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The much-anticipated Competition Amendment Act 18 of 2018 (Amendment Act), has been signed into law by President Cyril Ramaphosa.

The Amendment Act seeks, among others, to address the issue of economic concentration and to drive transformation of the South African economy, as well as to strengthen the provisions of the Competition Act with respect to prohibited practices. '

The Amendment Act changes the competition law landscape in South Africa, and firms will need to become familiar with them in order to adjust their business practices to ensure they continue to be compliant with the law.

Some of the key amendments introduced in the Amendment Act include the following:

- The Amendment Act does away with the so-called "yellow card", in terms of which penalties were not imposed for certain first-time offences. The Amendment Act also significantly increases the maximum penalties for repeat offenders from 10% to 25% of a firm's annual turnover.
- Insofar as mergers are concerned, new factors to be considered have been introduced including cross-ownership and cross-directorships, as well as other mergers undertaken by any party to the merger within a specific period. The public interest provisions have been amended to clarify their importance in the assessment process and to highlight the objectives of transformation and deconcentration mentioned above. As regards foreign acquisitions, it is envisaged that the President will constitute a committee consisting of cabinet members and other public officials to consider whether such transactions may have an adverse effect on national security interests.
- If one has regard to market inquiries, an obligation is placed on the Commission to take reasonable steps to promote the participation of small and medium sized businesses that have a material interest in the market that is the subject of the inquiry.
- The exemption provisions have also been amended to enhance the objectives of transformation and participation of small and medium sized businesses in the economy by including such objectives as criteria to be considered by the Commission when evaluating

exemption applications.

- As regards the abuse of dominance provisions, the Amendment Act introduces "buyer power" provisions preventing a dominant firm in sectors yet to be designated from imposing unfair prices or trading conditions on a supplier that is a small or medium sized business or a firm controlled by historically disadvantaged persons. The Amendment Act further prohibits dominant firms from engaging in price discrimination practices that are likely to have the effect of impeding the ability of small and medium businesses or firms controlled or owned by historically disadvantaged persons in participating effectively. It is also prohibited for such dominant firm to avoid purchasing from such suppliers (or selling to such customers) as a way of circumventing the above provisions.

The Amendment Act will only come into operation on a date to be declared by the President. Some provisions may be capable of introduction immediately, but others will require more time to implement. For example, the Amendment Act requires the Minister of Economic Development to make regulations in relation to a number of provisions, including regarding the application of the provisions regarding horizontal and vertical conduct as well as the abuse of dominance provisions. In anticipation of the introduction of the Amendment Act, in December 2018 the Minister of Economic Development published draft regulations pertaining to buyer power, price discrimination and the definitions of small and medium business. Interested parties have provided input, and second drafts are now awaited.

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