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## GENERAL NOTICES

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### NOTICE 1639 OF 2005

#### **NOTICE OF AN EXEMPTION GRANTED IN TERMS OF SECTION 10 OF THE COMPETITION ACT 1998: SCRIPTPHARM HOLDINGS (PTY) LTD AND OTHERS**

Notice is hereby given in terms of section 10 of the Competition Act 1998 ("the Act") that the Competition Commission ("the Commission") has decided on 27 May 2005 to grant a category exemption, with certain conditions attached, in terms of section 10(1)(b) of the Competition Act 1998, as amended ("the Act") for a period of three years ending in July 2008.

A category exemption is granted in response to an application for an exemption from the application of Chapter 2 of the Act by Scriptpharm Holdings (Pty) Ltd ("Scriptpharm Holdings"), Scriptnet Limited, Scriptpharm Risk Management (Pty) Ltd ("Scriptpharm Risk") and retail pharmacies that have contracted with Scriptpharm Holdings or Scriptpharm Risk (collectively "the Applicants").

The Applicants applied for an exemption for a category of agreements, as provided for in section 10(1)(b) of the Act, from the provisions of section 4(1)(b)(i) of Chapter 2 of the Act. The application relates to agreements in terms of which the involved pharmacists agree to and are permitted to support and/or implement the terms and conditions of agreements negotiated and entered into on their behalf with medical aid schemes and medical scheme administrators.

The applicants submit that the agreements are required to attain the objective set out in section 10(3)(b)(ii), namely that it contributes to the objective of promoting the ability of small businesses, or firms owned or controlled by historically disadvantaged firms to become competitive.

The applicants have demonstrated that participation in these arrangements does promote the ability of small business pharmacists to become competitive. Further, they have demonstrated that the restrictions for which they seek exemption are required in order for the arrangements to function. The applicants have thus fulfilled the requirements to be granted an exemption in terms of s10 (3)(b)(ii) of the Act.

#### **THE CONDITIONS**

The category exemption is granted for a period of three years ending July 2008 on condition that:

1. Scriptpharm Holdings continue as an independent managed care organization and that no practicing pharmacist, pharmacy or pharmacy group be permitted to hold shares in Scriptpharm Holdings;

2. Scriptpharm Risk continue as an independent managed care organization and that no practicing pharmacist, pharmacy or pharmacy group be permitted to hold shares in Scriptpharm Risk;
3. Scriptpharm Holdings and/or Scriptpharm Risk enter into separate vertical agreements with each participating pharmacist for purposes of administering its managed care agreements; and
4. All pharmacists and/or pharmacies contracted to Scriptpharm Holdings and/or Scriptpharm Risk are free to contract with any other network of pharmacies or managed care organization of their choice;
4. The applicants report back on an annual basis to the Commission that the grounds upon which the exemption was granted has been maintained. In particular, a detailed list of all members of Scripnet for the year must be provided, specifically identifying those members that qualify as SMME's and/or HDI's.

In terms of Rule 19(5) of the Rules For the Conduct Of Proceedings In the Competition Commission, the Commission has provided full written reasons for its decision. A copy of these reasons may be obtained from the investigator whose particulars are provided below.

In terms of section 10(8) of the Competition Act (89 of 1998), the *firm* concerned, or any other person with a substantial financial interest affected by this decision of the Competition Commission, may appeal this decision to the Competition Tribunal in the *prescribed* manner within 20 business days after the date of publication of this notice in the Government Gazette.

Published by: Mr. K Weeks, Senior Investigator, Enforcement and Exemptions, Competition Commission of South Africa, The dti Campus, Block C Mulayo Building, 77 Meintjies Street, Sunnyside, Pretoria. Contact numbers: (012) 394 3258 or 394 3200.

Reference case number: 2004Mar895

**NOTICE 1640 OF 2005****APPLICATION FOR AN EXEMPTION IN TERMS OF SECTION 10 OF THE  
COMPETITION ACT 89 OF 1998 (AS AMENDED)**

Notice is hereby given in terms of section 10 (6) (a) of the Competition Act, No 89 of 1998 as amended ("the Act"), read with rule 19(4) (a) of the Rules for the Conduct of Proceedings in the Competition Commission published in Gazette No 22025 of 1 February 2001, that the Petroleum Oil and Gas Corporation of South Africa (Pty) Ltd t/a PetroSA, a state owned private company, registered in terms of the Companies Act, 1973, has applied to the Competition Commission in terms of section 10 (1) of the Act for an exemption from certain provisions of chapter 2 of the Act.

In particular the Applicant has requested that it be permitted to conclude a Petroleum Product Purchase and Sale Agreement ("the agreement") with six (6) major South African oil companies namely: BP Southern Africa (Pty) Ltd, Caltex Oil (S.A) (Pty) Ltd, Engen Petroleum Ltd, Sasol Oil (Pty) Ltd, Shell South Africa Marketing (Pty) Ltd and Total South Africa (Pty) Ltd. The practices contained in the agreement may constitute prohibited practices in terms of section 4(1) b (i), 4(1) b (ii), 5(1) and, 8(c) of the Act.

The application is based on the premise that the agreement is required for the economic stability of the industry as designated by the Minister of Trade and Industry after consulting with the Minister of Minerals and Energy in terms of section 10 (3) (b) (vi) of the Act.

The Competition Commission is currently evaluating and assessing the application. Any interested party may, within 20 business days from the date of this Notice, make written representations to the Competition Commission as to why the exemption should not be granted.

Such representations may be directed to the Acting Manager, Enforcement and Exemptions Division, Private Bag X23, Lynwood Ridge, 0040, or by facsimile to number 012 394 4332. Case number: 2005May1594



**NOTICE 1641 OF 2005****COMPETITION COMMISSION****REFUSAL TO GRANT EXEMPTION IN TERMS OF SECTION 10 OF THE COMPETITION ACT 89 OF 1998 (AS AMENDED)**

Notice was given in the Government Gazette (Notice 150, in Gazette No.25958 of 30 January 2004) that PetroSA (Pty) Ltd, a state owned private company, registered in terms of the Companies Act, 1973, has applied to the Competition Commission ("the Commission") for exemption from Chapter 2 of the Competition Act (as amended), certain clauses of the Memorandum of Understanding (MOU) entered into between PetroSA and nine oil companies, namely Afric Oil (Pty), BP Southern Africa (Pty) Limited, Caltex Oil SA (Pty) Limited, Engen Petroleum Limited, Excel Petroleum (Pty) Limited, Shell South Africa (Pty) Ltd, Tepco (Pty) Limited, Total South Africa (Pty) Limited and Zenex Oil (Pty) Limited. The exemption sought was in respect of certain clauses of the MOU with the oil companies.

In its application, PetroSA has relied on two grounds:

- designation of the industry by the Minister of Trade and Industry after consultation with the Minister of Minerals and Energy.
- the promotion of small businesses or firms controlled by historically disadvantaged persons to become competitive and

In our assessment of the terms of the MOU, it was evident that the MOU contains certain clauses that contravene sections 4 and 5 of the Act.

The Commission evaluated PetroSA's application, and based on the information at our disposal, decided not to grant the exemption. Reasons for the Commission's decision are as follows:

1. We were not in a position to make an evaluation based on PetroSA's reliance on industry designation because the latter had expired on 31 December 2003, a month after PetroSA made its exemption application.
2. Similarly, PetroSA did not meet the requirements of section 10(3)(b)(ii). The Act requires the applicant to prove that the agreement, or practice concerned, contribute to, amongst other things, the promotion of small businesses or firms controlled by historically disadvantaged persons to become competitive. The MOU between PetroSA's predecessor, Mossgas and the oil companies was entered into around 1998. A list of the projects which were supposed to have been attained as a result of the MOU only started in 2003. It was difficult to comprehend how the MOU might have contributed to the attainment of the objectives of section 10(3)(b)(ii) when

the projects identified by PetroSA were only implemented from approximately four years after the existence of the MOU. In addition, it is the Commission's view that these objectives could have still been attained in the ordinary course of PetroSA's business, in the absence of the MOU.

The Commission hereby gives Notice in terms of section 10(7) that the exemption has been refused. The exemption was sought in respect of a category of agreements or practices, which do not meet the requirements of section 10 (3).

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