



**PARLIAMENT**  
OF THE REPUBLIC OF SOUTH AFRICA

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Mr Ebrahim Patel  
Minister of Economic Development  
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## **REQUEST FOR INDEPENDENT INQUIRY INTO THE COMPETITION COMMISSION**

Dear Minister Patel

I am writing to you out of concern about various matters that reflect negatively on the Competition Commission. Some of these issues have been raised directly with me by concerned parties. Others are ventilated in today's edition of *Financial Mail*.

I believe that, taken together, these matters are of sufficient magnitude to warrant further investigation. This is in the interests of the Commission's institutional integrity and stability.

It is for this reason that I am asking you to appoint an independent inquiry into the concerns raised below.

Now that the Competition Amendment Bill has been approved by Cabinet and will soon make its way through the parliamentary process, it is critical to address these concerns urgently. After all, the proposed legislative amendments will significantly broaden the Commission's mandate and greatly enhance its powers. It is therefore vital to ensure that the Commission is beyond reproach.

Should you be willing to appoint an independent inquiry into the state of the Competition Commission, I would like to ask that it be required to investigate:

1. A pattern of behaviour that undermines the Commission's integrity, substantiated by recent court judgments. These include the finding by the Competition Appeal Court in *The Standard Bank of South Africa vs The Competition Commission of South Africa (160/CAC/Nov17)* that the Commission inexplicably and unjustifiably denied Standard Bank access to its record of investigation in the so-called forex case. More concerning is the ruling in June by KwaZulu-Natal Deputy Judge President Isaac Madondo in *Competition Commission vs Wilmar Continental Edible Oils and Fats (Pty) Ltd and others (13748/16P)*. The judge found that the Commission had acted dishonestly and with *mala fides* in obtaining warrants to conduct search and seizure raids. The Commission relied on conjecture, speculation and hearsay to obtain them. The regulator was guilty, the judge said, of a "serious breach of its duty of good faith" because it had withheld information and failed to disclose material facts to the court.
2. The precise nature of the professional and financial relationship between the Commission and

Ndzabandzaba Attorneys. The firm's principal partner, Antony Ndzabandzaba, previously served as head of training and development in the Commission's cartels division. Your reply to my Parliamentary Question (IQP No. 2097, IQP date 15 June 2018) states that since 1 January 2017, Ndzabandzaba Attorneys has been briefed on seven cartel cases at cost to the Commission of R 10 519 266. This represents 63% of the Commission's expenditure on briefing for such cases – a handsome and disproportionately high amount. I would like the inquiry to determine what value was added by Ndzabandzaba Attorneys in each of these cases. In addition, I would like to know the total amount of money that has been paid by the Commission to Ndzabandzaba Attorneys since the firm first started doing work for the Commission; the nature of this work; and whether it has included active participation on (and/or guidance of) so-called 'dawn raids' conducted by the Commission.

3. Potential conflicts of interest among members of the Commission's Executive Committee (EXCO). I draw your attention to the Auditor General's finding contained in the Commission's Annual Report for 2015/16: "Persons in service of the public entity whose close family members, partners or associates had a private or business interest in contracts awarded by the public entity failed to disclose such interest, as required by Treasury Regulation 16A8.4" (page 110, point 17). I would like an independent inquiry to establish whether, since 1 April 2014, any companies in which current members of the EXCO, their close family members, partners or associates have had a private or business interest, have been awarded contracts by the Commission; if so, (a) what was the

nature of the contract, (b) what was the nature of the interest and (c) was the interest disclosed?

4. The purported use of VIP security protection for members of the EXCO, including the Commissioner, the Deputy Commissioner, the Divisional Manager of Cartels and the Chief Financial Officer. I would like an independent inquiry to determine (a) which members of EXCO have been afforded this privilege (b) whether a security threat was conducted by the South African Police Service in each instance and what the relevant recommendation was (c) the period over which VIP security protection was provided in each instance and (d) the total cost to the Commission for the provision of all VIP security protection from the date it was first provided.
  
5. The procedural correctness of all recruitment- and appointment processes for management positions filled since 2015, with particular attention to the appointment of (a) Mr. David Maimela as the Commissioner's Chief of Staff, (b) Ms. Khanyisa Qobo as the Divisional Manager of Advocacy and Public Affairs, and (c) Mr Molatlhegi Kgauwe as Chief Financial Officer.

I trust that these concerns will meet with your urgent attention and I look forward to your response.

Yours faithfully

**Dr Michael Cardo MP**  
Democratic Alliance  
*Sent by fax and email*