

DEPARTMENT OF ECONOMIC DEVELOPMENT

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Competition Commission of South Africa

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The Competition Amendment Bill was passed by the National Assembly in 2018 and signed by the President on 13 February 2019. Most amendments to the Competition Act No. 89 of 1998 (as amended) (“the Act”) came into operation on 12 July 2019 in terms of Government Notice No. 987 12 July 2019 (Government Gazette No. 42578). Sections 8(4) and 9(1)(a)(ii) were not operationalised as both are new abuse of dominance provisions which require regulations to be published by the Minister outlining the factors and benchmarks that should be considered in determining a contravention.

These amendments incorporate a buyer power provision under the abuse of dominance provisions of section 8 and a new price discrimination provision under section 9. In terms of section 8(4)(a), it is prohibited for a dominant firm as buyer in designated sectors to require from or impose unfair prices or trading conditions on small and medium businesses or firms controlled or owned by historically disadvantaged persons. In terms of section 9(1)(a)(ii), an action by a dominant firm, as the seller of goods or services, is prohibited price discrimination, if it is likely to have the effect of impeding the ability of small and medium businesses or firms controlled or owned by historically disadvantaged persons, to participate effectively.

Draft regulations in respect of these two provisions have now been gazetted by the Minister. In terms of those regulations and section 79(1), the Competition Commission (“Commission”) may prepare guidelines to indicate its policy approach on any matter falling within its jurisdiction in terms of the Act. Draft Enforcement Guidelines for these two provisions have been prepared by the Commission and are available on its website in terms of section 79(3).

The draft guidelines present the general principles that the Commission will follow in assessing whether alleged conduct contravenes section 8(4) and section 9(1)(a)(ii) of the Act. These provide guidance through outlining how the Commission intends to interpret the new buyer power and price discrimination provisions for enforcement purposes, and further how it will seek to screen and assess complaints laid in terms of the new provision.

The Commission invites interested parties to submit written representations on the draft guidelines within 28 days of publication of this notice. Written submissions can be sent to ccsa@compcom.co.za. After reviewing all submissions received, the Commission will publish final enforcement guidelines.