



**economic
development**

Economic Development Department
REPUBLIC OF SOUTH AFRICA

MEDIA STATEMENT

To: All media

Date: 17 July 2018

The Competition Amendment Bill - A New Deal for Economic Transformation and Inclusion; major review on 20th anniversary of the passing of the Competition Act.

The Minister of Economic Development, Mr Ebrahim Patel today briefed Parliament on the contents of the Competition Amendment Bill, the most significant economic legislation that the legislative body will be considering during 2018.

Twenty years ago the original Competition Act was signed into law by President Nelson Mandela. The Competition Act provides the legislative framework for the competition authorities to

- investigate and penalise anti-competitive conduct by dominant firms
- investigate and act against cartels, price-fixing and collusion
- approve or prohibit mergers and acquisitions, and consider competition and public interest issues, such as employment and the promotion of small businesses.

The Bill represents the most substantial series of amendments in the past 20 years to revamp and strengthen the Act, with a greater focus on economic transformation and inclusion.

The introduction of the Competition Amendment Bill follows the publication of a draft Bill in December 2017, and months of public consultations with various key stakeholders across society, including a formal process through Nedlac with representatives of Business and Organised Labour.

The main objective of these amendments is to open up the economy to small and medium enterprises and to black South Africans. It addresses two persistent structural constraints on dynamic and inclusive growth in South Africa:

- the high levels of economic concentration; and
- the skewed ownership profile of the economy

Economic concentration occurs when a few firms in a market dominate the industry.

When addressing Parliament's Portfolio Committee on Economic Development today, Minister Patel noted that high levels of economic concentration is often negative for an economy. 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 also often lead to an environment which makes it harder for small and medium businesses to participate in the economy, and can lead to higher levels of collusion between dominant firms.

Numerous studies on the South African economy, including by the World Bank and OECD, have pointed out the highly concentrated structure of the South African economy compared to its international peers.

Government tabled the result of a Study by the Competition Commission that showed that market concentration is particularly high in a number of sectors, including in information and communication technologies, pharmaceuticals, transport food and agro-processing and intermediate industrial products.

“The Bill will enable competition law to support our efforts to greater economic inclusion and injecting more dynamism in the economy. It is a critical tool for the state to strengthen its ability to act against companies who abuse their dominance in the market and to protect and advance the interests of SMEs and township entrepreneurs,” Minister Patel said today.

The Bill will give Government and the regulators the power to call an Inquiry into a market where a few firms dominate the production and output and examine whether dominance by those firms effectively limits smaller businesses from being in the market, or leads to higher prices for consumers. The Bill gives the Competition Commission the power to make binding findings to rectify such outcomes. There are also provisions in the Bill to address the additional capacity which the Competition Commission will require in order to fulfill its new responsibilities.

The Bill also 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 and to promote investment.

The Bill provides the authorities with enhanced tools to prohibit price discrimination and other abuses by dominant companies which impedes the participation and growth of smaller businesses, particularly black-owned businesses in the economy. This is important as a means of unlocking investment in the economy.

Expansion of ownership by black South Africans and workers in companies, will also now be considered by the competition authorities, during mergers or when one company acquires another company.

The provisions on intervention in merger proceedings involving foreign acquiring firms brings the South African law in line with other international jurisdictions. Under the new provisions, when a foreign-owned company buys a locally-owned firm in a sector with

possible national security implications (e.g. in the defense industry), the President will establish a Committee to consider the acquisition and determine whether it in fact has national security implications and if so, to take appropriate decisions on the matter.

“We want to introduce greater flexibility in the granting of exemptions which promote transformation and growth and to strengthen the role of market inquiries and merger processes in the promotion of competition and economic transformation,” Minister Patel said.

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Issued by the Ministry of Economic Development.