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Department:
Trade, Industry and Competition
REPUBLIC OF SOUTH AFRICA

THE NATIONAL ASSEMBLY

QUESTION FOR WRITTEN REPLY

QUESTION NO. 7061

Mr L Mkutu (ANC) to ask the Minister of Trade, Industry and Competition:

Whether any reforms are aimed at strengthening the Competition Commission, especially as it relates to mergers and acquisitions wherein big firms pick and choose their own black economic empowerment partners without due regard for broad-based black economic empowerment legislation; if not, what is the position in this regard; if so, what are the relevant details? NW7902E

REPLY:

There are no planned reforms on the Competition Act following the amendments of the Act in 2019. The Commission is however embarking on a consultative process aimed at reviewing and further enhancing the Revised Public Interest Guidelines. As a point of departure, the Commission's position is that section 12A(3)(e) of the Competition Act confers a positive obligation on the merging parties to promote a greater spread of ownership, in particular by historically disadvantaged persons and workers. The choice of HDP partners is made by the merging parties with the partner required to comply with the definition of a historical disadvantaged person in section 3(2) of the Competition Act. The Commission assesses the HDP transaction for compliance with section 3(2) of the Act and/or the conditions imposed in the merger. In terms of the Revised Public Interest Guidelines, a merger involving a person who does not fall within the definition in section 3(2) of the Competition Act will not be responsive to section 12A(3)(e) of the Competition Act. The Minister is of the view that the choice of HDP partners should be separate from the assessment transaction for objective and transparent regulation of mergers.

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