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Department:  
Trade, Industry and Competition  
REPUBLIC OF SOUTH AFRICA

## THE NATIONAL ASSEMBLY

### QUESTION FOR WRITTEN REPLY

#### QUESTION NO. 6850

#### **Mr L Mkutu (ANC) to ask the Minister of Trade, Industry and Competition:**

What steps has he taken to foster transformation at the Island View Terminal, given the express reliance on particularly section 79(1)(b) of the National Ports Act, Act 12 of 2005, with regard to the promotion of the national strategic and/or economic interest of the Republic, as it relates to competition and the broad based black economic empowerment law following the expiry of the leases held by the six or seven large oil companies and/or oil majors? NO7653E

#### **REPLY**

In terms of section 10(1) of the Act, every organ of state and public entity must apply the relevant code of good practice (the Codes) issued by the Minister in accordance with section 9 of the B-BBEE Act in: -

- a) Determining qualification criteria for the issuing of licences, concessions or other authorisations in respect of economic activity in terms of any law;
- b) Developing and implementing a preferential procurement policy;
- c) Determining qualification criteria for the sale of state-owned enterprises;
- d) Developing criteria for entering into partnerships with the private sector; and
- e) Determining criteria for the awarding of incentives, grants and investment schemes in support of B-BBEE.

Therefore, Transnet National Ports Authority (TNPA) as a public entity is required to apply the relevant Codes of Good Practice as stated above. In applying the Codes, each entity seeking to use the Island View Fuel Storage facilities would need to demonstrate to TNPA its B-BBEE compliance by way of providing a valid B-BBEE sworn affidavit or certificate.

In this context, to effectively drive B-BBEE within the sector requires alignment and synergy between the National Ports Act, Act 12 of 2005 which governs TNPA's oversight function over ports sector and the B-BBEE Act, Act 46 of 2013 (as amended) on the other hand.

With regards to the Competition Commission, the Commission's functions include investigating any alleged contravention of the Competition Act 89 of 1998 ('the Competition Act') and engaging in advocacy initiatives aimed at ensuring public awareness and compliance with the Competition Act.

The Commission has since received a request for a non-binding advisory opinion on the potential competition law implications arising from applications submitted under section 79 of the National Ports Act, 2005, in relation to the Island View Precinct ("IVP") at the Port of Durban. The request seek guidance on whether the engagements between individual leaseholders (Engen, Vopak, TotalEnergies, Sasol Oil, Astron Energy, SAPREF) and Central Energy Fund SOC Ltd, in order to agree on terms to be incorporated in the Minister of Transport's section 79 directive, would potentially contravene the Competition Act. The Commission is awaiting requested information from Department of Transport to enable it to finalise the opinion.

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