

February 2019

## The Competition Amendment Act – Changing the South African Competition Law landscape

The Competition Amendment Act (the “**Amendment Act**”) was signed into law by President Cyril Ramaphosa on 13 February 2019. The Amendment Act introduces extensive changes to the South African Competition Law landscape.

The overarching theme of the Amendment Act is the enhancement of the degree of public interest considerations in competition law matters. This theme is pursued in the Amendment Act by, among other things, affording the Competition Commission wide-ranging powers to foster the inclusion of small and medium enterprises (“**SME’s**”) and historically disadvantaged persons (“**HDP’s**”) in various markets.

**Some of the most notable provisions introduced by the Amendment Act include:**

- **Abuse of Dominance:** The most significant amendment to the abuse of dominance provisions brought about by the Amendment Act is the introduction of “reverse onus” provisions. Under the Amendment Act, in certain specific instances, the onus of proof shifts to the dominant firm to prove that there has been no abuse of dominance. The main objective for the introduction of “reverse onus” provisions is to ease the evidentiary burden previously placed on the Competition Commission to successfully prove certain abuse of dominance cases. The reverse onus will come into play, once a *prima facie* case has been established by the Competition Commission. The reverse onus provisions are introduced in the areas of excessive pricing, price discrimination (in respect of SME’s and HDP’s) and the new concept of “supplier abuse”. Supplier abuse relates specifically to instances where SME’s or HDP’s have a vertical relationship with a dominant firm. The objective of this section is to protect SME’s and HDP’s (in certain designated industries) from being required to supply their products to a dominant buyer at an unfair price or subject to unfair trading conditions.
- **Mergers and National Security Interests:** In terms of the Amendment Act, the Competition Commission (and where applicable, the Competition Tribunal) will be required to give equal weight to competition law considerations and public interest considerations when determining whether to approve or prohibit a merger notification. The Amendment Act furthermore mandates the President to establish a committee to consider whether a merger involving a foreign acquiring firm may have an adverse effect on the national security interests of South Africa. In this regard,

where a merger relates to the national security interests of South Africa, the merger must first be considered by the committee on national security interest grounds and only if approved by this committee, may the Competition Commission make a decision or the Competition Tribunal issue an order (in the case of a large merger) on whether to approve or prohibit the merger.

- **[Administrative Penalties](#):** The Amendment Act creates harsher punishment for firms that contravene competition laws in South Africa. We see this through the removal of the “yellow card” regime, higher administrative penalties (25% for repeat offenders) and the extension of a firm’s liability for contravening competition law to its controlling shareholders who knew or should reasonably have known about the contravention.
- **[Market Inquiries](#):** The regulatory ambit of competition law market inquiries has been significantly overhauled by the Amendment Act by way of, among other things, placing a time period on when a market inquiry should be completed and giving the Competition Commission stronger powers to address the shortcomings identified. In this regard, the Competition Commission has the power to make binding recommendations at the completion of a market inquiry.

**For more information, please contact:**



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