

MEDIA RELEASE

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Competition Commission amends Practitioner Update on risk mitigation financial transactions

As part of its mandate, the Commission is empowered in terms of section 79 of the Competition Act 89 of 1998, as amended (the Competition Act) to prepare and publish Guidelines to indicate and clarify the Commission's policy approach on any matter within its jurisdiction. These Guidelines are not binding on the Commission, the Competition Tribunal or the Competition Appeal Court in the exercise of their respective powers in terms of the Competition Act.

Currently, in terms of the Commission's Practitioner Update 4 dealing with risk mitigation financial transactions, registered banking institutions which acquire control over the business assets or the business of the debtor upon default by the debtor of its obligations in terms of the finance agreement are not required to notify the acquisition to the Commission in terms of the merger notification provisions of the Competition Act provided that the bank disposes of the assets or its interest in the business of the debtor within a period of twelve (12) months from the date of the acquisition.

The Commission's policy approach to such acquisitions is consistent with international practice and is in recognition of the fact that the principal objective of risk mitigation financial transactions in such circumstances is to secure the interests of the financier in the finance transaction to recoup the capital advanced to the debtor.

The Commission has decided to amend Practitioner Update 4 in order to extend:

- the exemption in Practitioner Update 4 to risk mitigation financial transactions entered into by state owned finance institutions authorised to provide finance in the ordinary course of business; and
- the twelve (12) months period for the disposal of the assets or the business of the debtor to twenty-four (24) months.

The Commission's amendment of Practitioner Update 4 dealing with risk mitigation financial transactions follows an earlier amendment to the Commission's Practitioner Update 5 which exempted registered banking institutions from notifying to the Commission asset securitisation schemes. A securitisation scheme is one of the alternative forms of obtaining funding in contrast to traditional bank loans, or debt or equity financing.

The Commission extended the exemption in Practitioner Update 5 to asset securitisation schemes entered into by non-banking institutions provided the asset securitisation scheme is in accordance with the Reserve Bank's regulations. The purpose of this amendment to Practitioner Update 5 was to, inter alia, align the Commission's policy approach to the current regulatory framework governing asset securitisation.

The Commission hopes that these amendments will contribute towards the lowering of transaction costs in respect of risk mitigation financial transactions and asset securitisation schemes.

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