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COMPETITION ALERT

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Competition Amendment Act Regulations on Price Discrimination and Buyer Power published for commentary

The long awaited Price Discrimination and Buyer Power Regulations (Regulations) were published for comment on 10 October 2019 by the Minister of Trade and Industry, Mr Ebrahim Patel.

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CLIFFE DEKKER HOFMEYR

Competition Amendment Act Regulations on Price Discrimination and Buyer Power published for commentary

For the Regulations to have application, firms controlled or owned by historically disadvantaged persons (HDPs) must purchase less than 20% of the goods and services supplied by a dominant seller (in relation to the Price Discrimination Regulations) or must supply 20% or less of the purchases of the dominant buyer for the goods or services (in relation to the Buyer Power Regulations).

The long awaited Price Discrimination and Buyer Power Regulations (Regulations) were published for comment on 10 October 2019 by the Minister of Trade and Industry, Mr Ebrahim Patel.

The Regulations are intended to give effect and clarity to the corresponding amendments to the price discrimination and buyer power provisions of the Competition Act, 1998 (Act) (sections 9(1)(a)(ii) and 8(4) respectively). These sections of the Act have been signed into law, but are not yet in effect.

For the Regulations to have application, firms controlled or owned by historically disadvantaged persons (HDPs) must purchase less than 20% of the goods and services supplied by a dominant seller (in relation to the Price Discrimination Regulations) or must supply 20% or less of the purchases of the dominant buyer for the goods or services (in relation to the Buyer Power Regulations).

The Price Discrimination Regulations set out the elements which must be established in order to sustain a contravention under the Act and

outlines the factors and benchmarks for determining whether price discrimination is likely to impede effective participation by HDPs.

The Buyer Power Regulations designate specific sectors of dominant firms which are prohibited to require or impose unfair prices or other trading conditions on SME and HDP suppliers. These sectors are the agro-processing; grocery retail and online intermediation services. These Regulations list the elements that must be established in order to sustain a contravention under the Act and outlines the factors and benchmarks for determining the unfairness of price and trading conditions.

Comments to the Regulations are required to be submitted within 28 days from publication. The closing date for submissions is 7 November 2019. Once the public comments have been taken into account, it is envisaged that a final set of Regulations will be published, accompanied by the promulgation of the price discrimination and buyer power amendments.

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