

# Trends in Competition Law in 2016

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2016 is set to be an important year in competition law, both in South Africa and on the rest of the continent.



## Changes to law

In South Africa, the implementation or partial implementation of the Competition Amendment Act is expected in 2016. Two new amendments of importance are those that involve complex monopolies and the criminalisation of cartel conduct. Complex monopolies exist where at least 75% of goods/services are supplied by five or less firms. These firms act in a parallel, conscious or co-ordinated manner without agreement and this has the effect of preventing or lessening competition, unless a firm shows otherwise.

The Minister for Economic Development, Ebrahim Patel, has stated that his department will be exploring the possibility of consolidating regulators to balance the specialist expertise within sector regulators with the broader economic and legal capacity that the competition authorities have built up over the years.

It was made clear that the Minister intends to introduce legislation to further strengthen efforts to tackle anti-competitive practices which impose unnecessary costs on consumers, undermine industrial policy objectives and reduce the competitiveness of the economy. As such, there should be further clarity from the Department of Economic Development in regard to the implementation of the Competition Amendment Act (either in whole or in part) during the course of 2016. In addition, it appears that more changes to the Competition Act, through the introduction of a new Competition Amendment Bill, may be on the horizon.

## Market inquiries

Two big market inquiries are expected to be finalised in 2016. According to the Competition Commission, the Liquefied Petroleum Gas market inquiry will be completed by March 2016. The inquiry into the Private Healthcare Sector will be conducted in 2016, with the final report expected to be published by the end of the year. The findings of these inquiries will guide the competition authorities as to whether or not to take further action in these sectors. The findings will also aid businesses in all sectors that might be unaware they are breaching competition rules.

## Public interest conditions

The competition authorities in South Africa have also increased their focus on public interest considerations in merger analysis. While the regulator cannot divorce public interest from competition analysis, it also cannot over-reach in its application of public interest if it will result in unintended consequences. More clarity on public interest decisions is needed. We can expect further guidance when the draft Public Interest Guidelines are finalised, hopefully also in 2016. In this regard, the draft Guidelines were revised in late December 2015, and interested parties have until the end of January to comment on the revisions.

## Competition law in Africa

Many African countries have recognised the value of competition and as a result have already introduced, or are in the process of introducing, competition regimes. Competition law is therefore also expected to play a critical role on the African continent in 2016. It is anticipated that the cases in Africa will become more complex as time goes on.

Burundi, Comoros, the Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia and Zimbabwe now fall under the Common Market for Eastern and Southern Africa (COMESA), with the COMESA competition law regime becoming operative at the beginning of 2013 (and the COMESA Competition Rules amended in March 2015).

These are still a few COMESA member countries who have no domestic competition regimes in place, namely Democratic Republic of Congo, Djibouti, Eritrea, Libya and Uganda. Others, such as Malawi and Kenya, have recently updated their competition legislation and there are more member countries who are expected to announce competition law developments soon.

## MoUs

Last year, the South African Competition Commission and Namibian Competition Commission entered into a Memorandum of Understanding (MoU) to promote cooperation in competition law enforcement and policy. This is the second MoU entered into between two African competition authorities, the other being between the COMESA Competition Commission and the Malawi Competition and Fair Trading Commission.

The heads of Competition authorities from Brazil, Russia, India, China and South Africa (BRICS) also recently signed a MoU to co-operate in the field of competition policy setting in motion a policy to share best practices and conduct joint studies in the competition law sector in the BRICS countries.

It will be interesting to see how these relationships unfold in 2016.

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