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Sent: 29 August 2018 08:45 PM

To: Peter-Paul Mbele <[pmbele@parliament.gov.za](mailto:pmbele@parliament.gov.za)>

Subject: Broadway Sweets Submission to the Competition Commission

> Dear Madam Chairperson,

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> Thank you for the opportunity to supplement our oral presentation with a further written submission on the Competition Amendment Bill.

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> In our oral submission I discussed a number of the ways dominant firms abuse their positions of power unfairly, to make it hard for small and medium businesses, especially black-owned businesses, to participate in their chosen market.

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> Some of these unfair, uncompetitive practices include margin degradation, rebates, refusing to provide shelf space, stocking of retailer brands (house brands), unfair returns policies, charging rental for space and for signage, unfavorable payment terms and the charging of excessive advertising allowances. These practices are very common in the retail market when dealing with the large retailers, and I have personally felt the effects of this in my business. In the case of Broadway Sweets, I have chosen not to deal with large retailers anymore. This is obviously a challenge given how concentrated the retail market is, and it stops me from growing my business, but it’s a choice I have made to sacrifice growth over having to deal with the unfair practices of the large retailers.

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> The provisions in the Competition Amendment Bill which deal with buyer power go some way to giving the authorities the tools to address these issues. The relevant sections of the Bill include 8(1)(d)(vii) which specifically says that it is prohibited for a dominant firm to force its suppliers to provide their goods or services at a price which impedes their ability to participate. This provision is especially important for SMEs and black-owned firms. Without this kind of protection, big businesses will ensure that their profit margins remain healthy while, small business struggles to stay alive.

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> The provisions in S 9(1)(a) which change the competition test to make it easier for small businesses to bring a case of price discrimination against a big firm are also important. Up until now it has been almost impossible for small business to do this given how difficult it is for small businesses to show “substantial” impact. The case of Nationwide Polls v. Sasol was an indication of this.

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> The provisions in 9(4) which say that the Commission must also look at price discrimination with regards to suppliers is also important in addressing some of our concerns. The rebates applied by large retailers to their suppliers, particularly SMEs, is a form of discrimination, which cannot be defended as reasonable by these dominant firms. SMEs just have to accept it because they don’t have another option. If you don’t accept it, retailers refuse to stock your products. This is especially a problem for suppliers of house brand products. This surely can’t be fair competition.

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> The provisions which shift the onus to dominant firms are also important in addressing our concerns. These are contained in 8(2) with respects to abuse of dominance and 9(3) with respects to price discrimination. We believe that this sends a strong message to big business that we are trying to create an economy of inclusivity, and that it important to create space for the participation of SMEs and black-owned firms.

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> In terms of the market inquiry provisions which will allow the Commission to conduct inquiries into the structure of markets and to determine if they are anti-competitive, we are also supportive. We hope that the Commission will be appropriately funded and capacitated to ensure that they are able to fulfil this very important function in our society. We can imagine that these market inquiries will be highly contested but ensuring that we have an appropriate process to address the continued high levels of economic concentration post apartheid is essential to unlocking the productive talent of all South Africa’s people.

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> Finally, we ask the Committee to consider the threshold to determine a dominant firm. While a change has not been proposed in the Bill, we see it as a key issue for many SMEs. Many of the firms in the retail sector, for example, are able to abuse their positions of power even though their market share is considerably less than 45%. This is true especially in the case of their dealings with their suppliers.

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> Once again we thank you for the opportunity to contribute to the parliamentary process. We believe the Competition Amendment Bill is a very important step forward in creating a more just and equitable society in South Africa, and we place on record our support for its objectives and the above mentioned provisions.

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> We humbly request that you accept this submission as part of your deliberations.

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> Sincerely,

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