

# Competition Amendment Bill

7 December 2017

## In brief

On 1 December 2017, the Minister of Economic Development published the Competition Amendment Bill. Members of the public have the opportunity to comment on the draft Bill until 30 January 2018. The draft Bill proposes a number of significant changes to the Competition Act 89 of 1998 including in relation to those provisions of the Act dealing with prohibited practices, the assessment of mergers and market enquiries. In addition, the draft Bill introduces a number of procedural changes.

## In detail

According to the Background Note to the draft Bill, the primary objective of the draft Bill is to (i) address the issue of market concentration and the racially-skewed ownership of firms in South Africa, and (ii) improve the policy and institutional framework, and procedures for the administration of, the Act.

The proposed amendments contained in the draft Bill seek to address five particular issues, namely –

- strengthening the provisions of the Act relating to merger control and prohibited practices;
- focusing on the impact of anti-competitive conduct on small businesses and firms owned by historically disadvantaged persons;
- enhancing the provisions relating to market enquiries so that remedial action effectively addresses market features and

anti-competitive conduct in the relevant market;

- providing the executive branch of government with more effective means of participating in competition-related proceedings and processes; and
- enhancing the administrative efficacy of the competition authorities and their processes.

### **Merger control and prohibited practices**

The draft Bill introduces the following additional factors for consideration by the competition authorities when assessing a merger –

- the extent of shareholdings by the merging parties in other firms in related markets;
- the extent to which any merging party is related to another firm in related markets through, for example, common shareholders or directorships;

- mergers consummated by the merging parties in the preceding 3 years; and
- as additional public interest considerations, the ability of small businesses to enter into, participate in and expand within the relevant market, and the promotion of a greater spread of ownership.

In relation to prohibited practices, *inter alia*, dominant firms will expressly be prohibited from –

- buying goods or services on condition that the seller accepts an unreasonable condition unrelated to the object of an agreement;
- engaging in margin squeeze; and
- requiring a supplier to sell at an excessively low price.

## *Legal Alert*

### ***Impact studies and market enquiries***

The draft Bill will empower the Commission to conduct studies on the impact of the decisions of the competition authorities.

In relation to market enquiries, the proposed amendments will make the Commission's findings and actions binding unless

challenged before the Tribunal. In addition, the Commission will be under a duty to remedy structural defects identified as having a negative impact on competition.

### ***Penalties***

Administrative penalties may, in terms of the proposed amendments, be imposed in relation to all contraventions

of the Act, including in relation those first time offences which under the Act do not at present attract an administrative penalty. In addition, administrative penalties imposed on one firm may be extended to other firms which form part of a single economic entity with the offending firm.

### ***Let's talk***

For more information on this Legal Alert, and how we may be able to assist, including in regard to making submission in relation to the draft Bill, please contact:

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