DTIC**") and the Competition Commission ("**Commission**") of actual or anticipated shortages and the need to engage in such practices:

Exempted communication

3.1. Communicating with each other in relation to the loss of stock or capacity in general and in particular areas of the country in order to determine the extent and location of likely shortages of essential goods;

3.2. Communicate with each other in relation to the availability of stocks and capacity in general and in particular areas of the country in order to determine the overall capacity for supply and the ability of different firms to supply different areas, as well as the timing thereof; and

3.3. Communicate with each other as to the extent of demand for essential goods in different parts of the country in order to determine the extent of shortage and an equitable distribution of available supply across the country to consumers and customers, including small businesses.

Exempted coordination

3.4. Coordinating in relation to the allocation of inputs across producers of essential goods in order to reduce anticipated or actual shortages in general or in particular areas, and to ensure an equitable distribution of essential goods across the country, including the transfer of inputs between producers of essential goods;

3.5. Coordination in relation to the distribution of essential goods to different geographic areas in order to ensure an equitable distribution of essential

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goods across the country to consumers, and especially poorer households, and customers, including small businesses; and

3.6. Coordination in relation to measures that may expand stocks or capacity in order to relieve anticipated shortages of essential goods in general or in particular areas.

Exclusions

4. These Regulations do not:
   4.1. exempt price-fixing and collusive tendering in respect of essential goods and inputs used in the production of essential goods; and

   4.2. authorise any discussion of the pricing of essential goods and the pricing of inputs used in the production of essential goods.

5. Firms in the supply chain for essential goods remain subject to the Consumer and Customer Protection and National Disaster Management Regulations and Directions[1] ("**Regulations and Directions**") issued on 19 March 2020. In terms of section 4 of the Regulations and Directions, any increases in prices for the essential goods, or the supply of inputs for essential goods, must be cost justified and not increase the net margin or mark-up for that good above the average margin or mark-up for that good in the three month period to 1 March 2020.

Scope of the exemption

6. The scope of these Regulations is limited only to agreements or practices specified under paragraphs 3 and which have the sole purpose of responding to actual and anticipated shortages for essential goods in general, or in particular areas of the country, arising from disruptions to the supply chains for essential goods.

[1] Government Notice No. 350 of GG 43116.

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7. These Regulations applies where the essential goods suppliers have notified the DTIC and the Commission of anticipated shortages and the need to engage in such practices to address such shortages prior to engaging in such conduct.

Amendments to Regulations

8. Given the unpredictability of the impact and duration of disruptions to the supply of essential goods, the areas of collaboration exempted in these Regulations may be expanded or reduced by the Minister by notice published in the Government Gazette in terms of these Regulations.

Record Keeping

9. Essential Goods suppliers that participate in any agreements or practices falling within the scope of these exemption must keep minutes of meetings held and written records of such agreements or practices and must submit same to the Commission within a reasonable time.

Short Title

10. These Regulations shall be called the Block Exemption for the Security of Supply of Essential Goods, 2021.

Commencement and duration

11. These Regulations shall come into effect on the date of publication in the Government Gazette.

12. These Regulations shall remain in operation until 15 August 2021, extendable by the Minister, or until they are withdrawn by the Minister whichever comes earlier.

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