

12 JULY 2019

COMPETITION ALERT

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BREAKING ALERT

Competition Amendment Act gets rolling: Commencement of certain sections of the Competition Amendment Act

On 12 July 2019, President Cyril Ramaphosa published a notice in the Government Gazette to immediately bring into force certain of the provisions of the Competition Amendment Act. The amendments were passed in February 2019, and the latest Gazette covers many of the procedural changes the Amendment Act envisaged.

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CLIFFE DEKKER HOFMEYR

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Still not in force are the controversial new rules on buyer power, price discrimination (both calculated to benefit small and black-owned businesses) and the "national security veto" on certain foreign investments. Presumably this is because these substantive provisions require the promulgation of additional regulations to be effectively enforced.

The administrators of the Act (Commission and the Ministry in charge of Competition) will be pleased to note that their enhanced powers of appeal in merger proceedings and to conduct market inquiries are now in force. Also in force are various additional factors to be taken into account in merger analysis, such as: structural links into related markets; the effect on small businesses; and ownership by historically disadvantaged persons and workers. Repeat offenders are now also liable for a penalty of up to 25%, and all contraventions are now subject to a penalty on a first offence.

The provisions that are not yet in force, and which will be proclaimed at a later date are:

- those relating to national security and acquisitions by foreign acquirers;
- the changes to s4 regarding allocation of market shares as a form of market division;
- the new powers of the Minister to make regulations regarding s4 (restrictive horizontal practices) and s5 (restrictive vertical practices);
- the new s8(4) relating to buyer power;
- the changes made to s9 relating to price discrimination by dominant firms;
- the time limit for the Commission to decide an application for an exemption in terms of the new s10(2A); and
- those relating to confidentiality and disclosure of information submitted to the Competition Authorities in terms of the changes to s44 and s45.

CDH has prepared a guide to the amendments, available on our [website](#). The guide provides an overview of what the amendments are in simple terms, including commentary on those changes.

Chris Charter and Craig Thomas

CDH is a Level 1 BEE contributor – our clients will benefit by virtue of the recognition of 135% of their legal services spend with our firm for purposes of their own BEE scorecards.

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