National Assembly passes Competition Amendment Bill

Economic Development Minister Ebrahim Patel says the Competition Amendment Bill is "transformative in character" as it will promote the participation of small enterprises in the economy, while aiming to dismantle cartels.

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The Minister said this when the National Assembly held a debate on the second reading of the Bill in the National Assembly on Tuesday.

“If we are to grow the economy much faster and we are to bring in fresh investment, and if we are to support small business development, we must take measures to deal with the structural problems of the economy. This includes high levels of economic concentration that acts as a restriction for new entrants, new investors and new firms,” he said.

After a vote, the Competition Amendment Bill was passed and referred to the National Council of Provinces for concurrence after 194 Members of Parliament (MPs) voted for, with 83 voting against the amendment. There were no abstentions.

The Bill introduces several measures aimed at tackling anti-competitive behaviour from bigger firms.

Outlining the benefits of the Bill, the Patel said:

- The Bill gives small businesses a special status as actions by dominant firms will now be subject to more scrutiny on practices like discriminatory pricing, which have been found to be damaging to smaller players;
- Consumers and customers will have better protection from excessive pricing by dominant firms, with the law set to put in place clear criteria that the courts can apply to determine if the price is excessive;
- Small suppliers will now have remedies against abusive buyer power from dominant firms when unfair pricing and trading conditions are imposed on them;
- Workers ownership of shares in companies will be promoted through a criteria on expanded ownership during mergers;
- Citizens will know that government will protect the country's national security interests when a foreign acquiring firm wants to buy a South African firm in security sensitive areas;
- Large businesses will know that penalties are much tougher for breaking the law but they will also have a lot more flexible regime in place to get exemptions to enable them to collaborate with each other to help expand South African production, grow the country's export markets and developing new technologies to create jobs;
- New investors will know that the market is open, that new players can know that monopolies are now being dismantled and that economic concentration is being addressed so that the country becomes more innovation-driven, more dynamic and more inclusive.

In the main, the Bill also zones in on dominant players – firms that control more than 45% of the market share – and adds the abuse of dominance to the list of exclusionary acts, particularly where it impedes the ability of SMEs and black-owned firms to participate effectively in a market.

This includes prohibited practices like collusion and abuse of dominance by a firm; the structure of markets – which looks at economic concentration and its impact on small and black-owned businesses, and mergers.

"To realise the full potential of the Bill for us as South Africans to build a more inclusive economy, to help create new investment opportunities and to complement what we are doing in other areas, we need to take a number of supportive steps.

"These include measures to support the small and medium enterprises and youth entrepreneurs with more capital, more know-how, licensing and less red tape," Patel said.

He said this will require additional financial and human resources to be channelled to the Competition Commission.

Patel said the processing of the Bill has been inclusive and extensive, and that the process was not flawed, contrary to assertions from opposition.

He said 90 submissions were made by organisations and individuals to the department and the Portfolio Committee on Economic Development.

The National Economic Development and Labour Council (Nedlac) considered the Bill over a seven-month period and made several changes.

The committee held hearings with 20 organisations and small businesses and it enriched the Bill after making changes to 14 sections and 28 subsections.

When Patel tabled the Bill before Parliament in July, he said investigations into cartels and monopolies in a number of sectors - from fertilisers, poultry, bread, construction, steel, banking, auto-components and telecoms, among others - have resulted in firms being slapped with fines amounting to more than R7 billion since 2010.

The Bill was tabled before Cabinet in November 2017 and was gazetted for public comment in December 2017 over a two-month period. Extensive discussions took place at Nedlac with business and organised labour between December and July this year.