

## COMPETITION BREAKING NEWS

anti-trust/competition newsflash  
13 February 2019

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# South African Competition Amendment Act, 2019 signed into law

by the anti-trust/competition department

As promised during his State of the Nation Address on 7 February 2019, South African President Cyril Ramaphosa has today, 13 February 2019, signed the Competition Amendment Act, 2019 (the “**Amendments**”) into law. The effective date of the Amendments has not yet been announced.

On 1 December 2017, the Minister of Economic Development announced the release of the Competition Amendment Bill for public comment. Following widespread discussions and public comments, 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. On 23 October 2018, the South African National Assembly passed a further revised version of the Bill. The National Council of Provinces passed the Bill on 4 December 2018 and it was sent to the president for assent.

President Ramaphosa has previously stated that one of the factors that inhibit growth of the South African economy is the high level of economic concentration. The Amendments aim to further empower the competition authorities and government to address these high levels of economic concentration, and open up new opportunities for South Africans to enter and compete on equal footing in various sectors in the economy. Specifically, the Amendments will address the enduring frustration of smaller market participants and firms owned by historically disadvantaged persons that they are unable to compete on equal footing due to the behaviour of dominant firms, despite the preamble and objectives of the Competition Act specifically recognising their vulnerability.

The Amendments are likely to have a significant impact on the application and enforcement of competition law in South Africa. It is clear that South Africa’s policy- and lawmakers see competition law and its enforcement in South Africa as an important industrial policy and economic development tool.

Some of the major changes introduced by the Amendments are:

- small and medium businesses, and firms controlled by historically disadvantaged persons, enjoy protection against price discrimination and unfair purchasing practices by dominant firms;
- the rules applicable to dominant firms have been refined, particularly as regards predatory pricing, margin squeeze, and excessive pricing, including a “reasonableness” justification for the latter;
- the penalty regime has been strengthened – the scope of first-time offences subjected to administrative penalties has increased and repeat offenders can incur higher administrative penalties;
- the competition authorities have greater flexibility in granting exemptions that promote economic development, transformation and growth;
- the competition authorities are mandated to consider additional competitive and public interest factors in a merger review;
- the National Executive can intervene in relation to mergers that affect the national security interests of South Africa;
- the Competition Commission has the power to conduct impact studies;
- the Minister of Economic Development is empowered to (after consultation) require that the Competition Commission conduct a market inquiry;
- the Commission’s findings and actions following a market inquiry are binding, unless challenged in the Tribunal;
- changes to the confidentiality regime; and
- the enhanced utilisation of ministerial regulations to give effect to the purposes of the Competition Act.

The ENSafrica anti-trust/competition team will be running a series of seminars and workshops about the impact of the Amendments. Should you be interested in attending these, please contact ENSafrica’s anti-trust/competition team.



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