

Bill gives competition authorities teeth to tackle cartels, monopolies

Economic Development Minister Ebrahim Patel says the Competition Amendment Bill will equip competition authorities with the tools to probe anti-competitive behaviour by cartels and monopolies in the economy.



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Briefing journalists at the Imbizo Centre in Parliament, Cape Town, on Tuesday, Patel said the Bill, which was presented to Parliament on the same day, was drafted last year following concerns that anti-competitive behaviour increasingly made it difficult for smaller players to penetrate the economy.

He said while the main focus of the Bill was to ensure economic transformation, it also seeks to address several big areas that affect competition. 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.

“We believe that the amendments taken as a package will boost for SMEs and economic inclusion, opening up the economy to fresh investment and innovation.

“We believe the Bill gives a clear mandate to the competition authorities to address economic concentration in a balanced

manner and to promote economic transformation. It gives greater clarity to firms and investors on prohibited practices and what constitutes abuse of dominance,” he said.

Patel's briefing comes after investigations into cartels and monopolies into 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 served 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. About 60 submissions were made on the Bill during public consultations and the revised Bill, incorporating those inputs, is now being submitted to Parliament for consideration.

Patel said the Bill will provide a greater certainty on what is permitted collaboration and prohibited collusion between competitors, customers and suppliers.

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. It also empowers the Competition Commission to show that the price charged by a dominant firm is excessive and for the firm to carry the obligation to show that it was reasonable.

The Bill will also revamp the regime to determine excessive prices and clarify in greater detail what is predatory pricing. It will also strengthen the penalties applicable for all prohibited practices as well as provide greater clarity to firms and the public on what is prohibited practices.

The second focus area that the Bill seeks to tackle is on the market structure – which looks at economic concentration and its impact on SMEs and black-owned businesses.

The Act provides for market inquiries to be conducted on the general state of competition in a market and to make recommendations to the Minister on its findings. The Bill expands the use of market inquiries most significantly to deal directly with economic inclusion and economic concentration and it provides the competition authorities with the power to take action to remedy the adverse effects,” he said.

On mergers, Patel said the Bill clarifies the factors that are relevant to determining the competition effects of a merger as well as the role of competition and public interest in the merger. In the main, the Bill includes an additional public interest criterion to the law.

“The Bill is a new deal for economic transformation and inclusion,” he said.

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