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independent DEMOCRATS

18 April 2008

By Hand

Honourable Madam Speaker

I hereby submit a memorandum in terms of the Rules of the Assembly for a proposed Private Member's Bill on the amendment of the Competition Act.

Please find the Memorandum attached.

Yours truly,

Patricia de Lille, MP

18 April 2008

Confirmation of receipt

I SUSAN RABINOWITZ hereby wish to confirm receipt of the

Memorandum on the objects of the amendment of the Competition Act, delivered by Nomonde Cele on behalf Patricia de Lille, MP on the 18 April 2008.

Signature: *Rabenu*

Signed at: Cape Town

Date: 18/4/08

MEMORANDUM ON THE OBJECTS OF THE AMENDMENT OF THE COMPETITION ACT

1. BACKGROUND

The country has seen a large number of companies with various industries being investigated and subsequently fined for price fixing and other anti-competitive practices. In most cases these companies are penalized by means of monetary fines.

These companies continue their business activity and make up the financial loss resulting from the fine but the consumer never recovers.

The Competition Commission allows for either a fine or imprisonment or both but also sets limitations which do not necessarily have much impact on the company's turnover.

Price fixing impacts the poor of this country the most, they are not offered much automatic compensation for the losses incurred as a result of price fixing.

Section 74 of the Competition Act provides for the imposing of fines and imprisonment for contravening the Act, these sanctions are not adequate nor are they adequately tested against the impact of the crime.

2. OBJECTS OF THE BILL

The objects of this bill are to:

- 2.1 Ensure that in cases of proven price fixing in all industries and sectors; individuals guilty of such offences are penalized individually, separate from the legal entity.
- 2.2 To ensure that parties found guilty of price fixing are tried and sentenced according to South African Criminal law.
- 2.3 To secure more stringent monetary fines on legal entities in proportion to the profit made from price fixing and the impact on consumer.
- 3.4 To prescribe for judges to take into consideration such factors as the intention/motive of the offence.

4. FINANCIAL IMPLICATIONS FOR THE STATE

None

5. CONSTITUTIONAL IMPLICATIONS

This Amendment would be in line with section 170 and 171 of the Constitution.

6. PARLIAMENTARY PROCESSES

In terms of The Rules of the Assembly 209-13 and 230 and 234-7