

COMPETITION BREAKING NEWS

anti-trust/competition newsflash
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South African National Assembly Passes The Revised Competition Amendment Bill

by the anti-trust/competition department

The South African Competition Amendment Bill, 2017 is a step closer to becoming operational. During its plenary sitting on 23 October 2018, the South African National Assembly (“NA”) passed a revised version of the Bill.

On 1 December 2017, the Minister of Economic Development announced the release of the Competition Amendment Bill for public comment. Following the closure of the period for public comments in the first quarter of 2018, a revised Competition Amendment Bill was tabled before parliament on 11 July 2018. The revised bill was then referred to the Portfolio Committee on Economic Development where further amendments were introduced after public hearings held in August 2018. It is this iteration of the Competition Amendment Bill that was passed by the National Assembly during yesterday’s session.

Despite its progress, however, the Bill is not yet operational. The next step is its referral to the National Council of Provinces (“NCOP”) and a further opportunity for stakeholder submissions. If the NCOP accepts the Bill as presented, it will be sent to the president for signature, after which it will be passed into law. If the NCOP either rejects or proposes changes to the Bill, it will be referred back to the NA for consideration (although the NA is not obliged to accept the changes proposed by the NCOP).

The stated objective of the Competition Amendment Bill is to remedy structural defects present in the South African economy (including the high levels of economic concentration in various markets) by amending the Competition Act, 1998. Its objectives include:

- a strengthening of the penalty regime;
- the introduction of greater flexibility in the granting of exemptions that promote transformation and growth;
- intervention by the National Executive in relation to mergers that affect the national security interests of South Africa; and
- providing the Competition Commission with powers to conduct impact studies.

The revisions introduced by the Portfolio Committee on Economic Development include:

- introducing a “reasonableness” justification into the test for excessive pricing;
- providing further protection for small and medium businesses, and firms controlled by historically disadvantaged persons, against price discrimination by dominant firms;
- refinements to the margin squeeze offence; and
- the enhanced utilisation of ministerial regulations to give effect to the purposes of the Competition Act.

We will keep you updated of developments as they arise. For more information on the Competition Amendment Bill, please contact ENSafrica’s anti-trust/competition team.



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