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DEPARTMENT OF TRADE AND INDUSTRY

NO. R. 422

27 MARCH 2020

COVID-19 BLOCK EXEMPTION FOR THE HOTEL INDUSTRY, 2020

I, Ebrahim Patel, 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, make the regulations as set out in the Schedule hereto.

The purpose of the exemption is to strengthen the Government's programs designed to fight COVID-19, after having declared a National State of Disaster published in Government Notice No. 313 of Government Gazette No. 43096 on 15 March 2020.

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



MR EBRAHIM PATEL

MINISTER OF TRADE, INDUSTRY AND COMPETITION

SCHEDULE

Definition

1. In these Regulations any word or expression to which a meaning has been assigned in the Act bears the meaning and, unless the context otherwise indicates –
 - 1.1. “**Act**” means the Competition Act, 1998 (No. 89 of 1998), as amended;
 - 1.2. “**COVID-19**” means the 2019 novel coronavirus (SARS-COV 2 / COVID-19);
 - 1.3. “**Hotel industry**” includes all forms of business providing short-term accommodation and other services to the public;
 - 1.4. “**Minister**” has the same meaning as defined in the Act; and
 - 1.5. “**Disaster Management Act**” refers to the National Disaster Management Act, 2002 (Act No. 57 of 2002), as amended.

Purpose

2. The purpose of these Regulations is to exempt a category of agreements or practices in the hotel industry from the application of sections 4 and 5 of the Act in response to the declaration of COVID-19 pandemic as a national disaster in terms of the Disaster Management Act, solely with the purpose of:
 - 2.1. promoting concerted conduct to prevent an escalation of the national disaster and to alleviate, contain and minimise the effects of the national disaster; and
 - 2.2. enabling the hotel industry to collectively engage with the Department of Health and the Department of Tourism in respect of identifying and providing appropriate facilities for persons placed under quarantine, as determined by the Department of Health.

Category of agreements or practices exempted

3. The Minister hereby exempts the following categories of agreements or practices in the hotel industry from the application of sections 4 and 5 of the Act if undertaken at the request of, and in coordination with, the Department of Health and the Department of Tourism for the sole purpose of responding to the COVID-19 pandemic national disaster and which exclude communication and agreements in respect of prices unless specifically authorised by the Minister of Health and the Minister of Tourism:

Identification and provision of facilities

- 3.1. Agreements or practices in the hotel industry with the sole purpose of:
 - 3.1.1. identifying and providing appropriate facilities for the accommodation of persons placed under quarantine, as determined by the Department of Health and the Department of Tourism.
 - 3.1.2. communicating with each other in relation to capacities and utilisation of facilities for the accommodation of persons placed under quarantine, as determined by the Department of Health and the Department of Tourism.

Cost reduction measures

- 3.2. At the request of the Department of Health and the Department of Tourism and subject to oversight and guidance by the Department of Health and the Department of Tourism, agreements or practices in the hotel industry with the sole purpose of communicating and agreeing on the reduction of the cost of providing appropriate facilities for the accommodation of persons placed under quarantine, as determined by the Department of Health and the Department of Tourism.
- 3.3. For the avoidance of doubt, any discussion and/or agreement on pricing amongst the hotel industry for purposes of providing appropriate facilities for the accommodation of persons placed under quarantine as required by the

Department of Health and the Department of Tourism must be specifically authorised by the Minister of Health and Minister of Tourism.

Scope of the exemption

4. The scope of these Regulations is limited only to agreements or practices specified under paragraph 3, and which have the sole purpose of responding to the COVID-19 pandemic national disaster as set out in paragraph 2.

Amendments to Regulations

5. Given the unpredictability of managing the COVID-19 pandemic, 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.
6. To the extent that the hotel industry identifies additional agreements or practices outside the scope of paragraph 3 that are necessary to achieve the purpose of these Regulations, the hotel industry may request the Minister to expand the scope of this exemption.

Record Keeping

7. Parties in the hotel industry participating 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.

Representation on Regulations

8. Representations on these Regulations.
 - 8.1. Any person may make written representations regarding these Regulations and directions.

- 8.2. Representations must reach the Department of Trade and Industry not later than 14 days from the date of publication of this notice.
- 8.3. Representations should be submitted by email to ministry@economic.gov.za.
- 8.4. Following consideration of the representations, the Minister may amend these Regulations and directions.

Short Title

9. These Regulations are called the Regulations relating to COVID-19 Block Exemption for the Hotel Industry, 2020.

Commencement and duration

10. These Regulations shall come into effect on the date of publication in the Government Gazette.
11. These Regulations shall remain in operation for as long as the declaration of the COVID-19 in terms of the National Disaster Management Act as a national disaster subsists, or until they are withdrawn by the Minister whichever comes earlier.