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Oh how the world is changing – Draft guidelines on collaboration between competitors on localisation initiatives

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Draft guidelines on collaboration between competitors on localisation initiatives

1. The Competition Commission ("**Commission**") has recently issued a notice in terms of section 79(3) of the Competition Act No. 89 of 1998, as amended ("**Competition Act**") inviting the public to comment on its Draft Guidelines on Collaboration Between Competitors on Localisation Initiatives ("**Draft Guidelines**").

2. Guidelines from the Commission provide industry stakeholders or market players with guidance on the Commission's policy approach on any matter falling within its jurisdiction. As such, parties should consider any relevant guidelines when interpreting and applying the Competition Act.

3. In response to the economic consequences of the COVID-19 pandemic, the government developed the Economic Reconstruction and Recovery Plan ("**ERRP**"). The ERRP sets out interventions aimed at promoting inclusive growth and increased employment opportunities in the domestic economy. As such, the increase of localisation initiatives is highlighted as being a key objective in achieving economic reconstruction and recovery.

4. Localisation initiatives, which can be initiated by government or private actors, consist of any project or effort which aims to increase the share of total procurement of an identified input from local suppliers and decrease the share of procurement of imports of the same input. They further aim to achieve greater levels of local production.

The Draft Guidelines, four types of collaboration

5. The Draft Guidelines set out four types of collaboration which may occur between competitors for increasing localisation initiatives:

5.1 The identification of opportunities for localisation initiatives at industry level

This is where industry players (in conjunction with Government at times) are 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 potential 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.

5.2 The process of setting industry local procurements targets

Which may involve discussions between competitors. These discussions must be led by the appointed independent facilitator or the government entity where it acts as the facilitator. No competitively sensitive information must be shared or discussed among firms in the collective discussions on localisation. The final industry targets must be determined by the facilitator.

In determining the industry targets, the facilitator may obtain competitively sensitive information on a bilateral and confidential basis separately from each individual firm, and this individual firm information may not be shared or discussed in the collective discussions among competitors.

5.3 The process of setting individual firm local procurement targets

Which must be conducted on a bilateral and confidential basis between the facilitator and individual firm. Competitively sensitive information, which may not be shared with other market participants, may be obtained from the individual firm for the purpose of reaching an agreement with the firm on its localisation target.

Further, progress reports on the achievement of milestones set out in the individual firm's localisation plan must be submitted to the facilitator on a bilateral and confidential basis, whereafter the facilitator may aggregate the information for any other purpose.

5.4 Demand forecasting

Whereby this is provided to facilitate industry planning against the availability of the input and supply commitments. In such cases, the Commission has indicated that the demand forecasting must only contain aggregated information and not firms' individual procurement plans and information.

6. The above strategy (localisation initiatives) may benefit local producers in a number of ways, for example by increasing economies of scale, stimulating greater local investment and, ultimately, improving competitiveness in export markets in the longer term.

7. The Draft Guidelines have been developed to guide the process by which such collaboration between competitors may occur in a way that localisation initiatives may be appropriately identified and implemented, in a manner that does not raise competition concerns. But this must take place within a set framework –

7.1 Collective discussions on localisation initiatives involving competitors must be minuted and notified to the Commission within a reasonable time.

7.2 The localisation initiatives must be inclusive of firms in the affected industry, particularly SMMEs and firms owned by historically disadvantaged persons.

8. In accordance with the provisions of section 79(4) of the Competition Act, the Commission will not regard collaboration on local procurement which is conducted in accordance with the Draft Guidelines as a contravention of the Competition Act.

9. The Draft Guidelines appear to be a positive move in the right direction by the Commission in a time marred by poor economic conditions, having a significant impact on the competitive market.

10. The closing date for the submission of comments from the public is 27 September 2021.

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