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Department of Trade, Industry and Competition

NO. 6183 **8 May 2025**

INVITATION FOR THE PUBLIC TO COMMENT ON THE DRAFT BLOCK EXEMPTION FOR THE IMPLEMENTATION OF PHASE 2 OF THE SUGAR MASTER PLAN, 2025

1. By virtue of the powers vested in me in terms of section 10(10) of the Competition Act, 1998 (Act No. 89 of 1998) as amended (the Competition Act), I, Mr. Mpho Parks Tau, Minister of Trade, Industry and Competition, after consultation with the Competition Commission, hereby publish for public comments the draft regulations in terms of section 78(1) as set out in the Schedule hereto.

2. The purpose of these Regulations is to give effect to the purposes of the Act as set out in section 2 of the Act by exempting the following categories of agreements or practices from the application of sections 4(1)(a), 4(1)(b)(i), 4(1)(b)(ii) and 5(1) of the Act to facilitate the implementation of Phase 2 of the South African Sugarcane Value Chain Master Plan to 2030 (Sugar Master Plan):

   2.1. Collaboration between sugar cane producers, sugar producers and downstream customers on the identification of diversification opportunities; and

   2.2. The collective determination by sugar cane producers, sugar producers and downstream sugar users of:

      2.2.1. Producer price restraints, including coordination on the pricing methodology to be adopted in determining price increases of sugar products and the timing of such price increases; and

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2.2.2. Local volume commitments, the establishment of offtake targets and the mechanisms by which to monitor such commitments and targets, with the purpose of contributing to the sustainability of the South African sugar value chain.

3. Stakeholders and interested persons are invited to submit comments in writing on the proposed regulations within a period of 30 business days of the publication of this notice to the Minister of Trade, Industry and Competition, for the attention of Dr Ivan Galodikwe, email IGalodikwe@thedtic.gov.za OR hand delivered at 3rd Floor, Block E, 77 Meintjies Street, Sunnyside, 0132.



MR MPHO PARKS TAU, MP

MINISTER OF TRADE, INDUSTRY AND COMPETITION

DATE: 06/05/2025

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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 –

"Act" means the Competition Act No. 89 of 1998, as amended;
"downstream sugar users" refers to retail, wholesale and industrial sugar customers;
"downstream customers" refers to downstream sugar users and other customers who purchase sugar industry products, including as inputs for production of goods not intended for consumption;
"Firm" includes a person (juristic or natural), association, partnership or a trust;
"HDP Firms" means firms owned and controlled by historically disadvantaged persons in terms of section 3(2) of the Act;
"Industrial sugar customers" refers to customers who purchase sugar from sugar producers for use as an input in the production of goods intended for consumption;
"Independent Facilitator" means a person or firm with no direct or indirect commercial links or otherwise to the sugar value chain or any firm that is a participant in the exempted agreement or practice in question, appointed by the dtic;
"Minister" unless otherwise specified, means the Minister of Trade, Industry and Competition;
"SASA" refers to the South African Sugar Association, a statutory body established in terms of section 2(1) of the Sugar Act No. 9 of 1978, as amended;
"SMMEs" means small business, micro business or medium-sized business as defined by the Minister in Government Gazette No. 987 of 12 July 2019 or its successor in title, or business, as the context dictates and as defined by section 1 of the Act;
"**Sugar**" means raw or refined sugar produced from sugar cane;
"Sugar industry product" refers to a sugar industry product as defined in section 1 of the Sugar Act No. 9 of 1978, as amended;
"Sugar value chain" includes sugar cane growers, farmers, millers, refiners, and downstream sugar users;
"Sugar producers" refers to any firm involved in the processing of sugar cane into raw or refined sugar for commercial sale and includes large-scale sugar manufacturers and independent millers and refiners who contribute to the local production and supply of sugar within South Africa;
"Sugar cane producers" refers to any firm involved in the cultivation or harvesting of sugar cane and includes small-scale growers who contribute to the local supply of sugar cane within South Africa;
"Sugar Master Plan" refers to South African Sugarcane Value Chain Master Plan to 2030;
"Retail sugar customers" refers to customers who purchase sugar from sugar producers for sale to consumers for personal or household consumption, typically through retail outlets such as grocery stores or supermarkets;
"the Commission" means the Competition Commission, a juristic person established in terms of section 19 of the Act;
"the dtic" means the Department of Trade, Industry and Competition; and

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"wholesale sugar customers" refers to firms that purchase sugar from a sugar producer in large quantities for the purpose of resale, typically to retailers or other commercial entities.

Background to the block exemption

2. The Sugar Master Plan was developed jointly between government and industry stakeholders in response to the crisis facing the South African sugar industry in what has been described as a "perfect storm" due to several combined factors that led to a sharp decline in local demand within the Southern African Customs Union (SACU). In the few years prior to the Sugar Master Plan being adopted, local demand for sugar had dropped from 1.65 million tonnes to 1.25 million tonnes per annum, forcing the industry to increase exports to a global market where prices are below the local cost of production. These exports had resulted in annual losses of approximately 2 billion Rand for the sugar industry.

3. Due to the nature of the crisis facing the sugar industry, which threatened significant job losses in some of the most vulnerable areas of the country and may have resulted in the exit from the market of a significant number of players in the industry including small scale growers and independent millers, the Sugar Master Plan was developed. This plan provides a social compact aimed at uniting stakeholders around a comprehensive intervention strategy to prevent the sugar industry from collapsing.

4. The Sugar Master Plan assigns an important role to downstream players in the sugar industry in the initiative to turn-around the possible collapse of the South African sugar industry. According to *Action Commitment 1*, which focuses on restoring the local market and securing off-take commitments, downstream sugar users have committed to increase their sourcing of locally produced sugar. This commitment supports the broader goal of stabilising and restructuring the sugar industry.

5. The objectives of the South African Sugar Master Plan include:

   5.1. Stemming the industry decline to preserve 2019 job numbers (estimated at 65 000 jobs), and over the long run grow jobs again in a diversified industry based on sugar cane;

   5.2. Restructuring and rebalancing industry capacity to reduce inefficiencies, reduce costs and restore competitiveness, reduce reliance on tariff protection and to set the foundations for diversification;

   5.3. Advancing transformation through inclusive and broad-based participation in the value chain for workers, black and women farmers and black industrialists; and

   5.4. Investing in globally competitive and sustainable diversified sugar cane-based value-chains.

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6. The Sugar Master Plan adopts a phased approach. Phase 1, which focused on restructuring and establishing a foundation for diversification, spanned three years and concluded on 31 March 2023.

7. On 16 October 2020, the Commission granted an exemption to the South African Sugar Association (SASA) to enable its members to collaborate in the implementation of the Sugar Master Plan, subject to certain conditions.

8. The sugar industry subsequently approached the Minister to request a block exemption for agreements or practices essential for implementing Phase 2 of the Master Plan.

9. The three components of Phase 2 of the Sugar Master Plan covered by this block exemption are:

    9.1. Diversification opportunities for sugar cane producers and sugar producers;

    9.2. Price restraints for sugar cane producers and sugar producers; and

    9.3. Local procurement commitments and offtake targets by downstream sugar users.

Purpose

10. The purpose of these Regulations is to give effect to the purposes of the Act as set out in section 2, by exempting the following categories of agreements or practices from the application of sections 4(1)(a), 4(1)(b)(i), 4(1)(b)(ii) and 5(1) of the Act, to facilitate the implementation of Phase 2 of the Sugar Master Plan:

    10.1. Collaboration between sugar cane producers, sugar producers and downstream customers on the identification of diversification opportunities; or

    10.2. The collective determination by sugar cane producers, sugar producers and downstream sugar users of:

        10.2.1. Producer price restraints, including coordination on the pricing methodology to be adopted in determining price increases of sugar products and the timing of such price increases; and

        10.2.2. Local volume commitments, the establishment of offtake targets and the mechanisms by which to monitor such commitments and targets,

with the purpose of contributing to the sustainability of the South African sugar value chain.

Category of agreements or practices exempted

11. The Minister hereby exempts the following categories of agreements or practices in the sugar value chain from the application of sections 4(1)(a), 4(1)(b)(i), 4(1)(b)(ii) and 5(1) of the Act to facilitate the implementation of Phase 2 of the Sugar Master Plan:

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11.1. Collaboration between sugar cane producers, sugar producers and downstream customers on the identification of diversification opportunities; or

11.2. In order to secure local volume commitments as contemplated in the Sugar Master Plan, the collective determination by sugar cane producers, sugar producers and downstream sugar users of:

11.2.1. Producer price restraints, including coordination on the pricing methodology to be adopted in determining percentage of price increases of sugar products, and the timing of such price increases; and

11.2.2. Local volume commitments, the establishment of off-take targets and the mechanisms by which to monitor such commitments and targets.

Appointment of an independent facilitator

12. The collective determination by sugar producers and downstream sugar users contemplated in sub-regulation 11.2 must be led and coordinated by an independent facilitator appointed by the dtic.

13. The reasonable cost of the independent facilitator appointed by the dtic shall be borne equally by all firms that are participants in the exempted agreement or practice in question.

14. The independent facilitator shall facilitate the sharing of competitively sensitive information amongst firms in the sugar value chain to ensure that the competitively sensitive information shared is strictly necessary for the purposes of the implementation of Phase 2 of the Sugar Master Plan as contemplated in these Regulations.

Exclusions

15. These Regulations exclude:

15.1. The fixing of the selling prices of goods and services sold to end consumers;

15.2. Market allocation of goods and services sold to end consumers;

15.3. Collusive tendering for goods and services intended for sale to end consumers; and

15.4. Resale price maintenance of goods and services sold to end consumers.

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In-scope confirmation by the Commission

16. Firms 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.

17. The Commission may:

    17.1. 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 sugar value chain is limited to the agreements or practices contemplated in regulation 11; or

    17.2. if the agreement or practice does not fall within the scope of these Regulations, advise the Firms in the sugar value chain accordingly.

18. No agreement or practice contemplated in these Regulations may be implemented unless confirmation has been provided by the Commission in terms of regulation 17.

19. Subject to regulation 20, the Commission must make the decision contemplated in regulation 17 within 30 business days of receipt of the request for confirmation.

20. The Commission may extend the 30 business days contemplated in regulation 19 by a further period not exceeding 30 business days if it has good cause to do so.

21. If the Commission has not made a decision and has not extended the 30 business days period contemplated in regulation 19, or has not made a decision within the extended 30 business days period contemplated in regulation 20, the agreement or practice shall be regarded as having been confirmed as falling within the scope of these Regulations.

Revocation of confirmation

22. The Commission may revoke the confirmation granted in terms of regulation 17 if:

    22.1. there is a breach of safeguards made in terms of sub-regulation 17.1; or

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

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

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

23. 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

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

Scope of the exemption

25. The scope of these Regulations is limited only to agreements and/or practices specified under regulation 11.

26. These Regulations apply to:

    26.1. sugar cane producers, sugar producers and downstream sugar users who are signatories to the Sugar Master Plan; and

    26.2. other downstream customers that intend to participate in an exempted agreement or practice contemplated in regulation 11.1 together with firms falling within the scope of regulation 26.1.

27. The agreements and/or practices exempted in these Regulations include the exchange of information strictly necessary for the purposes of the conclusion and implementation of the agreements and/or practices.

Monitoring

28. 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:

    28.1. Notification to the Commission should be sent to exemption.conditions@compcom.co.za.

    28.2. Notifications to the dtic should be sent to exemption.conditions@thedtic.gov.za.

29. 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, and exchanges of competitively sensitive information strictly necessary for the purposes of the implementation of Phase 2 of the Sugar Master Plan as contemplated in these regulations.

30. The Commission may, at any time, request the record of the minutes of meetings held, correspondence related to the exempted agreements and practices, or exchanges of competitively sensitive information strictly necessary for the purposes of the

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implementation of Phase 2 of the Sugar Master Plan as contemplated in these regulations.

Amendments to Regulations

31. 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

32. These Regulations shall be called the *Block Exemption for the Implementation of Phase 2 of the Sugar Master Plan, 2025*.

Commencement and duration

33. These Regulations come into effect on the date of publication in the Government Gazette and shall endure for a period of 5 years, which period can be extended by the Minister, by notice in the Government Gazette, after consultation with the Commission and taking into account the implementation of the Sugar Master Plan.

Winding down of agreements and practices

34. 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 such agreements or practices before the withdrawal of these Regulations.

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