

# Competition Law

## ALERT

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On 7 April 2023 the Competition Commission of South Africa (Commission) published draft Terms of Reference (Terms) for a market inquiry into the South African steel industry (Inquiry). Intermediate industrial products have long been identified as a priority sector for Competition Commission attention, and with steel being an essential input into many strategic and core segments of the economy, it is no surprise that the Commission considers it important to determine whether the industry is functioning optimally.

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## New Competition Commission inquiry into the steel market

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The steel industry has faced the attention of the Commission before, including prosecutions for excessive pricing of steel products, and investigations into alleged cartel conduct by various players within the steel value chain, such as the producers of long and flat steel products, the producers of wire rod, and the suppliers of scrap metal.

Now the Commission's gaze is less focused on discrete conduct by discrete entities: the Commission proposes an extensive scope of inquiry allowing it to consider conditions and conduct across players across the value chain.

As background to the Inquiry, the Terms note that steelmaking remains a key strategic industry for South Africa – representing 1,5% of the country's GDP and accounting for approximately 190,000 jobs. Nevertheless, South Africa's global position as a steel producer is declining. In 2014 the South African

steel industry was ranked 19th in terms of global crude steel production (and largest on the African continent), but by 2021 South Africa ranked a meagre 32nd place. Still, the Terms recognise that the domestic iron ore industry has the potential to be globally competitive owing to the high quality of iron ore produced.

### Scope of the Inquiry

The Inquiry will be confined to two levels of the steel value chain: (i) the provision of inputs and raw materials for steel production and (ii) primary steel production.

### Inputs and raw materials

The Terms imply that a particular focus in analysing the input level of the supply chain will be on iron ore and coking coal as the main inputs to steel production. That said, the supply of other inputs, such as scrap metal, also appear to be within scope.



## New Competition Commission inquiry into the steel market

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### **Iron ore**

The Terms delineate the following potential concerns in relation to the supply of iron ore:

- Market concentration and market power: Given the Commission's prior "*findings*" that the largest three market participants account for more than 95% of total ore mined, and whether these incumbents may have the ability to act without constraint from their competitors and customers.
- Pricing dynamics: Whether a price set with reference to what may be achievable in international markets bears any reasonable relation to production costs or any other competitive price that may be used as a benchmark.
- Access to rail and port capacity and impact on emerging iron ore miners: Whether allocations of capacity on the ORYX line are done in a competitive and non-discriminatory manner, and whether such arrangements may impede participation and expansion of emerging miners to export iron ore.

- Regulatory barriers: The extent to which mining and environmental regulations hinder competition through raising barriers to entry.

### **Coking coal**

The Terms list the following areas of focus with respect to the supply of coking coal:

- Localization, entry, and expansion of coking coal supply: South African steel manufacturers rely significantly on imported coking coal since this input is not manufactured on a large scale in South Africa.
- Pricing of coking coal: Reliance on imports in some markets allows local producers to set their prices at import parity levels.

### **Upstream steel production**

On upstream steel production the Inquiry aims to:

- Review ownership patterns of steel mills and assess historical and current industrial policies in place to support the steel producers.

- Assess measures to promote entry and expansion of steel producers (in particular small- and medium-sized businesses and firms controlled or owned by historically disadvantaged persons).
- Assess challenges faced by steel producers and factors surrounding the closure of some steel mills.
- Assess the price setting mechanisms (including pricing trends in South Africa as opposed to international pricing).
- Consider pricing to downstream players and the role that traders play in price setting.
- Consider the role of tariffs and trade remedies in the steel industry, and the impact of import duties on intermediaries and end customers of the upstream steel producers.

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### Conclusion

The Inquiry aims to determine if there are market features impeding competition at the input level of the value chain, particularly in respect of market concentration, pricing of inputs, and barriers to entry and expansion.

As with most recent market inquiries initiated by the Commission, there will be a focus on assessing how accessible the industry is to emerging players, particularly small- and medium-sized businesses and firms controlled or owned by historically disadvantaged persons. It will be interesting to see how the Commission weighs this consideration with the (acknowledged) high capital costs required to establish a steel plant and to mine and supply iron ore.

The scope of the Inquiry is wide: In its present form it encompasses everything from inputs and logistics to import duties and environmental concerns in a range of different markets (mining of iron ore, importing of coking coal, and production of steel). This will involve canvassing the views and submissions of a huge range of industry participants; and will in turn result in recommendations affecting players across multiple markets.

Members of the public are encouraged to comment on the draft scope of the Inquiry on or before 5 May 2023

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