



**MINISTRY
ECONOMIC DEVELOPMENT
REPUBLIC OF SOUTH AFRICA**

Private Bag X149, **PRETORIA**, 0001 • the dti Campus, 77 Meintjies Street, Sunnyside, **PRETORIA** • Tel +27 12 394 1006 • Fax +27 12 394 0255
Private Bag x9047, **CAPE TOWN**, 8000 • Tel: +21 466 9800 • Fax: +21 461 0428
Email: ministry@economic.gov.za • website: www.economic.gov.za

Minister of Economic Development releases Draft Bill amending the Competition Act to address economic concentration, spread of ownership and institutional and procedural processes, for public comment

Immediate release 1 December 2017

The Minister of Economic Development, Mr Ebrahim Patel, today released a draft Bill amending the Competition Act to address the structural issues of economic concentration and the racially-skewed spread of ownership in the economy. The Bill also deals with various institutional and procedural processes aimed at enhancing the efficiency and effectiveness of the competition authorities.

The Bill is released for public consultation and comment.

The draft Bill is the result of consultations held during the course of the year within Government and with experts in the field of competition law and economics and has been approved by Cabinet for public consultation. The Minister expects further useful input from the public consultation process that commences today and which is expected to be completed by February 2018. All of this input will then be considered before a final Bill is approved by Cabinet for presentation submission to Parliament for consideration, debate and adoption.

The most significant amendments are to:

- Enhance the market inquiry process to empower the Commission to consider features of markets, including high levels of concentration and limited economic transformation and take any remedial action that is reasonable and practicable to address such features of a market that prevent, restrict or distort competition;

- Expand the consideration of cross-shareholdings, cross-directorships and the phenomenon of creeping concentration in merger control proceedings;
- Ensure scrutiny of the impact of mergers on the spread of ownership in the economy as a public interest issue;
- Require dominant firms to justify their conduct when they are accused of anti-competitive abusive practices and improve the prospects of prosecuting dominant firms for excessive or predatory pricing;
- Enable the Commission to research and report on the impact of merger conditions and behavioural or structural remedies so that all stakeholders are informed about how the competition regime achieves the purposes of the Act; and
- Streamline and enhance various procedures governing the work of the competition authorities and the involvement of the Minister in competition matters.

A Background Note to the proposed amendments is published in the Government Gazette today, together with the draft Bill, which explains the proposed amendments in greater detail and enables stakeholders to provide informed comment during the consultation process.

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.*”

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.

In addition, many parts of the economy are still faced with 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.

"The effect of these structural features of the local market 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. They also diminish the promotion of effective competition. The proposed amendments seek to address these concerns within a framework that can promote faster and more inclusive growth," Minister Ebrahim Patel said today.

"We are releasing the Bill in order to obtain the views and advice of the public. I hope small firms as well as larger companies and trade unions and other civil society institutions make representations so that we have the benefit of their views before finalising a package of proposals for consideration by Parliament," he said.

The period for public comment is the next 60 calendar days. Government will also engage with parties in this period.

Issued by the Ministry of Economic Development, 1 December 2017, Sandton. For more information, please contact Dr Molefe Pule at mipule@economic.gov.za.