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Department of Trade, Industry and Competition

NO. 6182 **8 May 2025**

NOTICE IN TERMS OF THE COMPETITION ACT NO. 89 OF 1998 (AS AMENDED)

BLOCK EXEMPTION FOR PORTS, RAIL AND KEY FEEDER ROAD CORRIDORS, 2025

1. I, Mr Mpho Parks Tau, Minister of Trade, Industry and Competition, after consultation with the Competition Commission, hereby in terms of section 10(10) read with section 78(1) of the Competition Act, 1998 (Act No. 89 of 1998) as amended (the Competition Act), make the Regulations as set out in the Schedule hereto.

2. The purpose of these Regulations is to exempt a category of agreements or practices amongst firms in the ports, rail and key feeder road corridors industry from the application of sections 4(1)(a), 4(1)(b)(i) (excluding the fixing of the selling prices of goods and services to customers or consumers), 4(1)(b)(ii) and 5(1) of the Act in response to the current challenges facing ports, rail and key feeder road corridors in South Africa:

   2.1. solely with the purpose of promoting collaboration to:

      2.1.1. reduce costs, improve services and minimise losses caused by operational inefficiencies and infrastructure capacity shortages;

      2.1.2. prevent, mitigate and resolve bottlenecks and operational breakdowns in port and rail infrastructure;

      2.1.3. contribute to measures aimed at resolving the challenges in the South African ports, rail and key feeder road corridors industry; and

      2.1.4. ensuring security of supply of goods transported through South Africa's ports, rail and key feeder road corridors systems.

3. These Regulations will come into effect on the date of publication hereof in the Gazette.

MR MPHO PARKS TAU, MP
MINISTER OF TRADE, INDUSTRY AND COMPETITION
DATE: 25/03/2025.

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 –

"Act" means the Competition Act No. 89 of 1998, as amended;
"Firm" includes a person (juristic or natural), association, partnership or a trust;
"Key feeder road corridors" means a road facilitating the movement of goods to and from rail and ports transportation hubs;
"Minister" means the Minister of Trade, Industry and Competition;
"Sector regulator" refers to the relevant regulators for ports and rail respectively;
"the Commission" means the Competition Commission, a juristic person established in terms of section 19 of the Act; and
"the dtic" means the Department of Trade, Industry and Competition.

Purpose

2. The purpose of these Regulations is to exempt a category of agreements or practices amongst firms in the ports, rail and key feeder road corridors industry from the application of sections 4(1)(a), 4(1)(b)(i) (excluding the fixing of the selling prices of goods and services to customers or consumers), 4(1)(b)(ii) and 5(1) of the Act in response to the challenges facing ports, rail and key feeder road corridors within the country, solely with the purpose of enabling collaboration to:

2.1. reduce costs, improve services and minimise losses caused by operational inefficiencies and infrastructure capacity shortages;

2.2. prevent, mitigate and resolve bottlenecks and operational breakdowns in port and rail infrastructure;

2.3. contribute to measures aimed at resolving the challenges in the South African ports, rail and key feeder road corridors industry; and

2.4. ensuring security of supply of goods transported through South Africa's ports, rail and key feeder road corridors systems.

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Category of agreements or practices exempted

3. The Minister hereby exempts the following categories of agreements or practices in the ports, rail and key feeder road corridors industry from the application of sections 4(1)(a), 4(1)(b)(i) (excluding the fixing of the selling prices of goods and services to customers or consumers), 4(1)(b)(ii) and 5(1) of the Act for the sole purpose of responding to the challenges facing the ports, rail and key feeder road corridors industry within the country:

Exempted coordination on ports

3.1. Coordination on ports capacity and capacity of a port to accept new cargo and diverting cargo between ports;

3.2. Coordination on the flow of traffic into the ports, including weather forecasts, stack levels, equipment breakdowns and productivity shifts;

3.3. Coordination on night runs to ease congestion during peak hours;

3.4. Coordination on the management, repair, maintenance, expansion, and/or upgrading of port infrastructure, facilities, and/or equipment;

3.5. Collaboration on studies on the relevant sectors (involving elements such as joint technical assessments and modelling exercises) conducted to improve efficiencies in the national transport and logistics sectors;

3.6. Collaboration on joint funding or joint investment on the repair, maintenance, expansion, and/or upgrading of port infrastructure, facilities, and/or equipment; or

3.7. Collaboration on procurement and sharing of the services of independent technical experts and other independent consultants for the improvement of port infrastructure.

Exempted coordination on rail

3.8. Coordination on the management, repair, maintenance, expansion, and/or upgrading of the rail logistics network (including rail lines, and/or any other related infrastructure, facility, and/or equipment, identified by the rail industry);

3.9. Coordination on volumes to support a dedicated rail service;

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3.10. Coordination on sharing capacity on locomotives;

3.11. Coordination on reinstating rail services to critical value-adding nodes;

3.12. Coordinated use of rail and port facilities to optimize cargo flow and reduce congestion;

3.13. Collaboration on studies on the relevant sectors (involving elements such as joint technical assessments and modelling exercises) conducted to improve efficiencies in the national transport and logistics sectors;

3.14. Collaboration on joint funding or joint investment on the repair, maintenance, expansion, and/or upgrading of rail infrastructure, facilities, and/or equipment; or

3.15. Collaboration on procurement and sharing of the services of independent technical experts and other independent consultants for the improvement of rail infrastructure.

Exempted coordination on key feeder road corridors that interface with ports and rail

3.16. Coordination on the management, repair, maintenance, expansion, and/or upgrading of key feeder road corridors' infrastructure identified by the relevant industry;

3.17. Collaboration on studies on the relevant sectors (involving elements such as joint technical assessments and modelling exercises) conducted to improve efficiencies of key feeder road corridors;

3.18. Collaboration on joint funding or joint investment on the repair, maintenance, expansion, and/or upgrading of key feeder road corridors' infrastructure, facilities, and/or equipment; or

3.19. Collaboration on procurement and sharing of the services of independent technical experts and other independent consultants for the improvement of key feeder road corridors' infrastructure.

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Exclusions

4. These Regulations exclude:

   4.1. Any discussions and/or agreement on fixing the selling price of goods and services to customers or consumers;

   4.2. Collusive tendering;

   4.3. Any agreement that forecloses third party access to rail infrastructure such as new entrants, SMMEs and HDP owned firms;

   4.4. Any agreement or practice that is in conflict with sectorial legislation or policy;

   4.5. Resale price maintenance; and

   4.6. Any merger transaction.

In-scope confirmation by the Commission

5. Firms in the ports, rail and key feeder road corridors industry that wish to enter into agreements or engage in practices covered by the exemption contained in these Regulations must first seek confirmation from the Commission in writing whether the agreement or practice falls within the scope of these Regulations before implementation.

6. The Commission, after consultation with the relevant sector regulator and the dtic, may:

   6.1. confirm in writing if the agreement or practice falls within the scope of these Regulations with or without safeguards necessary to ensure that the collaboration among Firms in the ports, rail and key feeder road corridors industry is limited to the agreements or practices contemplated in regulation 3; or

   6.2. if the agreement or practice does not fall within the scope of these Regulations, advise the Firms in the ports, rail and key feeder road corridors industry accordingly.

7. No agreement or practice contemplated in these Regulations may be implemented unless confirmation has been provided by the Commission in terms of regulation 6.

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8. Subject to regulation 9, the Commission must make the decision contemplated in regulation 6 within 30 business days of receipt of the request for confirmation.

9. The Commission may extend the 30 business days contemplated in regulation 8 by a further period not exceeding 30 business days.

10. If the Commission has not made a decision and has not extended the 30 business days period contemplated in regulation 8 or has not made a decision within the extended 30 business days period contemplated in regulation 9, the agreement or practice shall be regarded as having been confirmed as falling within the scope of these Regulations.

11. The Commission shall have the discretion to determine the duration of an exempted agreement, practice, or project, taking into account the nature of the project, the return on investment including the payback period, and the implementation timeline of the exempted agreement, practice, or project which period must not exceed the duration of these Regulations as contemplated in regulation 23.

Revocation of confirmation

12. The Commission may revoke the confirmation granted in terms of regulation 6 if:

    12.1. there is a breach of safeguards made in terms of sub-regulation 6.1; or

    12.2. the collaboration among the Firms exceeds the exemption granted in terms of these Regulations; or

    12.3. the confirmation was granted on the basis of false information; or

    12.4. the reason for granting the confirmation no longer exists.

13. The Commission shall notify the relevant firms in writing of its intention to revoke the confirmation and shall afford the relevant firms an opportunity to make representations within a reasonable time before making a decision to revoke the confirmation.

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HDP and SMME Participation

14. HDP Firms and SMMEs at all levels of the value chain must be afforded an opportunity to opt-in to agreements or practices entered into in terms of these Regulations.

Scope of the exemption

15. The scope of these Regulations is limited only to agreements or practices specified under regulation 3, and which have the sole purpose of responding to the challenges facing the ports, rail and key feeder road corridors industry as set out in regulation 2.

16. The exempted coordination on road set out in regulation 3 is limited to roads that are the key feeder corridors that interface with rail and ports.

17. The agreements or practices exempted in these Regulations include:

    17.1. the exchange of information and discussions strictly necessary for the purposes of proposing, initiating, assessing, concluding and implementing the agreements or practices exempted in these Regulations;

    17.2. any discussions and/or agreement on fixing the purchase price of goods and services (excluding the fixing the selling price of goods and services to customers or consumers) among the Firms in the ports, rail and key feeder road corridors industry strictly necessary for the purposes of implementing the agreements or practices exempted in these Regulations; and

    17.3. any discussions and/or agreement on trading conditions among the Firms in the ports, rail and key feeder road corridors industry strictly necessary for the purposes of implementing the agreements or practices exempted in these Regulations.

Monitoring

18. Firms who participate in any agreements or practices falling within the scope of these exemptions must notify the Commission, and the dtic of the agreement or practice within 7 business days of its implementation via the following:

    18.1. Notification to the Commission should be sent to

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exemption.conditions@compcom.co.za.

18.2. Notification to the dtic should be sent to exemption.conditions@thedtic.gov.za.

19. Firms who participate in any agreements or practices falling within the scope of these exemptions must keep accurate written records of meetings held, correspondence related to the exempted agreements and practices, exchanges of competitively sensitive information strictly necessary for the purposes of the conclusion and implementation of the agreements or practices, and all agreements or practices entered into in terms of these Regulations.

20. The Commission may, at any time, request the record of the minutes of meetings held, correspondence related to the exempted agreements and practices, exchanges of competitively sensitive information strictly necessary for the purposes of the conclusion and implementation of the agreements or practices, and all agreements or practices entered into in terms of these Regulations.

Amendments to Regulations

21. The areas of collaboration exempted in these Regulations may be expanded or reduced by the Minister, after consultation with the Commission, by notice published in the Government Gazette in terms of these Regulations.

Short Title

22. These Regulations shall be called the *Block Exemption for Ports, Rail and Key Feeder Road Corridors, 2025.*

Commencement and duration

23. These Regulations shall come into effect on the date of publication in the Government Gazette and shall endure for a period of 15 years, which period can be extended by the Minister, after consultation with the Commission, for a further period of 15 years by way of a notice in the Government Gazette taking into account the return on investment including the payback period and challenges facing ports, rail and key feeder road corridors in South Africa.

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Winding down of agreements and practices

24. The Minister, after consultation with the Commission, may, by notice in the Government Gazette, provide a reasonable period to Firms that have participated in any agreements or practices falling within the scope of these exemptions to wind-down agreements or practices referred to in regulation 3 prior to the withdrawal of these Regulations.

25. The reasonable period contemplated in regulation 24 must take into account, where relevant, the long-term nature and implementation timeline of any project or other exempted practice falling within the scope of these Regulations.

ENDS

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