14 July 2020

To whom it may concern

The Tyre Equipment Parts Association (TEPA) a proud association of the RMI is the single biggest representative body of Tyre Dealers in South Africa as well as Parts dealers, both of which are either independents or franchised.

The document presents that a wider extensive consultation has been conducted with industry by the Commission, the extent of this consultation appears to have not fully covered all industries involved in Franchised operations. Therefore, it will be imperative to note those specific industries as alluded too.

TEPA is of the opinion that the establishment of a FIO does not have jurisdiction over the motor industry related businesses as there is already a Motor Industry Ombud in place. Consequently, there would be no benefit to the commission in this regard as far the Motor Industry is concerned.

However, there are numerous concerns that TEPA has regarding the establishment of a FIO.

* Clause 3.1.1. alludes to the inclusion of Car Dealers, which in the broader context implies the “Motor Industry” which is already covered by the MIOSA.
* 3.1.2. refers to funding and it should be noted that with the jurisdictional limitation the Motor Industry related franchisees would not form part of the funding model.
* 3.1.4. refers to the FIO complying with the King code of Governance, however where funds are a gazetted obligation, it stands to reason that these same funds must be managed in line with the requirements of the PFMA and not any other practice. This will ensure compliance with the ministerial financial modelling and congruence of objectives measurement and accountability.
* 3.1.8. where the discussion document provides for the promotion and awareness campaigning of the FIO there is merit, however this must be strictly according to a budget approved by the department and treasury, in line with the confines of the PFMA.
* 3.1.9 the discussion document reflects on mechanisms to deal with complaints; however, this is not associated with any performance limitations or targets as effectiveness measurements.

In the detail of the CODE for the Franchise Ombud the following comments and concerns are raised by section.

1. **CONSTITUTION OF THE BOARD OF THE FIO**

The composition of the Board should be made during an initial general meeting of the FASA, where democratic nominations and voting in to office should determine the democratic manner of the process.

1. **POWERS, DUTIES AND FUNCTIONS OF THE BOARD** 
   1. The Board must
      1. The duties of the board in setting remuneration must be limited to adherence to the government approved Job grading levels, and the Ombud must not be otherwise employed other than as the Ombud.
      2. (b) the level of contribution must be approved by a full general meeting of the members of the FASA, and must not be a unilateral board decision.
      3. (g) The Resourcing of the Ombud must be inline with the approved budget and follow due process as for Government HR practices. All incumbents must follow the government HR training program as well.
   2. Contributions
2. With the motor industry not being party to this FIO are those volumes of franchisees to be disregarded in the formulation of the number of franchisees
3. . The five categories of determination as described (b – f) are all associated with confidential trading information that sharing with the Ombud and ultimately the Board (made up of other franchisees) would provide information that could be seen as material in gaining a competitive advantage in the industry.
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8. The number of complaints has no bearing on the determination of a contribution levy, as the time frame nor the volume work load determines the remuneration scales of permanently employed personnel.
9. The Operating costs and budget should be managed in line with an income stream and cash flow availability, and not merely have the contributions adjusted to cover costs, which is not a valid commercial practice and allows for potential mis-management of funds as well.
10. **THE FIO**

As per previously noted remarks the code as considered does not fulfil adequately the requirements of good governance.

1. **THE FUNCTIONS OF THE FIO**

3.(f) the collection of gazetted funding systems is in law nothing less than a Taxation and therefore no private enterprise should be collecting a tax, (refer the Minister of the Environment vs REDISA) consequently the funding should be managed by the department and in line with the PFMA and not a Private bank account.

1. all expenses should be expended against the approved process by the Department of Trade, Industry and Competition.

(m) all financial reporting must and can only follow the requirements of the PFMA in line with the requirements of National Treasury.

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1. **4 THE FIO MUST**
   * 1. Public funds cannot be used for investment purposes, this is exactly why the PFMA is in place to manage fiduciary processes in line with approved governance guidelines
     2. There should be no need for a Bank account as all salaries and other expenses must be channelled through the Department in line with the PFMA.
     3. Promotion and awareness campaigns must be managed within budgets
     4. Procurement of external services and functions must be managed within budget and funded directly from the Department of Trade Industries and Competition.
     5. Under no circumstance can authority be directly vested in the Ombud to unilaterally acquire or dispose of property
     6. The Ombud must be insured against the same profile as the government departments are covered
     7. The determination of appointment must follow approved Government HR procedures in all respects
     8. The broad context of “do anything necessary” is not in line with good governance objectives
2. **THE ACCOUNTING AUTHORITY**

IS to be reliant on accepted government practices

1. **FUNDING OF THE OMBUD**
2. The financing model must be reliant on an approved budget within the Department objectives.
3. The contributions cannot be allowed to adjust according to need the operations must be contained within a budget.
4. No investment opportunity can exist for the Ombud.
5. **JURISDICTION**

The MIOSA must take precedence over the FIO

1. **SCHEDULE 1**

The establishment of the FIO is a direct result of FASA and its own clear lack of ability to address the issues within their franchise membership, as well as to formally illicit a fee from the Non-members of FASA, in an attempt to provide a level field and a further source of income in place of FASA itself.

There cannot be any functional reason to support this proposal under the current construct of the code. Especially where loans are entered into by a Public organisation with a Private company.

The levels of influence are not in any way commensurate with either King or PFMA constraint of good governance.

Yours faithfully

Hedley Judd

National Director

Tyre Equipment Parts Association