

# DISPUTE RESOLUTION

PETROLEUM PRODUCTS  
AND THE LAWFULNESS  
OF THE 'ALLOCATION  
SYSTEM'

## PETROLEUM PRODUCTS AND THE LAWFULNESS OF THE 'ALLOCATION SYSTEM'

**Petroleum Products – the lawfulness of the 'Allocation System' used by the Controller of Petroleum Products (Controller) to consider the granting/refusal of retail and site licences in terms of the Petroleum Products Act, No 120 of 1977 (Petroleum Products Act).**

In terms of s2E of the Petroleum Products Act the Minister of Energy (Minister) must prescribe a system for the allocation of site and retail licences by which the Controller is bound. The full bench of the North Gauteng High Court in the *Nine Nine Ninety Nine Projects (Pty) Ltd v Minister: Department of Energy* 2012 JDR 0313 (GNP) held on 30 April 2014 that the Minister had not yet prescribed such a system for the allocation of site and retail licences by the Controller.

The court found:

*"It is common cause that the Minister has not yet prescribed a "system" in terms of Section 2E of the Act. However, the reasons given for the decision [by the Department] seems to be a backdoor implementation of the system that does not exist because it seeks to limit the number of filling stations in a certain radius."*

The court thus formed the view that the system was implemented secretly and contrary to what is prescribed by the Petroleum Products Act as the 'system' should have been gazetted for public comment and such public comments considered before being promulgated. It follows that, if the system is being implemented by the Controller secretly, it may well be unlawful. The court has instructed the Minister to issue guidelines on factors that must be taken into account by applicants for retail and site licence applications in order to comply with each and every objective set-out in s2B of the Petroleum Products Act. To date no guidelines has been issued.

The Department of Energy's website reflects that, between 2007 and July 2014, the Controller decided approximately 3109 applications for site licences and/or retail licences. The possibility exist that a number of applications may have been refused based on the "backdoor implementation of the system" thereby "limiting the number of filling stations in a certain radius."

*Should you require further information relating to the lawfulness of the methodology being adopted by the Controller, please contact Jackwell Feris on (T) 011 562 1825 or [jackwell.feris@dlacdh.com](mailto:jackwell.feris@dlacdh.com).*

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