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Contents

<i>No.</i>		<i>Gazette No.</i>	<i>Page No.</i>
PROCLAMATIONS • PROKLAMASIES			
10	Competition Amendment Act (18/2018): Date on which the sections of the Act specified in the Schedule hereto shall come into operation.....	43018	4
10	Wysigingswet op Mededinging (18/2018): Datum waarop bepaalde artikels van publikasie van die Wet, in werking sal tree.....	43018	6
GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS			
Economic Development Department/ Ekonomiese Ontwikkeling Departement			
168	Competition Act (89/1998): Regulations on Buyer Power made by the Minister under Competition Act, 1998.....	43018	9
169	Competition Act (89/1998): Regulations on Price Discrimination made by the Minister under Competition Act, 1998.....	43018	14

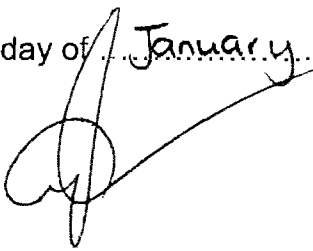
PROCLAMATIONS • PROKLAMASIES

PROCLAMATION NO. 10 OF 2020

*by the**President of the Republic of South Africa***COMMENCEMENT OF CERTAIN SECTIONS OF THE COMPETITION
AMENDMENT ACT, 2018 (ACT NO. 18 OF 2018)**

In terms of section 46 of the Competition Amendment Act, 2018 (Act No. 18 of 2018), I hereby fix the date of publication of this Proclamation in the *Gazette* as the date on which the sections of the Act specified in the Schedule hereto shall come into operation.

Given under my Hand and the Seal of the Republic of South Africa at *Waterkloof*
this *06* day of *January* Two thousand and ~~nineteen~~ *twenty*

**PRESIDENT****MINISTER OF THE CABINET**

SCHEDULE**COMMENCEMENT OF CERTAIN SECTIONS OF THE COMPETITION
AMENDMENT ACT, 2018 (ACT NO. 18 OF 2018)**

Sections specified in the following table take effect on the date of publication of the accompanying Proclamation in the *Gazette*:

Section 5, in so far as it relates to section 8(4) of the Competition Act, No. 89 of 1998
Section 6
Sections 27 to 28
Section 33(a), in so far as it relates to sections 8(4) and 9(1A) of the Competition Act, No. 89 of 1998

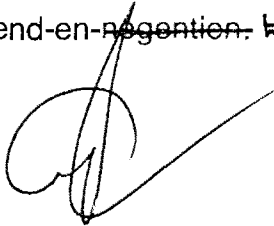
PROKLAMASIE NO. 10 VAN 2020
van die
PRESIDENT VAN DIE REPUBLIEK VAN SUID-AFRIKA

**INWERKINGTREDING VAN BEPAALDE ARTIKELS VAN DIE WYSIGINGSWET
OP MEDEDINGING, 2018 (WET NO. 18 VAN 2018)**

Kragtens artikel 46 van die Wysigingswet op Mededinging, 2018 (Wet No. 18 van 2018), bepaal ek hiermee dat die artikels van die Wet wat in die Bylae hierby vermeld word, in werking tree op die datum van publikasie van hierdie Proklamasie in die *Staatskoerant*.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te
Waterkloof op hede die 06 dag van ... Januarie

~~Tweeuisend-en-ogentien~~ kwintig



PRESIDENT



MINISTER VAN DIE KABINET

BYLAE**INWERKINGTREDING VAN BEPAALDE ARTIKELS VAN DIE WYSIGINGSWET
OP MEDEDINGING, 2018 (WET NO. 18 VAN 2018)**

Die artikels wat in die tabel hieronder vermeld word, tree in werking op die datum van publikasie van die meegaande Proklamasie in die *Staatskoerant*:

Artikel 5, in die mate waartoe dit betrekking het op artikel 8(4) van die Wet op Mededinging, No. 89 van 1998
Artikel 6
Artikels 27 tot 28
Artikel 33(a), in die mate waartoe dit betrekking het op artikels 8(4) en 9(1A) van die Wet op Mededinging, No. 89 van 1998

81/172488
(Z 19E)**PRESIDENT'S MINUTE NO 546****COMMENCEMENT OF CERTAIN SECTIONS OF THE COMPETITION AMENDMENT ACT, 2018 (ACT NO. 18 OF 2018)**

In terms of section 46 of the Competition Amendment Act, 2018 (Act No. 18 of 2018), I hereby, by means of the accompanying proclamations in English and Afrikaans, determine that the sections specified in the Schedules to the accompanying Proclamations, shall come into operation on the date determined in the Proclamations.

Given under my Hand and the Seal of the Republic of South Africa at Waterkloof this 06 day of January Two Thousand and Nineteen twenty

A handwritten signature in black ink, appearing to be Cyril Ramaphosa, written over a horizontal line.

PRESIDENT

A handwritten signature in black ink, appearing to be Ebrahim Rasool, written over a horizontal line.

MINISTER OF THE CABINET

GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

ECONOMIC DEVELOPMENT DEPARTMENT

NO. 168

13 FEBRUARY 2020

COMPETITION ACT, 1998 (ACT NO. 89 OF 1998)**REGULATIONS ON BUYER POWER MADE BY THE MINISTER UNDER
COMPETITION ACT, 1998**

I, Ebrahim Patel, Minister of Trade and Industry, after consultation with the Competition Commission, hereby in terms of section 8(4) read with section 78 of the Competition Act, 1998 (Act No. 89 of 1998), make the regulations as set out in the Schedule hereto.

The regulations will come into effect on the date of publication hereof in the *Gazette*.



MR EBRAHIM PATEL
MINISTER OF TRADE AND INDUSTRY
DATE: 2020/02/12.....

SCHEDULE**BUYER POWER REGULATIONS****Interpretation****1. In these Regulations—**

- (a) a word or expression to which a meaning has been assigned in the Act, has the meaning so assigned,;
- (b) a reference to a section by number refers to the corresponding section of the Act;
- (c) a reference to a regulation by number refers to the corresponding item of these Regulations, and

unless the context indicates otherwise,

"agro-processing sector" constitutes the processing of raw materials and intermediate products derived from the agricultural sector, including agriculture, forestry and fisheries;

"designated class of supplier" means small business or medium sized business as defined in section 1 of the Act and any regulations made by the Minister; or alternatively a firm controlled and owned by historically disadvantaged persons within the meaning of the Act and within the benchmarks determined by these Regulations;

"grocery wholesale and retail sector" constitutes the wholesale or retail of food, pet food, drinks, cleaning products, toiletries and household goods;

"ecommerce" includes the sale, or facilitation of sale, of goods supplied by third party businesses;

"ecommerce and online services sector" constitutes the online sale of goods or services to businesses or consumers;

"online services" include—

- (a) the provision or facilitation of a service using contracted individuals or other businesses to supply the service that forms the basis for an online sale; and
- (b) online e-commerce market places, online application stores and so-called 'gig economy' services.

"price" includes discounts, rebates, commissions, allowances or credit;

"trading conditions" include any explicit terms contained in contractual arrangements as well as any implied or actual trading terms implemented by the buyer outside of the supply contract; and

"the Act" means the Competition Act, 1998 (Act No. 89 of 1998).

Purpose

2. The purpose of these Regulations is to—

- (a) designate the sectors of dominant firms which are prohibited from requiring or imposing unfair prices or other trading conditions on a supplier;
- (b) set out the relevant factors and benchmarks for determining whether prices and other trading conditions imposed are unfair; and
- (c) in respect of firms owned or controlled by historically disadvantaged persons, set out the benchmarks for determining the firms to which section 8(4) applies.

Factors of buyer power to be satisfied to establish a contravention

3. The factors that must be considered in the establishment of a contravention of section 8(4)(a) include whether—

- (a) the buyer operates within a sector designated by the Minister in terms of regulation 6;
- (b) the buyer is dominant within the meaning of section 7;
- (c) the supplier falls within the designated class of suppliers;

- (d) the price or trading condition is required from or imposed on the supplier by the buyer; or
- (e) the price or trading condition is unfair.

Determination of unfair price

4. Factors and benchmarks for determining the unfairness of the price include the following:

- (a) The prices paid to other suppliers of like goods or services, in particular those outside the designated class, and whether such prices are higher;
- (b) the magnitude of any differences in prices to other suppliers of like goods or services;
- (c) whether reductions in the existing purchasing price are directly or indirectly required from, or imposed on, the supplier;
- (d) whether reductions to an existing purchasing price are retrospective, unilateral or unreasonable;
- (e) whether costs are directly or indirectly imposed on or required from the supplier which reduce the net price received by the supplier; or
- (f) whether the direct or indirect imposition or requirement of costs is retrospective, unilateral or unreasonable.

Trading conditions

5. Factors and benchmarks for determining whether a trading condition may be deemed unfair include the following:

- (a) The trading condition unreasonably transfers risks or costs onto a firm in the designated class of suppliers;
- (b) the trading condition is one-sided, onerous or not proportionate to the objective of the clause (such as unduly long payment terms); or
- (c) the trading condition bears no reasonable relation to the objective of the supply agreement.

Designated sectors

6. The Regulations apply to the following sectors:
- (a) Grocery wholesale and retail sector;
 - (b) agro-processing sector; and
 - (c) ecommerce and online services sector.

Application to firms controlled or owned by historically disadvantaged persons

7. These Regulations apply to firms controlled and owned by historically disadvantaged persons that supply 20 per cent or less of the purchases of the dominant buyer for the relevant goods or service.

Guidelines

8. The Competition Commission may, in terms of section 79, issue guidelines in respect of its enforcement approach to section 8(4) in light of these regulations.

Short Title

9. These Regulations are called the Buyer Power Regulations, 2020.

ECONOMIC DEVELOPMENT DEPARTMENT

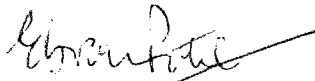
NO. 169

13 FEBRUARY 2020

COMPETITION ACT, 1998 (ACT NO. 89 OF 1989)**REGULATIONS ON PRICE DISCRIMINATION MADE BY THE MINISTER UNDER
COMPETITION ACT, 1998**

I, Ebrahim Patel, Minister of Trade and Industry, after consultation with the Competition Commission, hereby in terms of section 9(4) read with section 78 of the Competition Act, 1998 (Act No. 89 of 1998), make the regulations as set out in the Schedule hereto.

The regulations will come into effect on the date of publication hereof in the *Gazette*.



MR EBRAHIM PATEL
MINISTER OF TRADE AND INDUSTRY
DATE: ...2020/02/12.....

SCHEDULE

PRICE DISCRIMINATION REGULATIONS

Interpretation

1. In these Regulations a word or expression to which a meaning has been assigned in the Act, has the meaning so assigned and, unless the context indicates otherwise—

"designated class of purchaser" means a small business or medium-sized business as defined in section 1 of the Act or any regulations made by the Minister; or alternatively a firm controlled and owned by historically disadvantaged persons within the meaning of the Act and within the benchmarks determined by these Regulations;

"Regulations" means the Price discrimination Regulations; and

"the Act" means the Competition Act, 1998 (Act No. 89 of 1998).

Purpose

2. The purpose of these Regulations are—
- (a) to give effect to section 9(1)(a)(ii) of the Act and to provide for the benchmarks for determining the application of section 9(1)(a)(ii) to *firms* owned and controlled by historically disadvantaged persons; and
 - (b) to set out the relevant factors and benchmarks for determining whether a

dominant *firm's* action is price discrimination that impedes the *participation* of *small and medium businesses* and *firms* controlled and owned by historically disadvantaged persons.

Factors of Price Discrimination to satisfy to establish a contravention

3. The factors that should each be considered in the establishment of a price discrimination contravention, includes:

- (a) The selling firm must be dominant within the meaning of section 7 of the Act;
- (b) there is differential treatment between the purchaser in the designated class of purchaser and other purchasers outside that class of the form of discrimination set out in section 9(1)(c) in respect of equivalent transactions for goods or services of like grade and quality as set out in section 9(1)(b) of the Act;
- (c) the differential treatment—
 - (i) does not make reasonable allowance for differences in the cost or likely cost of supplying the good or service based on differing places or methods of supply as set out in section 9(2)(a)(i) or (ii);
 - (ii) does not constitute an act of good faith to meet a competitor's price as set out in section 9(2)(b); or
 - (iii) is not a legitimate response to changes in market conditions as set out in section 9(2)(c); and

- (d) the differential treatment in price relative to other purchasers is likely to impede the effective participation of a firm or firms in the designated class of purchasers.

Price Discrimination

4. Factors and benchmarks that may be relevant as to whether the price discrimination by a dominant firm is likely to impede effective participation by a designated class of purchaser includes:

- (a) The extent of the difference in respect of price or other factors outlined in section 9(1)(c) of the Act relative to other purchasers in the same market or in markets in which the purchaser in the designated class is a potential competitor;
- (b) the significance of the input in the cost structure of the purchaser in the designated class of purchaser or as a driver of sales in the downstream market for the purchaser in the designated class of purchaser;
- (c) the duration and timing of the price differential;
- (d) the likelihood that the differential treatment would result in the purchaser in the designated class of purchaser facing decreased demand for its goods or services in the downstream market; and
- (e) the likelihood that the differential treatment would result in decreased investment by the purchaser in the designated class.

Application to firms controlled and owned by historically disadvantaged persons

5. These Regulations apply to firms controlled and owned by historically disadvantaged persons that purchase less than 20% of the relevant good or service supplied by the dominant seller over the same period as the discrimination.

Guidelines

6. The Competition Commission may issue guidelines in terms of section 79 of the Act in respect of its enforcement approach to section 9(1)(a)(ii) in light of these regulations.

Short Title

7. These Regulations are called the Price Discrimination Regulations, 2020.