



competition commission
south africa

PRESS RELEASE

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**COMMISSION RELEASES BUYER POWER
GUIDELINES THAT GIVE BOOST TO SMALL BUSINESS**

The Competition Commission has issued the Price Discrimination and Buyer Power Guidelines aimed at bringing more fairness for emerging entrepreneurs and small businesses after the draft version was released for public comment late last year.

The objective of the buyer power provisions is to enhance the participation of small and medium businesses (SMEs) and historically disadvantaged persons (HDP) firms in the economy by protecting these firms from unfair exploitation by dominant buyers of their products.

The regulations deal with buyer power and price discrimination in terms of (section 8(4) and (section 9) respectively following the Amendments to the Competition Act (the Act). The new buyer power provisions prohibit a dominant buyer in designated sectors from imposing unfair prices or trading conditions on SME or (HDP firms).

The new section (8)(4) of the Act came into operation on 6 January 2020 and Ministerial Regulations were gazetted on 13 February 2020 (Gazette No. 43018) which set out the factors and benchmarks for determining whether a price or trading condition is unfair. The Ministerial Regulations also designated the sectors to which the new buyer power provisions will apply, namely the agro-processing, grocery wholesale & retail, eCommerce and online services.

The Commission issued draft guidelines for public comment last October alongside the draft Ministerial Regulations. The Commission reviewed the public submissions and the final Ministerial Regulations, making changes to the guidelines where appropriate.

The publication of the final guidelines on the Buyer Power Provisions provides clarity to both dominant buyers and suppliers as to how the new legislation will be enforced by the Commission. This includes not only the unfair pricing and trading condition provisions, but also the avoidance provisions whereby it is a contravention to avoid buying from designated suppliers in order to avoid the application of fair treatment under the buyer power provisions.

The guidelines are likely to evolve as the Commission gains experience in the enforcement of the provisions, but also as precedent is set within the Competition Tribunal and Appeal Court.

Accompanying the publication of the guidelines are easy guide summaries of what the Commission considers to be unfair trading conditions in the designated sectors, the types of pricing imposed on suppliers that are likely to be considered unfair, and answers to a number of Frequently Asked Questions as to the application of the provision that will assist with compliance.

Competition Commissioner Bonakele welcomed the release of the guidelines. “The buyer power provisions present an opportunity for SMEs or HDP firms to effectively participate in the economy without undue hindrances as a result of abuse of market power by dominant buyers. This is an important step towards the realisation of a growing and inclusive economy in South Africa. These guidelines also come at an important time when the Commission is seeing such participation in the economy under threat from the COVID-19 crisis,” he said.

“Increasingly we are seeing powerful buyers unfairly trying to shift their own economic hardship onto their suppliers which puts the sustainability of the suppliers at risk. The Commission has already taken enforcement action under these provisions in the dairy industry and is looking to apply them urgently in other parts of the food value chain and online services. The guidelines provide a clear set of rights for small and historically disadvantaged suppliers to stand by in their negotiations with powerful buyers,” he added.

[ENDS]

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