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09 January 2008

Attention: Ms Zelna Jansen

Committee Secretary
Portfolio Committee on Science and Technology
3rd Floor
90 Plein Street
Cape Town
8000

Dear Ms Jansen,

Comments: Draft Technology Innovation Agency Bill

The Draft Technology Innovation Agency Bill (Draft TIA Bill) published on 17 August 2007 in Government Gazette No. 30164 refers. Thank you for allowing DNAbiotec the opportunity to comment on the above Draft TIA Bill.

1. DNAbiotec is SMME in biotechnology sector

DNAbiotec is a small private company in the biotechnology sector, which was founded in October 2001 by its two shareholders. The company is currently in its sixth (6th) year of operation and its sole source of income is via the Intellectual Property (IP) that it generates. Our main income generating activities are:

- a. Consultation in the biotechnology, forensic and business sectors.
- b. Contract research and development.
- c. In-house research and development for IP generating purposes.
- d. Short Courses presented to the following sectors: health sciences (human and animal), forensic and legal, business.

2. Why is DNAbiotec commenting on the Draft TIA Bill?

The private sector biotechnology SMMEs was not consulted, and we believe that should the Draft TIA Bill be implemented in its current form, it will stifle growth in the private biotechnology sector in South Africa and actively discourage innovative entrepreneurs.

Based on our own experience in the young biotechnology sector of South Africa during the past six years, we are convinced that the Draft TIA Bill in its current form will not create the "enabling environment" that is proposed as the object of this Bill. Moreover it will not motivate entrepreneurs to start new companies and will in fact actively discourage new young entrepreneurs.

The proposed Draft TIA Bill seems to have as its aim, intended or not, direct competition in the private sector with start-up and other private companies. This competition will be funded from the TIA with funds that originate, amongst other sources, also from the taxes generated by the private sector companies. This fact alone will be a huge de-motivator for companies such as us, in the private sector. Given the contrast in available financial resources between the TIA and a new start-up company, the young start-up entrepreneur will be at a distinct, and we believe fatal, disadvantage in the market.

We believe that entrepreneurs should be encouraged, not discouraged, to start SMME companies to aid growth towards strong and healthy private biotechnology sector. This is the mechanism that will drive our economy to prosperity – discouraging entrepreneurs will have the opposite effect.

3. Not consulted with SMME sector

It is incomprehensible to us why the biotechnology SMME sector was not consulted in the drafting of this Bill. This sector must be consulted prior to the finalisation of this Draft TIA Bill. Not doing so in the context of the Draft TIA Bill is unacceptable.

4. Implication of “any other assistance”

In general the Bill contains multiple undefined concepts. In particular the term “any other assistance” [Section 4.(1)(a)(i)] is not defined and may have extreme negative implications for a company such as DNAbiotec. In the extreme sense, if we receive “any other assistance” from the TIA the TIA “must ... ensure that the Agency is represented in the Board of such company” [Section 4.(2)]. This concept is directly in conflict with the object of the Bill to create “... an enabling environment ...” for innovation in South Africa. This clause has major implications for the private sector, is not acceptable, and moreover the concepts on which it rests are not clearly defined and specified to allow informed evaluation.

The implication for a company such as DNAbiotec is as follows: if we receive “any other assistance” (as of today undefined and could potentially include something as simple as advice or information of the sector, or co-funding for a joint venture to exploit IP) from the TIA the TIA would want to be represented on the Board. It is not good business practice to take a Board member onboard for every “deal” that we make. This will imply that DNAbiotec will not be able to liaise with the TIA, and will thus be alienated from a public entity that is supposed to stimulate growth in our sector. We can not accept that this is what the government intends for companies such as ours in the private sector.

This factor alone will serve as a huge counter-incentive to the private entrepreneur in South Africa.

5. TIA replacing the entrepreneur

In [Section 4.(1)(a)(i-ii)] it is implied that the TIA will play an active role in the private sector, to the extent where it will in effect take over the role of the entrepreneur. It will create private companies, obtain (via state funding) the exploitable IP etc. Whether this implication is unintended or not, it will be disastrous to the private biotechnology sector. We will be seen to have to “compete” with the TIA in the private arena – a situation that no private biotechnology entrepreneur in South Africa would want to find itself in.

6. Incubation in the biotechnology sector

In [Section 4.(1)(a)(iv)] it is implied that the TIA will be able to (at the discretion of its Board) restructure several state organisations that has been put in place to stimulate growth in the biotechnology sector. It is our plea, based on our own experience, that the incubation role in the biotechnology sector should not be underestimated. There should be a strong and robust structure in place to assist young entrepreneurs who are looking to enter the private sector via start-up of an SMME company. Incubation is a critical building block in the road to success in the path “from concept to profit”. If this function is amalgamated with other functions its value will be lost and it will leave the young start-up entrepreneur in the cold.

In our opinion and based on our experience in assisting other start-up entrepreneurs over the past six years, the so-called ‘innovation chasm’ exists in part because research results (into which government has invested substantially to date) does not reach the market as products because the pipeline from concept to product is not robust. Meaningful incubation can facilitate the smooth transition from the concept to the product in this pipeline, and without a highly robust incubation system we will never see the expected return on investment from this research investment.

7. Relevance of the 2007 Draft IP Bill

The “Draft Intellectual Property Rights from Publicly Financed Research Bill” (Draft IP Bill) that was published on 08 June 2007 as Notice 719 of 2007, is relevant to this Draft TIA Bill. The impact of the IP Bill (currently not yet re-drafted, and thus unknown) on the Draft TIA Bill is thus not defined. It is therefore not clear how this Draft TIA Bill can be finalised without a final version of the Draft IP Bill on the table.

8. Implementation instruments of the TIA

The instruments that will be used to implement the Draft TIA Bill are not clear or specified. The TIA will be a major role player in the South African IP environment and it must be outlined via which instruments it will be operating. In its current form, without clarifying this aspect, the Draft TIA Bill is vague and to a certain sense almost all-encompassing, which obscure the meaning of many of the concepts and aspects addressed therein.

9. Recommendations

Our recommendations are outlined throughout this document, with an abbreviated summary of the key aspects listed below. We recommend that the following changes be implemented:

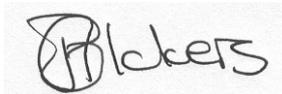
- a. Private sector biotechnology SMMEs **must** be consulted prior to the finalisation of this Bill. The Draft TIA Bill must be revised in consultation with the SMME sector, such as DNAbiotec or the industry organisation BioSA, in order to avoid that private sector SMMEs are sacrificed in the process of creating a regulatory framework via the TIA.
- b. The Draft TIA Bill must be amended to include clear and specific definitions of all the terms.
- c. The Draft TIA Bill should be revised to align it with other goals of the DST and DTI, i.e. the National Biotechnology Strategy, to assist private start-up SMMEs, and to grow business in the private sector via the generation of more SMMEs.

- d. That the TIA should have as its objective to assist also private sector SMMEs without taking a Board position or equity in return. It should be an instrument of the government that truly spans across the public / private divide to unite the sectors via close interaction and facilitation – not one that is itself a dividing factor between these two sectors. The future of a healthy private sector SMME in biotechnology is at stake if we fail to address this aspect.
- e. Clause (2) of Section 4 should be eliminated entirely.
- f. Implementation instruments of the TIA must be clarified and clearly stated.
- g. The re-drafted version or newly formulated version of the 2007 version of the Draft IP Bill must be put on the table prior to finalising the Draft TIA Bill in order to allow an informed assessment and evaluation of the TIA Bill.

In South Africa we are in a fortunate position that, although small at the moment, we have a strong group of entrepreneurs in the private biotechnology sector that are wholly committed to growing this sector. Structuring the TIA to assist this group of committed entrepreneurs will truly be an enabling mechanism for the economic growth of this sector. Failing to do so, would have disastrous consequences for the private biotechnology sector in South Africa.

Please contact us at your earliest convenience if further information or interaction is required.

Yours sincerely,



Dr Antonel Olckers
CEO and Director: DNAbiotec (Pty) Ltd