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# COMPETITION LAW ALERT

## IN THIS ISSUE >

### Local is lekker: Competition Commission draft guidelines on collaboration between competitors on localisation initiatives

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## Local is lekker: Competition Commission draft guidelines on collaboration between competitors on localisation initiatives

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Localisation aims to achieve greater levels of local procurement or production. Improved localisation can be a catalyst for economic growth by, for example, increasing economies of scale for local producers, enhancing local investment and boosting competitiveness in export markets over the long term. The need for greater localisation has been compounded by the COVID-19 pandemic and identified as one of the key policy objectives of Government's Economic Reconstruction and Recovery Plan.

The Competition Commission (Commission) has recently published draft Guidelines on Collaboration between Competitors on Localisation Initiatives (Guidelines). Although non-binding, the Guidelines aim to provide guidance to industry stakeholders (purchasers and/or suppliers) and Government on how to collaborate in identifying opportunities for localisation and implementing localisation initiatives in a manner that would not fall foul of the rules of engagement for competitors in terms of the Competition Act 89 of 1998, as amended (Competition Act).

Examples of localisation initiatives cited in the Guidelines include the Department of Trade, Industry and Competition's Master Plan processes or other industry initiatives which aim to reinvigorate an industry or capitalise on opportunities to further local procurement.

In recognition that competitor collaboration may be required to help advance localisation initiatives, the Guidelines identify four types of likely collaboration and provide corresponding competition law compliance guidance:

(i) **The identification of opportunities for localisation initiatives at industry level**

With intimate knowledge of their own supply chain, industry players (in conjunction with Government at times) are usually best placed to identify local procurement opportunities.

In these instances, industry players may engage with their suppliers around potential expansion of local supply, provided that this does not involve access to competitors' competitively sensitive information. Where a candidate product is identified which could be better localised by the industry at large, the scope for localisation in aggregate across the industry must be assessed by an independent facilitator who must then engage firms on a bilateral basis. Securing agreement may require discussion between competing firms, but this must be led by the facilitator. Only aggregated information on volumes and percentages of the identified product may be shared by the facilitator.

## Local is lekker: Competition Commission draft guidelines on collaboration between competitors on localisation initiatives...*continued*

Compliance with the Guidelines will help guard against inadvertent contraventions of the Competition Act.

### (ii) The process of setting industry local procurement targets

Discussions among competitors, with the aim of setting industry level localisation targets, may only be conducted when led by an appointed independent facilitator. The limitation again being that no competitively sensitive information may be discussed among market participants and only aggregated industry data may be shared and discussed. The facilitator must determine the final industry targets and in so doing may obtain competitively sensitive information on a bilateral and confidential basis separately from each individual firm, which may not be shared in any collective discussions among competitors.

### (iii) The process of setting individual firm local procurement targets

Setting individual firm localisation targets in the implementation of any localisation initiative must be undertaken on a bilateral and confidential basis between the facilitator and the individual firms. The facilitator may obtain competitively sensitive information from an individual firm so as to reach agreement on its localisation targets, provided that this is not shared with competitors. This process also includes the submission of progress reports on the achievement of milestones in the individual firm's localisation plan to the facilitator on a bilateral and confidential basis (the facilitator is then able to aggregate the information for any other purpose).



## Local is lekker: Competition Commission draft guidelines on collaboration between competitors on localisation initiatives...*continued*

The Guidelines appear to be a step in the right direction in supporting local economic recovery. The closing date for the submission of written representations on the Guidelines is 27 September 2021.

### (iv) Demand forecasting

Lastly, localisation initiatives may also include industry commitments to provide demand forecasting guidance to input suppliers in order to facilitate industry planning. In such cases, guidance to suppliers must only contain aggregated information, as opposed to a firm's individual procurement plans.

Collective discussions on localisation initiatives involving competitors must be minuted and notified to the Commission within a reasonable time. The Commission may request access to the recording or minutes of these meetings at any time.

Importantly, and in line with the Commission's policy, where practical, the localisation initiatives must be inclusive of

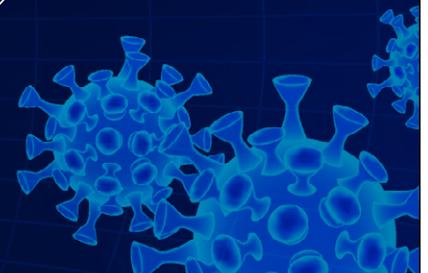
firms in the affected industry, particularly small-, micro- and medium-sized enterprises and firms owned by historically disadvantaged persons. Compliance with the Guidelines will help guard against inadvertent contraventions of the Competition Act.

Amidst the prevailing challenging economic climate, the Guidelines appear to be a step in the right direction in supporting local economic recovery. The closing date for the submission of written representations on the Guidelines is **27 September 2021**.

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