

COMPETITION

# Ten things you need to know about amendments to the Competition Act

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On 4 December 2018 the National Council of Provinces voted to approve the Competition Amendment Bill of 2018. With this vote, the Bill has now completed the Parliamentary process. All that remains is for the President to formally assent to the Bill and announce its commencement date. This is expected to happen shortly. The Bill constitutes a major overhaul of the [Competition Act](#) of 1998 and sweeping new powers are given to the Competition Authorities to address the perceived high concentration levels and lack of transformation in the South African economy. Stated below, in a succinct and simplified form, are the key amendments you need to know as a business owner:

1. A new offence is created: In certain designated sectors, dominant firms will in future have to show that they do not demand unfair prices or trading conditions from their historically disadvantaged (HDP) or SMME suppliers. What "unfair" means is still unclear at this stage but may in future be clarified in regulations. (A dominant firm is one with a market share exceeding 45% or a firm with market power).
2. Dominant firms will in future have to charge HDP-owned and SMME customers the same prices as they charge other firms – regardless of order volume differences. This is unless the dominant firm can show that the differential pricing does not impede the HDP-owned and SMME firms' effective participation in the market.
3. To combat avoidance of paragraphs 1 and 2, dominant firms who in future do not buy from or supply to HDP-owned or SMME firms must be able to prove that they are not attempting to circumvent the Act.
4. The acquisition of a business or a controlling stake in a firm may in future be prohibited on grounds that it has an adverse effect on HDP or employee ownership in the firm (or conditions may be imposed on the approval of the transaction to ensure such HDP/employee ownership).
5. In future a foreign firm's acquisition of a South African business could be blocked by the South African government on national security grounds. These grounds are vaguely defined and include South Africa's economic and social stability.
6. After conducting a market inquiry, the Competition Commission will in future have binding powers to impose remedies on firms. Furthermore, the Competition Tribunal can order the divestment of a business or assets of a firm upon the Commission's recommendation. This is regardless of whether or not anyone has contravened the Competition Act.
7. Maximum penalties are increased, for repeat offenders, from 10% to 25% of the turnover of the offending firm.
8. Any and all contraventions of the Competition Act will in future attract penalties – in the past, only the more serious and more clearly defined offences attracted penalties upon a first conviction; the less serious and unclear ones were merely "yellow-carded".
9. The holding company in a corporate group may in future be held liable for the penalty payable by a subsidiary for competition law contraventions, and the penalty can in future be calculated using the holding company's turnover, if the holding company knew or ought to have known of the offending conduct by the subsidiary.
10. The Minister of Economic Development will in future have the power to exempt certain agreements or practices from the application of the Competition Act.



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