

Remarks at the introduction of the COMPETITION AMENDMENT BILL, 2018, at the Portfolio Committee on Economic Development, 17 July 2018.

Madame Chair

Members of the Portfolio Committee

On the 20th of October 1998 – some twenty years ago – President Nelson Mandela signed the Competition Act into law, a bold and forward-looking piece of legislation, bringing a key part of the post-apartheid legislative programme into place. It is a singular honour therefore that on the eve of the 100th anniversary of the birth of this extraordinary man, born near the banks of the Mbashe River, I am introducing the Competition Amendment Bill, 2018 in Parliament.

The Bill proposes a number of changes to the competition law that will focus on economic inclusion; the promotion of small and medium enterprises; the opening of the economy to new entrants to give young South Africans a fair opportunity, to promote investment and to address the unusually high levels of economic concentration in our economy.

In its Preamble, the Competition Act states:

The people of South Africa recognise:

That apartheid and other discriminatory laws and practices of the past resulted in excessive concentrations of ownership and control within the national economy, inadequate restraints against anti-competitive trade practices, and unjust restrictions on full and free participation in the economy by all South Africans.

That the economy must be open to greater ownership by a greater number of South Africans. That credible competition law, and effective structures to administer that law, are necessary for an efficient functioning economy.

That an efficient, competitive economic environment, balancing the interests of workers, owners and consumers and focussed on development, will benefit all South Africans.

South Africa's Competition Act is unique in that it is not limited to looking at traditional competition issues only. It also aims more broadly to promote inclusive growth and enhance the positive impact of companies on society. It provides for identified public interest considerations such as

employment and the promotion of small businesses, to be considered together with competition issues.

South Africa has lead the way globally on matters of public interest in competition law. And in fact, many authorities around the world are now beginning to recognize the importance of these responsibilities to support the public interest through their competition laws and policies.

The competition authorities have been successful in using the Act to address a number of anticompetitive behaviours, protect public interest and spur new investment in a number of industries.

Since 2009, the competition authorities have successfully litigated cases of collusion and cartels, levying penalties in excess of R7 billion.

Conditions imposed to protect the public interest (in mergers and in abuse of dominance cases) has resulted in nearly R11 billion earmarked for new investment.

About R4.5 billion has been set aside in development funds principally targeted at small and medium business development.

In the last four years alone, conditions to ensure retention of jobs, covering more than 65 000 workers, were agree and commitments have been made for a further 7 400 direct jobs to be created in sectors such as agro-processing and agriculture.

Further gains have been achieved in transforming ownership in a number of South African companies, including Old Mutual and Coca-Cola Beverages, and the relocation of Global or African headquarters, which has promoted further investment in employment.

However, while there have been many successes, it is clear that 20 years after the Competition Act was first signed into law, one of the goals of the Act – to provide all South Africans with an equal opportunity to participate fairly in the national economy – has not been fully achieved.

A number of studies of the South African economy – including studies by the World Bank and OECD – have pointed to the unusually high levels of market or economic concentration, that is, the extent to which a small number of firms account for the bulk of sales in a given market. Public concerns about economic exclusion is high.

High levels of economic concentration are often damaging to an economy as it can lead to higher prices for consumers, lower levels of production

and employment, and weaker levels of innovation and investment in and by businesses in the industry.

It can often lead to an environment which makes it harder for small and medium businesses to participate in the economy, and can further lead to higher levels of collusion between dominant firms.

It should be noted that while concentration can often impose significant costs on the economy and society, it may also be an unavoidable outcome of the pursuit of other legitimate policy goals or the operation of economic factors necessary for strong growth. This is particularly true where a company must be relatively large in order to use advanced technologies in production, distribution and sales.

It is therefore key that our competition statute ensures that concentration does not present unacceptable barriers to market entry and does not lead to economic stagnation where firms with significant market power use their power to capture rents while preventing entry of innovative small and medium sized firms or those owned by black South Africans.

At the same time as tackling economic concentration, it is imperative to address the persistently racially-skewed profile of ownership of the economy. Instruments and mechanisms to address economic transformation must ensure inclusive and meaningful change.

In my Budget Vote speech in May 2017, I announced the terms of reference for developing a Bill to introduce amendments to the legislation, to address high levels of economic concentration and racially-skewed ownership profiles which stunt economic growth, prevent entry of new players, reduce consumer choice, limit the levels of innovation and dynamism in the economy and feed a growing resentment among black South Africans of the failure to realise the vision of the Constitution.

In the months that followed, a panel of legal and economics experts identified a set of changes to give effect to the terms of reference.

In November 2017, the proposed amendments were submitted to Cabinet and approved for publication, and on 1 December 2017, a draft Competition Amendment Bill was published for public comment.

The draft Bill sought to tackle economic concentration, by empowering the Commission to investigate the structure of markets, including the levels of concentration and barriers to entry, which could have a direct impact on outcomes, like prices for goods and services in that market, levels of

ownership, employment, and the conduct of participants in those market, and proposing remedies which may lead to an opening up competition, investment and growth.

The draft Bill also sought to provide measures which could further address economic inclusion, like the level of ownership, particularly by black South Africans, during a merger.

Finally, the draft Bill sought amend the Act to enhance the policy and institutional framework, and provide procedural mechanisms for the administration of the Ac, like empowering the Commission to conduct impact studies on the effectiveness and implementation of prior decisions.

The draft Bill received more than 60 submissions during the public consultation period from a wide range of public, business and civil society interests, including provincial governments, both local and international business, the legal fraternity, economic consultants, local and international academics, and labour.

Over a six-month period following publication of the draft Bill, the Ministry considered these submissions and consulted with stakeholders, including through formal engagements with Business and Organised Labour at NEDLAC.

These public consultations enriched the final Bill which was presented to Cabinet earlier this month, and which has been introduced here to Parliament today. The result is a thoughtful and bold piece of legislation which speaks to the needs of society, while maintaining the architecture and functioning of the structures which has generated so much success; a Bill which we are calling *A New Deal for Economic Transformation and Inclusion*.

The Competition Amendment Bill, 2018 focus on economic concentration through enhanced powers for the Commission to conduct market inquiries which will both investigate and seek to remedy any adverse effects. These powers have not been provided lightly. The procedures around market inquiries have been designed to be effective while providing for a rigorous process which upholds the rule of law.

The Bill focuses more clearly on providing opportunities for small and medium business, aligning the operations of the Act with one of its clearly stated purposes. It provides greater clarity to firms and investors on prohibited practices and what constitutes abuse of dominance; and

improved administrative efficiencies in the work of the competition authorities.

The Bill introduces greater flexibility through changes to enable firms to work with each other when there is demonstrated public benefit to doing so, such as increased production and employment.

The amendments also strengthen the available interventions that will be undertaken to redress the specific challenges posed by concentration and untransformed ownership.

These measures will advance the fulfilment of the purposes of the Act as set out in section 2 of the Act and the creation of inclusive, vibrant and competitive markets to the benefit of all South Africans, as envisaged in the Preamble to the Act.

These changes are in the long-term interest of both business and organised labour: they benefit small to medium-sized companies, bring in a pro-growth transformation model and can help to lift investment and the structural levels of growth in the economy, whilst spreading the benefits more widely.

I look forward to supporting the work of the Committee during the rest of this year, as it considers the Competition Amendment Bill. This Bill is the most significant piece of economic legislation that Parliament will be considering during 2018.

Thank you.