

## **Local Procurement Seminar: Commissioner Tembinkosi Bonakele's welcome address**

***01 July 2015, Competition Commission Health Inquiry, Travenna Building,  
Sunnyside***

Minister Ibrahim Patel

Colleagues from various government departments

Management and staff of the Competition Commission

When I briefly left the Commission back in 2013, I was called by DPE to facilitate a workshop. It turned out to be a workshop about local procurement in the mining sector, and involved Eskom and Transnet. I was worried that I was being asked to facilitate a cartel. When I heard what the workshop was about, I was very comfortable and gave participants comfort that I did not see any contraventions in what they were planning to do. But the Commission was there, and even though it confirmed that there seem to be no contravention, it issued a veiled warning to the participants that the path they were embarking on is full of competition transgression risks. I suppose, this is one of the reasons we are here today.

Minister because some view the Commission a gun wielding sheriff here waiting to shoot at anything that resembles a criminal, I need to explain the context of our interventions in matters of this nature.

### ***Background and context***

The Competition Commission is essentially an economic agency, with some law enforcement responsibilities in areas like cartel enforcement. That is why the Minister of Economic Development, and not the minister of Justice, exercise oversight over it. And competition policy is but one part of a range of policy instruments to address our economic challenges.

South Africa is facing significant economic challenges. We need to accelerate the growth rate to create wealth that enhances the standard of living for all South Africans, dramatically increase employment creation; develop industrial capabilities to decrease the country's dependence on commodity exports; and transform the ownership and management profile of the economy to reflect that of the broader South African population. The Commission's strategy for the next five years is driven by its vision to contribute to a growing and inclusive economy. This vision is aligned to the National Development Plan, the New Growth Path and the Industrial Policy Action Plan. The Commission is but one part of a number of instruments of government aimed at attaining this vision. The Commission accepts upfront that there is a balancing act that needs to be struck to attain this vision of a growing and inclusive economy as there are sometimes competing objectives and tensions between different the different instruments. What is paramount is to take a long term view and to look at sustainable solutions that ensure that South Africa is able to achieve its strategic developmental goals.

There are different drivers of investment for different sectors of the economy. The most fundamental driver of investment in intermediate and advanced manufacturing in an economy is the perception of the scale, consistency and quality of the national demand for a product or service. Quite simply, the greater the scale of national demand, the greater the ability to amortise the costs of localisation across a large number of units that are produced. Greater scale also allows for a continuous learning process which results in increased productivity and competitiveness. A high level of consistency of demand is also required. If demand is sporadic or if it fluctuates between feast and famine too much, then the process of industrialisation will likewise be sporadic and uneven to the point where trust between industry and their customers breakdown and industry will stop investing.

South Africa, as a medium sized economy needs to optimise the demand created by government and large enterprises. Strategic procurement is therefore a logical response aimed at to supporting supplier development and localisation. We understand that sophisticated planning capability is required to optimise the demand platform for localisation.

### ***Pros and cons of local procurement***

The Commission accepts that an effectively implemented local procurement strategy can be pro-competitive by reducing barriers to market entry and expansion for small to medium-sized firms (“SMMEs”) thereby contributing to dynamism and transformation of ownership in the economy. Local Procurement can also lead to the development of local industries, the prevention of job losses and creation of jobs and the re-building of those ‘at-risk’ industries that have competitiveness potential. These pro-competitive gains are actually in alignment with some of the objectives of the Competition Act.

Local Procurement can, however, also be potentially anti-competitive. If Local Procurement drives are implemented in such a manner that only a small number of firms are compliant with the adopted standard, then competing technologies and firms face a barrier to entry and may be potentially excluded from the market. In this instance removing actual or potential competitors which do not comply with the local content requirement may entrench existing local cartels or create conditions conducive to cartel activity. The implementation may also confer market power to certain firms that are then able to exploit this market power to exclude other firms or to raise prices to the detriment of consumers. It may also give rise to the exchange or sharing of information that is competitively sensitive and could lead to the outcomes I have just mentioned.

### ***Solutions***

What then are the solutions to these challenges:

- Legitimate joint ventures whose purpose is to achieve a pro-competitive objective
- Knowing exactly what amounts to a contravention of the Act, both on the part of those driving local procurement initiatives well as industry actors
- Designation of strategic industries or sectors to ensure the economic stability of such industry or sector.

The complexities involved also more importantly call upon policy makers and agencies to work together in a ***collaborative*** manner e.g. in designation of

industries. The state has the primary function of designation but it should also ensure that in so doing it does not harm competition. Consideration should be paid to the number of firms in the relevant industry or sector, the duration of the period of designation.

This collaboration should extend to working together to bring the private sector on board. The Commission is aware that the private sector often raises concerns around potential contraventions of the Competition Act. Whilst in certain instances these concerns are legitimate, they have also been raised to resist every state initiative to get industries to work. I must also state categorically that the instances of collaboration discussed above do not constitute a contravention of the Act. I can neither see price fixing, market allocation nor bid rigging in them. The Commission's primary concern would be that there are safeguards in place to avoid any collusive conduct and exclusion of small players, whether through exclusionary standard setting or foreclosure from access to key inputs or customers by a dominant firm.

### ***Conclusion***

Today's seminar is the beginning of a conversation amongst all stakeholders which should lead to a common understanding as to how local procurement, as a policy instrument, can be implemented in a manner that enables it to contribute to increased total welfare through promoting local manufacturers and suppliers, without compromising competition and the benefits thereof.