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COMPETITION LAW ALERT

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Education is the key to success – well, so is competition: The Competition Commission's guideline on the procurement of school uniform and learning materials

The Competition Commission has again weighed in on the market for the procurement and supply of school uniforms and other learning-related materials. The Commission reports that since 2010 it has received complaints from parents and guardians regarding the high price of school uniforms and that some schools compelled parents to buy uniforms and learning-related materials from only one supplier. The Commission stated that this conduct often left parents out of pocket at the start of each school year as they could not source cheaper suppliers.

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In order to address these issues, the Commission has released a guideline on the procurement of school uniforms and learning materials; just in time for the upcoming start of a new school year.

The guideline aims to help schools, parents and school governing bodies (SGBs) understand the benefits of competition in the sale of school uniforms and learning materials; help schools foster competition between suppliers; encourage parents to get involved and to exercise their right to choose value for money; and encourage SGBs to develop policies that promote pro-competitive procurement practices.

Pointers for schools, parents and SGBs

The guideline provides useful pointers to schools, parents and SGBs as to how they can play their part in fostering healthy competition in this market.

Schools are advised to make their school uniform as generic as possible so that parents do not have to source it from only specialist suppliers; appoint or designate as many school uniform suppliers as possible so that customers have more choices; and ensure that the number of exclusive items appearing on a school uniform list are limited to the bare necessities and are, where possible, reusable so as to minimise repeated expense and waste. If schools must appoint exclusive service providers, they should do so after a competitive bidding process and should regularly seek to rotate suppliers.

Parents are advised to exercise their right to choose and actively pursue comparable quality at the lowest price; encourage their schools to implement the guideline and to sign an undertaking in this regard; and report to the Commission any schools that flout the guidelines and continue to sign exclusive agreements with school uniform suppliers.

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These interventions are positioned as supporting South Africa’s fight against its many socio-economic issues, one of which is access to a basic and affordable education.

SGBs are advised to ensure that their schools implement the guideline; encourage them to sign a voluntary undertaking in this regard, as a public pledge of their commitment to pro-competitive compliance; and report to the Commission any schools that do not adhere.

In a related advocacy move, the Commission has also entered into a memorandum of understanding with the National Association of School Governing Bodies (NASGB). The NASGB represents over 7,000 SGBs and is expected to play a role in driving awareness of competition law and principles in the procurement of goods and services (ranging from teaching material and uniforms to equipment, building and construction services and concessions such as tuck shops) and discouraging anti-competitive behaviour by schools. The NASGB is to be the first line of resolution for disputes raised

by parents. A joint working committee will be established between the NASGB and the Commission to facilitate ongoing monitoring.

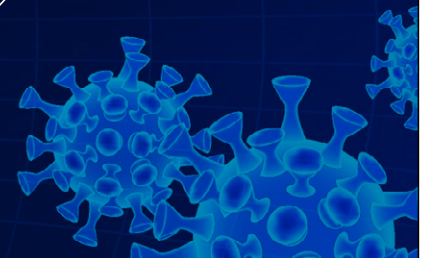
Finally, in December the Commission concluded a consent agreement with a major Gauteng-based school uniform supplier. Although no admission of liability was sought, the agreement effectively terminates all exclusive supply agreements with schools.

These interventions are positioned as supporting South Africa’s fight against its many socio-economic issues, one of which is access to a basic and affordable education, where anticompetitive procurement might contribute to inefficient spending and higher prices to the detriment of learners and their guardians.

Nelisiwe Khumalo and Chris Charter

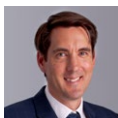
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