



**MINISTRY  
ECONOMIC DEVELOPMENT  
REPUBLIC OF SOUTH AFRICA**

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**Changes to the Competition Act – addressing economic concentration. A background Note issued by the Minister of Economic Development.**

Embargo: 16h00 on 25 May 2017.

1. During the State of the Nation Address in February 2017, government committed that:

*During this year, the Economic Development Department will bring legislation to Cabinet that will seek to amend the Competition Act. It will among others address the need to have a more inclusive economy and to de-concentrate the high levels of ownership and control we see in many sectors. We will then table the legislation for consideration by parliament.*

*In this way, we seek to open up the economy to new players, give black South Africans opportunities in the economy and indeed help to make the economy more dynamic, competitive and inclusive.*

2. The Competition Act already establishes among its purposes the provision to “all South Africans [of an] equal opportunity to participate fairly in the national economy” and the regulation of “the transfer of economic ownership in keeping with the public interest.” It also seeks “to ensure that small and medium-sized enterprises have an equitable opportunity to participate in the economy” and “to promote a greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged persons.”
3. However, many markets in the South African economy are faced with persistently high levels of economic concentration. In a number of sectors, there are a mere handful of firms which account for the majority shares of their market and utilise their resulting market power to heighten barriers to entry. This concentration may be economically unjustified and, if so, should be addressed.
4. In addition, many parts of the economy still are faced with stubbornly racially-skewed ownership profiles. The exclusion of most historically disadvantaged South Africans from the ability and opportunity to own productive assets must be

remedied to unlock the competitive and development benefits of full participation by all in the economy.

5. The effect of these two structural features of these markets is to 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 promises made by the Competition Act. In summary, these structural features diminish the promotion of effective competition in a number of markets.
6. Despite its clear objectives, the current Competition Act is primarily concerned with anti-competitive effects arising from the conduct of market participants, as opposed to optimising the structure of the relevant contestable markets to achieve its purposes.
7. It is therefore proposed to amend the Competition Act to enable more effective measures to be taken against these features of market structure. These amendments will amplify and complement the measures already available to address all forms of anti-competitive conduct.
8. The amendments will require the consideration of the concentration, ownership profile and structural impediments to entry or expansion in a market when that market is defined and assessed by the competition authorities in mergers or where anti-competitive conduct in that market is scrutinised in complaints referred to the Competition Tribunal for determination.
9. In addition, the competition authorities must be empowered to consider these questions proactively or at the request of key stakeholders, including parties who are demonstrably unable to overcome these barriers entrenched in the relevant markets. Markets plagued by over-concentration and untransformed ownership will be identified, investigated and appropriate measures applied to remedy these market features. These inquiries, and any remedies that result, will target the primary structural impediments to market entry and ownership by black South Africans.
10. The proposed amendments also will seek to incentivise firms to develop relationships and adopt strategies that would alter market structure, reduce concentrations by encouraging entry of historically disadvantaged South Africans (particularly those who own small and medium-sized enterprises), reduce barriers to entry, and expand ownership to ensure that more enjoy substantive economic citizenship.
11. The proposed amendments further the objectives of competition policy as reflected particularly in the preamble and section 2 of the Competition Act and bolster the remedial tools available to the competition authorities to ensure the fulfilment of these objectives.

12. An advisory panel has been established to develop the draft amendments for consideration by the Ministry, which will inform the broader consultation with key stakeholders and the public. The panel members are Advocate Michelle le Roux (Practicing Advocate at the Johannesburg Bar), Ms Doris Tshepe (Partner in a Joburg-based law firm), Mr Liberty Mncube (Chief Economist of the Competition Commission) and Professor Imraan Valodia (Dean of the Faculty of Commerce, Law and Management, Wits University). It is expected that the Panel will submit a Report within the next six weeks to the Ministry.

Issued by Minister of Economic Development, Ebrahim Patel, 25 May 2017, Cape Town.

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