

Mr Mandla Isaac Rayi, MP
Chairperson of the Select Committee on Economic and Business Development
PO Box 15,
Parliament of South Africa,
Cape Town
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Dear Honourable Rayi,

**RE: SUBMISSION TO THE SELECT COMMITTEE ON THE COMPETITION
AMENDMENT BILL B23-2018**

The Black Economic Empowerment Advisory Council, would like to submit the views and desire to raise the following areas for consideration by the committee in respect of the Competition Bill;

1. The provisions of Section 2 of the Act – Purpose of Act:
 - *to expand opportunities for South African participation in world markets and recognise the role of foreign competition in the Republic;*
 - *to ensure that small and medium-sized enterprises have an equitable opportunity to participate in the economy; and*
 - *to promote a greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged persons.*

The Council holds a view that the Act and the Amendment Bill do not adequately address the intentions articulated above and submits that a broader policy discussion is required, as the legislative amendment process has limitations.

2. Notwithstanding the above, the BEE Advisory Council would advise that the following be considered;
 - a) that under section 2(f), the expression historically disadvantaged persons, be replaced with black persons as defined under the BBBEE Act.
 - b) Under Chapter 3 Merger Control: - that the important aspect of black ownership constitutes one of the critical considerations by the Competition

Commission. The mechanism being recommended is the applicant or Parties must submit either;

- the BBBEE Commission BEE registration certificate, as part of the transaction, or
 - If the merger involves not expansion of BEE ownership, submit a report for the consideration by the BBBEE Commissioner as to why the merger cannot advance the purpose of the Act to expand the ownership by historically disadvantaged individuals.
- c) Under Section 43 Market Inquiries: - that the Competition Commission, in consultation with the BEE Advisory Council & BBBEE Commission, ought to conduct market inquiries on sectors considered to be performing poorly in terms of the BBBEE Commissioner's annual sector performance report. And that the remedial recommendations be binding and include divestitures that seeks to address Black Ownership and SME development.

The BEE Advisory Council is of the view that this is a critical legal instrument to proactively and adequately address the market structures that continue to inhibit inclusive economic growth. In that regard, it is requested that the select committee afford the BEE Advisory Council an opportunity to make detailed presentation on the above proposed amendment to the Competition Bill.

We hope our submission will receive favourable attention and assist in accelerating the implementation of the transformation agenda in the South African Economy.

Yours Sincerely.



Ms Koko Khumalo,
Convener: BEE Advisory Council.
Date: 07/11/2018