

Shake-up to halt pricing abuse urged

Dismantling conglomerates an option

Amanda Visser

ECONOMIC Development Minister Ebrahim Patel wants a shift away from the focus on market conduct in competition policy towards a greater focus on changes to the industrial structure of the economy.

He wants to ensure the competition authorities have the ability to break up conglomerates that abuse their dominance to the detriment of consumers and other market players.

The economy has remained highly concentrated, despite the Competition Act being in place for 15 years.

“This may require a greater resort to divestiture remedies to address market abuse,” Patel said yesterday.

“If we cannot find solutions in any other way [to address market abuse], divestiture has to be on the table.”

Patel was speaking at a competition law conference. He said authorities had been cautious about breaking up the operations of companies engaged in abusive conduct.

They had not tested whether the provisions of the Competition Act gave them the necessary power.

He referred to Sasol’s settlement agreement with the Competition Commission in 2010 to sell five of its fertiliser plants after it

was found guilty of charging excessive prices.

Patel said he was not convinced a breakup would have been possible if the company had not volunteered to sell its assets.

“Radical change” to the economy’s structure was needed to speed up development, employment and industrial capacity.

“You cannot take the old structure and say if it was performing at 2%, we can solve the problems of this

‘ **This may require a greater resort to divestiture remedies**

society by getting it to perform at 4% or 6%.”

He referred to possible changes to the Competition Act to strengthen the Competition Commission and Competition Tribunal’s hand in finding pricing remedies, particularly for critical input products, such as steel, polymers and fertilisers.

ArcelorMittal South Africa and Sasol Chemicals Industries have been in the competition authorities’ spotlight because of their pricing policies.

The commission fined Sasol R534-million in June

for excessive pricing in its polypropylene and propylene business.

Part of the tribunal’s finding was that Sasol should charge the same price to all buyers.

Sasol has taken the tribunal’s decision on appeal before the Competition Appeal Court.

ArcelorMittal has been found guilty of excessive pricing but settled the matter out of court.

Werksmans Attorneys competition practice head Paul Coetser said one of the failures of the Competition Commission was its limited success with abuse of dominance cases.

“There had been only 13 successful cases over the past 15 years, seven of which the commission settled with the contravening parties,” he said.

“There have only been six litigated cases and they have taken years to come to fruition. There is something wrong with that.

“South Africa is still a very concentrated economy, with very concentrated markets, and unless we can all believe that none of the firms in those markets is contravening the Competition Act, there is something seriously to be looked at,” he said.

But he warned against placing all the government’s industrial policy objectives on the shoulders of the commission.