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**GENERAL NOTICES • ALGEMENE KENNISGEWINGS**

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**ECONOMIC DEVELOPMENT DEPARTMENT****NOTICE 447 OF 2016****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 Abalone Farmers Association of Southern Africa ("Applicants"), has 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.

The Applicants comprise of various Abalone farmers namely Abagold Limited Aquion Proprietary Limited; HIK Abalone Farm Proprietary Limited; Irvin & Johnson Limited; Jacobsbaai Sea Products Proprietary Limited; Marine Growers Proprietary Limited; Premfresh Seafoods Proprietary Limited; Walker Bay Cannery Limited; West Coast Abalone Proprietary Limited; and Wild Coast Abalone Proprietary Limited. Further, the Applicants are active in the business of farming, processing and marketing of abalone for both local and international markets.

The exemption application covers a range of practices and/or agreements which the Applicants submit are in contravention of section 4(1)(a) and 4(1)(b)(i) of the Act. The Applicants rely on objectives set out in section 10(3)(b)(i) of the Act, they submit that the agreements and/or practices will contribute to the maintenance or promotion of exports.

The Applicants submit that South Africa has the ability to create premium brand of abalone, which should enable the industry to fetch higher prices. However, the industry is currently not able to function at its full capacity to reach the premium brand status due to factors such as competition from countries with lower production costs and the increase in illegal farming activities. In addition, the Applicants submit that China has started producing an inferior form of farmed abalone that takes a quarter of the time it takes South African producers to grow abalone and is also sold at a quarter of South Africa's abalone prices. The Applicants submit that this has placed direct pressure on South African producers. Further, the Applicants submit that the global financial crisis has also resulted in suppressed demand for high-priced fishery product.

At present, the Applicants mentioned that they are under pressure to decrease their prices when their customers allege that a competitor has offered a lower price. The Applicants further submit that they are unable to verify these claims and are thus often forced to be price takers. This pressure is further exaggerated by the fact that customers often collude on the prices they are willing to accept. As such, the Applicants are of the view that the sharing of market and price information will reduce the ability of international customers to exert downward pressure on South African abalone prices.

The Applicants therefore submit that in order for the South African abalone industry to continue to be a viable export driven industry, there is a need for the Applicants to coordinate their efforts in respect of sales into certain international markets. In particular, the Applicants seek the exemption to enable meetings and communication between farmers, processors and marketers of abalone in order to share knowledge in respect of market conditions and to stabilise international selling prices.

The Applicants indicate that they will need to coordinate their activities for markets in which one or more of the Applicants compete. These common markets have been identified by the Applicants as:

- Hong Kong;
- China;
- Japan;
- Malaysia;
- Singapore; and
- Taiwan.

The practices and agreements are explained in detail below:

#### **I. Meetings and communication between Applicants**

In its application, the Applicants submit that meetings and communication are required for the overarching objective of achieving stability in the affected markets. The Applicants further submit that the stabilisation of market conditions will require firstly, the sharing of market intelligence to enable each Applicant to engage more capably and effectively in the affected markets and, secondly, requires some level of information sharing for the purpose of achieving price stabilisation between the Applicants within the affected markets.

#### **II. Market Intelligence**

The Applicants indicate that they intend to share market information for the affected markets which may also impart experience, knowledge and general market intelligence obtained from the Applicant's individual operations. The Applicants further indicate that the information to be shared include, but is not limited to, the demand and supply conditions in the affected markets: prevailing prices, feedback from information received from agents on prices, estimates of abalone stocks available, volumes of abalone products exported and the volumes of abalone stockholding of the international competitors.

The Applicants submit that this will enable them to construct robust strategies in respect of the affected markets and to anticipate and respond more effectively to market disruptions, should they occur. Moreover, the Applicants indicate that the market information is intended to be used in determining each Applicant's own independent business decision, including own abalone prices and inventory.

### III. Price Stability

The Applicants submit that it will be necessary to share pricing information in order to achieve price stability of abalone products within the affected markets. The Applicants further submit that the nature and extent of the information to be shared may differ from product to product as each abalone product form (i.e. live, frozen, dried and canned) is subject to differing demand and supply forces.

Moreover, the Applicants submit that in future, they may request as part of price stabilisation, the pooling of abalone (in all product forms) amongst them in order to meet volume, form and size demands of international customers. The Applicants submit that this will enable them to secure demand for the product and also reliably fulfill demand at a committed and secured price.

The Applicants seek this exemption for a period of ten (10) years, starting from the date of approval of the application by the Commission; should the Commission approve the application.

The Notice is hereby given in terms of section 10(6)(b) of the Act to allow interested parties 20 business days from the date of the publication to make written representations to the Commission as to why the exemption should not be granted.

Such representations must be directed to Ms. Nonjabulo Sambo and Ms. Selelo Ramohlola on the following electronic mailing addresses, [NonjabuloS@compcom.co.za](mailto:NonjabuloS@compcom.co.za), [SeleloR@compcom.co.za](mailto:SeleloR@compcom.co.za), respectively.

**In correspondence kindly refer to the following Case No: 2016JUN0286**