

The future of competition law reform in South Africa is now

By [Leana Engelbrecht](#)

14 Jan 2019

In July 2018, the Minister of Economic Development, Ebrahim Patel, introduced to Parliament a radical bill aimed at amending the Competition Act, 89 of 1998 (Competition Act). The amendments contained in Competition Amendment Bill are aimed at creating and engaging the substantive provision of the Competition Act by addressing two key structural challenges in the South African economy - the high levels of economic concentration in the economy and its racially skewed ownership profile. Further, the amendments also seek to enhance the policy and institutional framework, and procedural mechanisms for the administration of the Competition Act.



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A whirlwind process of consultation and public hearings followed and the Competition Amendment Bill, B23B-2018 (the Competition Amendment Bill) was passed by the National Assembly in October 2018 and by the National Council of Provinces in early December. The Competition Amendment Bill will become law once signed by the President - which is anticipated to happen soon. In the meantime, the Minister has already published three different requests for public comments on regulations and similar documents that are relevant to the enforcement of the new provisions introduced by the Competition Amendment Bill.

1. A request for public comment on the first draft set of definitions of small and medium business

The Competition Amendment Bill, inter alia, aims to protect small- and medium-sized businesses. It is important to be able to determine which businesses will be able to benefit from these protections and this must be done within clear definitions and thresholds.

The Minister is calling for comments on the classification of small- and medium-sized businesses for purposes of the new provisions of the Competition Amendment Bill. The Minister is specifically asking for input into whether the new turnover thresholds for determining whether a business is classified as a small- or medium-sized business under the

National Small Business Act are sufficient for purposes of competition law enforcement; and suitable in the context of the fourth industrial revolution.

2. A request for public comment on the first draft set of buyer power regulations

As mentioned above, the Competition Amendment Bill introduces the concept of buyer power, where dominant firms are prohibited from engaging in conduct that would impede its non-dominant suppliers (that are small- and medium-sized businesses or firms controlled by historically disadvantaged individuals) from participating effectively in the market - i.e. by excessively exercising the market power it holds as a result of its dominant market position.

The Minister is calling for public comment on a first set of regulations and whether the proposed regulations are sufficient. The first draft regulations propose an approach to identifying suppliers that benefit from the protections granted under this new provision; ascertain whether a price or trading condition is unfair - in itself and relative to other suppliers; and designated specific industries that will benefit from this new provision.

3. A request for public comment on the first draft set of price discrimination regulations

Small- and medium-sized businesses and firms controlled by historically disadvantaged persons will enjoy additional protections against price discrimination by dominant suppliers. This provision is aimed at ensuring that these businesses are able to effectively compete in the markets they operate in without being subjected to higher input costs when compared to their competitors. The proposed regulations set out the guidelines for how and the parameters within which these protections are proposed to be granted.

Timeline

The Minister has set a timeline for finalising these three documents to assist in the enforcement of the revolutionary amendments to South African competition law. Public comments are due by 31 January 2019 and interested parties have to register their interest in participating in discussion forums by the 15 January 2019. Once these processes are complete and the Competition Amendment Bill has become law, second drafts will be published for public comment. After further consultation, the final definitions and regulations will be published.

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