

## An industry-led manufacturing initiative



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## RSA Clusters Group

Passion for local manufacturing.  
Innovative ideas.  
Empowering networks.

### Unleashing small business potential

A manufacturing cluster response to the advertised call for public response.

**To: The Minister of Trade and Industry**

% Mrs Linda Herbst (email [lherbst@thedtic.gov.za](mailto:lherbst@thedtic.gov.za))

**CC:** The Minister of Small Business Development

The Chairperson of the RSA Cluster Group

The Chairperson of the Casting Forging and Machining Cluster of South Africa

The Chairperson of the Electro Technical Industries Cluster of South Africa

The Chairperson of the Rail Manufacturers Cluster of South Africa

The dtic: Ms T. Phele, Ms M. Komane, Ms N. Dlambulo, Mr M Shunmoogam, and Mr B. Mamba

Cluster members

**Re: Competition Act - Block Exemption Regulations for SMMEs**

To whom it may concern,

#### 1. Who we are

The RSA Clusters Group NPC (manufacturing cluster) is a non-profit company with members registered in South Africa. We have a broader interest in the manufacturing economy, and engage a wide interest group, to thrash out business issues. More information is provided at the tail end of this letter, or is available on our website.

#### 2. Exemptions

The purpose of the draft regulations is just what is needed - brilliant. Cooperation and collaboration is to be encouraged. Thank you and well done to the researchers, policy writers and leadership involved.

We support the need for good business practices to be reinforced, and respect the value of having a close working relationship with the government and its agencies, in this case the Competitions Commission, and **the dtic** to achieve communal goals.

The exemptions are explicitly identified, and make a clear statement as to what types of agreements will be allowed and encouraged under these Regulations. We envisage that these Regulations, with some important corrections, will become an important enabler, unlocking innovation, and encouraging technology deployment - that will encourage improved competitiveness in all small to medium businesses, and ultimately will play a big part in arresting and turning around economic decline in the sub-sector.

The manufacturing community will be a significant beneficiary of this Regulation. We will support and embrace any steps taken that will lead to growth and development, in this case focused on SMME businesses in the manufacturing and services value chains. It is our

position that SMMEs remain unfairly yoked, and that their ability to innovate, to pivot quickly into new markets, to rapidly expand capacity, and to create new jobs, has - until now - been overlooked and curtailed. This Regulation has the potential to work very well in the current environment: It could achieve far more than the initial objective (i.e. to stimulate growth and participation), and there is a high probability that the Regulation will also serve to stimulate and improve SMME business confidence.

There are, however, some fundamental shortcomings in the draft Regulation. These are shortcomings that we hope will be ironed out and addressed in due course, prior to final approval and rollout, relating to:

- a. the motivation for the change;
- b. incentives to drive good behaviours;
- c. the 5 year duration of the exemption; and
- d. the exclusion of independent businesses that are neither big businesses, nor large corporations.

Our experience has taught us that neither the government, nor the private sector will be able to do this alone. Sustainable changes are needed and it is our position that collaborative partnerships and joint ventures between manufacturing related industries and government at all levels, will help to drive awareness and alignment to address business needs. We think that a combination of industry leadership, entrepreneurial flair, and institutional support will help to address challenges and to promote suitable outcomes for SMME participating in the municipal economies. Existing, and new collaborative partnerships between the two groupings, will need to unpack and help resolve challenges as they arise, and to grapple with the bigger issues in a joint effort to gain insights and deeper understanding.

The types of agreements to be enabled (i.e. Research and development; Production; Joint Purchasing; Joint Selling; Commercialisation; Standardisation; and Collective negotiations with large buyers or sellers) are strategic. The benefits that could arise are neither obvious, nor common knowledge to the majority of SMMEs. Processes to increase awareness and know-how are needed, and implementation support mechanisms and tools would need to be developed.

We envisage that there is a lot of experience to be gained. No one entity is best suited to carry this drive forward. Rather the broader stakeholder role will be to encourage good behaviour and to help bring deviant behaviour back in line if it causes damage to the economy. Working together as partners, business and government will need to work on enabling and empowering SMMEs to increase their contribution to job creation and to local economies; and in so doing, restoring past imbalances in the economy.

We foresee that a large tranche of work lies ahead and that interventions will become necessary to help well-suited independent businesses to find one another. Profiling of individual businesses will become important to inform industry, skills, and product profiles. Facilitation is needed to drive awareness and understanding around good business practices, and synergistic opportunities. Industry leadership is needed to establish appropriate structures to monitor the health of the different industries, and their progress towards collective goals; to generate industry reports, and to drive responsible outcomes through the application of industry governance, ethics, and codes of good practice.

We anticipate that there will be unforeseen disruptions to the status quo as we know it, and suggest that we embrace and look forward to exciting changes, as SMMEs explore their newfound freedom, and explore new boundaries. With changes in the business environment, will come changes in the business support structures. Interventions will be needed to strengthen the linkages between companies and institutions, and to build-up the critical mass between geographic concentrations of businesses in a similar field.

This Regulation, once finalised, is set to become one of the most important economic enablers for business in South Africa.

### **3. Strengths**

The block exemption as provided for in the draft, is good news. It gives independent small businesses the freedom to collaborate with one another to strengthen their position (i.e. working together to get information, be innovative, design and develop new products, and to drive out costs, etc) and enables the application of collaborative actions and cooperation that will aid to unlock latent potential and deliver value.

It provides room for like-minded small businesses:

- a. to reassess their business relationships based on the value of good ideas and common purpose business goals, rather than on exclusivity;
- b. to set up new mechanisms to expand their networks and their shared knowledge;
- c. to address common challenges that concern them; and
- d. to expand their reach and influence across the markets.

From a manufacturing cluster perspective, the block exemption is a bold move that, with the right level of facilitation, will bring business people together and help to strengthen the small businesses sub-sector and institutions across the economy (i.e. in the primary, manufacturing, and services sectors).

Not all collaborative agreements between parties will have the effect of substantially limiting or preventing competition in the market, or involve restrictive practices. Many such agreements will assist SMMEs to work together with a common purpose to uplift or improve industries, for the good of the collective.

We applaud the choice of categories of agreement or practices exempted, and are confident that the selection, as presented, will bring clarity and comfort to SMMEs wanting to expand. Too many South African businesses fail to realise the limitations of competing on price alone, or the benefits of adding more differentiated products into their sales mix.

First: The focus on 'research and development is crucial.

Of the different research requirements, market intelligence is at the top of our list. We do not know nearly enough about what specifications the markets require, or what our competitors in the market are doing, to establish where we have competitive advantages, or to know what the gaps are. Of the many development requirements, innovation and new product development top our list. There is a dearth of home-grown South African technologies and intellectual property in the private sector, which constrains local industrialisation and local content. This has occurred despite government efforts to provide support (e.g. universities,

technical colleges, science councils, etc) and interventions (e.g. incentives such as THRIP that is offered by **the dtic**).

The exemption of this category of agreement or practice will stimulate new interest as it overcomes some of the hurdles (e.g. ownership of intellectual property will not necessarily lie with organs of state; state procurement protocols and rules are avoided, and SMMEs can more easily source a supplier of choice), making it more efficient for SMMEs to attain a viable solution. Marketing research is available through individual licences with local and international companies.

Second: The focus on 'production' enables greater flexibility through outsourcing of work to contract manufacturers to lower the cost of overheads, increase scalability, and to access technology.

SMMEs can now consider working together to target bigger projects, as if they were a bigger company. Toll manufacturing will be especially beneficial for SMMEs in the metal conversion industries (e.g. foundries) who, until now, have had a weak position in the market, reliant on others to take their products to the market.

The exemption of this category of agreement or practice will stimulate cost reductions, and increase competition, making it easier for SMMEs to access market opportunities.

Third: The focus on 'joint purchasing' empowers SMMEs to increase their collective volumes and achieve volume scale that will serve to drive down costs.

The exemption of this category of agreement or practice will stimulate SMMEs to work together, to address material availability, supplier service performance, and the cost and quality of materials.

Fourth: The focus on 'joint selling' is an interesting opportunity that enables the formation of more efficient channels of distribution.

The exemption of this category of agreement or practice will stimulate collaborative relationships between SMME businesses to work with one another, similar to the way that individuals work together in a cooperative. We like the idea and think that this type of relationship will gain popularity quickly.

Fifth: The focus on 'commercialisation' will help to increase awareness, and to influence perceptions.

Without the ability to address the market as a collective, it is possible that whole industries and valuable solutions may cease to exist in a particular area or region, despite their relevance. There are too many cases of wonderful products being developed in the country, only to find that they are too difficult for one company to market alone, resulting in the technology being poached and parts of the industry being exported (e.g. drone industry).

The exemption of this category of agreement or practice will stimulate SMMEs to work together to draw public attention to, and explain, a concept or a concern, and rapidly increase awareness. Similarly, SMMEs will be able to work together to promote and improve public perceptions of an industry (e.g. to encourage more young people to think of working in manufacturing as a viable and rewarding career, or to send important "Buy South African"

messages into the public domain to increase awareness around the effect of the ever increasing export of jobs, and the negative impact for South Africans).

Sixth: The focus on 'standardisation' is not only an international trend that has gained popularity across the world, but also an important mechanism that will assist SMMEs to gain acceptance in the market.

If SMMEs are going to position themselves to supply into technical supply chains, or to export, they are obligated to conform, and *must* observe modern standards. Having standards creates a level playing field, so no one SMME can gain advantage by cutting corners on prerequisite criteria (e.g. quality).

The exemption of this category of agreement or practice will stimulate SMME growth and development as they strive to improve to attain benchmark standards. Standards also have strategic values that may serve to increase local participation, whilst decreasing imports, as SMMEs work together to increase compliance or develop unique barriers to entry for importers.

Seventh: The focus on 'collective negotiations with large buyers or sellers' will help to balance the buying and selling powers of the parties to the negotiations. SMME businesses are typically in a much weaker position than big businesses, as they have less funding, less skills and less resources to make a power play to leverage and improve their position.

The exemption of this category of agreement or practice will stimulate confidence in SMME businesses, knowing that the collective, acting in harmony, increases their leverage and dramatically improves their position.

#### **4. Weaknesses**

Our collective actions to reignite economic activity in South Africa, will require leadership, honest motives, clear agendas, mechanisms to address challenges, and deliberate actions.

The messaging in the draft Regulations, although well intended, is not always clear.

First: Our concern relates to what is in-fact prohibited and what is not prohibited by the Competitions Act, once the Regulations are adopted. We note the following:

- a. We are not satisfied that restrictive practices (i.e. fixing of purchase prices or selling prices, or fixing of any other trading condition, or the dividing of markets whether it be by allocating customers, suppliers, territories, or specific types of goods and services) would be acceptable under any conditions. None of these practices should be openly entertained, and if there are to be exceptions, these exceptions should not be available for unconditional or universal application.
- b. We strongly oppose collusive tendering in any form.

Second: Our concern relates to public procurement and related Regulations, and how these exemptions might impact buying decisions.

- a. As noted above, collusive tendering should not be allowed under any circumstances.
- b. Due consideration needs to be given to ensure that manufacturing suppliers are not disadvantaged by low cost imports being presented fraudulently as local content, or

- any other misrepresentation of the exemptions that influence buying practices and undermine (i.e. that would cause harm to) local businesses.
- c. Standards are an important part of the competitive environment in South Africa. They benchmark and determine minimum requirements to be met, and indicate to competitors what materials should be used, and how those materials are to be processed. Should standards be overlooked, undermined, or ignored, the risks for everyone increase. The effect of sub-standard goods and services are destructive and could be physically dangerous in some industries. They:
    - i. increase the risk that the quality of the product or services offered are inferior;
    - ii. diminish market opportunities, and weaken the position of compliant competitors;
    - iii. increase the reputational risks for industries, regions, and the country; and
    - iv. they open the industry up to the risk of increasing levels of non-compliance if not policed and stopped.

This type of action diverts opportunities away from invested capacity, and if not addressed, breaks down values and ethics, and diminishes the application of good practices.

Third: Our concern relates to the scope of the exemptions. The statement is made in paragraph 12 of the draft Regulations that the agreement or practices must include the majority of the SMMEs in the market, including historically disadvantaged persons. This statement is very broad and needs to be put in context. The proposed inclusivity clause (i.e. to include the majority of SMMEs in the market) is seemingly irrational, as it is difficult to imagine a feasible scenario which would encompass the scope that the author of the draft Regulation was imagining. Furthermore, there is very little known about individual SMME businesses, let alone about SMME activities in any particular market. Ensuring that there is any percentage (even if averaged) is nonsensical without industry profiles and data. We strongly suggest that paragraph 12 in its current form is re-written, or excluded from the scope of the final Regulation.

We note and agree, however, that as the theme is to promote the activities of SMMEs, that all SMMEs should have a choice to join collectives of their preference as voluntary members, and contribute to the collective in equal portions to their peers. Our experience is that despite open invitations and encouragement, we should not expect that all SMMEs will want to participate in a collective, until they are well enough informed, and see the value of their participation. In other words, SMMEs are more focused on a programme or network that shows them opportunities and helps them to grow their revenues.

Fourth: Our concern relates to the duration of the block exemption, and the messaging used.

- a. The message by our reading informs us that this is an interim measure with a five (5) year duration, which the Minister may choose to change (up or down) at any time.
- b. There is no clear indication of what happens at the end of the five (5) year period.
- c. Based on the limited information provided in the draft Regulation, we would not be encouraged to consider making strategic investments to develop structures, programmes, projects, or even training materials, lest we mislead SMMEs.
- d. Similarly, independent businesses will be less willing to join into a collaborative relationship that has a short term duration, with no clear indication of what happens at the end of the period.

Fifth: Our concern relates to messaging. We suggest that references to duration (paragraph 17) or to the Minister's powers (paragraph 13) are revisited, and where necessarily, re-written. Our suggestion is that the exemption should be open ended, and subjected to review after five (5) years by the Minister, with the help of the Competitions Commission and industry stakeholders. Furthermore, and without suggesting that we change or curtail the Minister's powers, we recommend that the Minister's powers should be exercised in accordance with a pre-defined criteria, which would need to be authored and added to the text.

Sixth: Our concern relates to the exclusion of independent businesses that are in the middle ground between midsize and large. These are South African based businesses that fall outside of the SMME definition provided, (i.e. they are bigger than the specified maximum revenue or employee numbers for medium sized businesses), yet by nature and character are more like medium sized businesses, and less like big businesses. These valuable contributors to the economy are important to the SMMEs, as they include a substantial number of businesses that hold locally developed intellectual property rights, and have the potential to become good lead companies, as they work with SMMEs to grow revenues and to build their supply chains.

Seventh: Our concern relates to the dearth of collaborative thinking in the private sector, following a long period of thought suppression on the topic, as SMMEs have chosen to avoid collaboration under fear of the possible repercussions. Misguided or not, this mindset needs to be changed. This will require systematic steps to be implemented, and constant reinforcement of positive behaviours, by government and industry. This Regulation will act as a good first step toward clarifying what is possible and encouraging collaboration again.

Eighth: Our concern relates to the release of this block exemption in isolation to other other regulations or policies that might continue to constrain SMMEs anyway, despite this Regulation. We suggest that an orchestrated draft of complementary legislative updates (e.g. to include BBBEE, etc), should be considered for release at the earliest opportunity, not to unintentionally constrain the growth and and participation of SMMEs in the economy.

Ninth: Our concern is that we should not exempt SMMEs from certain practices, if it would enable and give value to unscrupulous and destructive behaviours. To exempt SMME's from the full spectrum of standards and standardisation process does not make sense, because these are market, not administrative requirements.

## **5. Opportunities**

The Regulations are an important enabler, lifting-up and giving some prominence for the SMMEs in South Africa. This is what industry wants and needs.

The manufacturing cluster has been waiting patiently for a competition-related guide to help propel SMMEs and general business forward. The intent of the Regulation, and the focus of the block exemptions align well to the work that we have been doing to create awareness and to develop-out our concept and associated structures. We have done much of the upfront work, and have worked hard to develop a franchise-like model for easy deployment to interested SMME communities. This model incorporates the establishment,

administration, and management phases of a new initiative, and provides the necessary structures and mechanisms to ensure good governance and inclusive participation. We are prepared and ready for rollout, and know with confidence that our concept works. Furthermore, many of the important tools needed to profile industries, companies, skills, and products have been developed and are in a state of readiness for adoption and rollout. We anticipate that by working with us, and others like us, SMMEs in industry have the ability to get going quickly.

- a. Cluster Initiatives are a best-practice enabler to support the inclusive growth and participation of SMMEs in the economy. They provide a structure that encourages SMME involvement, drive deliberate agendas for change, and focus on entrenching leadership accountability.
- b. There are a significant number of SMMEs that are well structured, and mature. These businesses would help to facilitate business opportunities, and to ensure that the new Regulations were implemented efficiently across industries.
- c. Training, skills development, and knowledge transfer will increase rapidly as demand increases, and more SMMEs are able to deploy their resources.
- d. SMMEs have the know-how and passion needed to make a positive change in the economy, and are well equipped to move forward quickly, given the chance. We think that this Regulation will present the chance, and that SMMEs will grab-hold and work feverishly to create new opportunities, as they act to reduce costs and grow their business.
- e. Domestic demand is for manufacturing and services in the built environment, infrastructure, and renewable energy. These focus areas are often reserved for big business with the appropriate scale, but can now all benefit SMMEs as they may work together to enter these markets in a more meaningful way.

## **6. Threats**

The Regulations will serve to unlock constraints for SMMEs in the Competitions Act. Collectively we will need to ensure that we do not open the door and make allowances for bad practices, and uncompetitive behaviours, under the pretext that good behaviours would constrain SMMEs.

- a. Domestic demand for manufactured products and technical services is impaired.
- b. The energy crisis will continue to constrain and curtail business activities.
- c. There is no mechanism proposed for stakeholder review, assessment and resolution of any concerns that may arise.
- d. There are a raft of other Regulations and policies that affect the business community that may curtail SMME growth and participation in the economy, and negatively impact the effectiveness of this Regulation.
- e. SMMEs, like any other business, need to know their boundaries. Clarity on what they



are limited by, and can't do, gives business the freedom to dream, and to put plans in place to achieve their goals given what they can do. Weak regulations and policies disrupt this process, and impair growth.

- f. There should be due concern if competitors are pushed or otherwise removed from the market. Tendencies by large businesses to consolidate capacity, aiming to remove SMME competitors, cause huge damage. This action also neutralises or removes specialist know-how and skills from the market, often creating a holes in domestic capacity. This is bad for business and weakens the economy overall.
- g. The draft Regulations alone will not necessarily provide sufficient motivation to incentivise SMMEs to change their focus, or their behaviours.
- h. There is an inherent lack of strategically important geographic information (i.e. city, district, municipality, local area or suburb, street number) and business information (i.e. contact detail: designated contact person, telephone number and email address, website, product or services offering, business accreditations, etc) relating to SMMEs, Without such information, it is impossible to determine where SMMEs are located, or which business does what. We expect this factor (i.e. lack of information), will slow down the rollout process to businesses in close proximity to one another and to areas were local relationships (social and business) have already been established. We suggest that it should be expected that some municipal areas will be better than others, and Metros may struggle initially.
- i. The importance of facilitation and coordination should not be underestimated and overlooked. Without it, industries will be weakened and individual SMMEs will be left to fend for themselves, trying to do their own thing. This can be inefficient and counter-productive.
- j. Industry has the ability to self-fund their activities up to a point. Help will be needed from the government to facilitate industry access to institutional funds to supplement the industry contribution.

## 7. Conclusion

The block exemptions proposed for SMMEs is a great idea that will serve to strengthen the SMMEs as individual companies, sole proprietors, partnerships and as a collective. The positives of what can be achieved with these exemptions, in our view, far outway the negatives. The exemptions are significant as they allow SMMEs to collaborate and pool their strengths with 3<sup>rd</sup> parties

The Regulation will help to give SMMEs more leverage at the business table, and will empower them where it counts to build collaborative relationships with other SMMEs. It could also help them to develop market intelligence, to innovate, and to develop new products and services. SMME cooperation on buying and selling, and in negotiations with big business will lift-up the SMMEs as a force to be reckoned with and increase their recognition as a valuable part of the business environment.

Their business, skills, and product profiles will bring to light what each SMMEs does and open up unlimited opportunities for value creation. We think that the Regulations, as amended to address weak messaging and ambiguity, will achieve the desired objectives to increase SMME growth and participation in the economy.

## 8. About Us - Why we drive industry led initiatives

The RSA Clusters Group NPC was established as an umbrella body, or parent company, responsible to oversee the activities of existing initiatives in the cluster, and to establish new cluster initiatives as needed. There are four affiliated clusters registered in South Africa<sup>1</sup>, and several informal initiatives, each with its own mission in a key problem-filled field, within the broader manufacturing cluster. Independent South African based companies, and associations are our primary focus for membership, of which SMMEs make up the majority.

We are an industry-led collective of manufacturers and service providers active in various industries across the manufacturing value chain. We help to initiate, facilitate, coordinate, and integrate activities that will benefit businesses in the cluster. Our objective is to strengthen linkages between companies and institutions and afford independent businesses the opportunity to cooperate, and work in collaboration with one another to overcome challenges, or to leverage opportunities that would otherwise be too difficult to achieve as individual companies. They do so for the benefit of the cluster and industry as a whole. The manufacturing cluster initiatives launched are focused on growth and development in the manufacturing sector, and have a common goal to increase local content, skills, and employment.

By creating alliances and using collective resources, the various cluster initiatives aim to stimulate capacity development and utilisation, through the improved competitiveness of South African made products. As a result, the cluster has made localisation, import replacement, and driving down input costs (e.g. energy, raw materials, etc) key focus areas.

We strongly believe that provided the opportunity to address these challenges, South African manufacturers can become more innovative, globally competitive, and better suited to contribute to local economic development and job creation.

Kind regards,

Steve Jardine  
Managing Director

### **RSA Clusters Group NPC**

Company Registration: 2021/333769/08



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Signature

30 September 2022

Date

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<sup>1</sup> Casting, Forging, and Matching Cluster of South Africa NPC.  
Electro Technical Industry Cluster of South Africa NPC.  
Rail Manufacturers Cluster of South Africa NPC.  
Infrastructure Cluster of South Africa NPC.