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28 February 2019

Mr Ebrahim Patel
Minister of Economic Development
3rd Floor, Block A, DTI Campus
77 Meintjies Street, Sunnyside
Pretoria

Per email: ministry@economic.gov.za

**REQUEST FOR SUSPENSIONS AT COMPETITION
COMMISSION PENDING FINALISATION OF FORENSIC
INVESTIGATION**

Dear Minister Patel

I am writing to request that you suspend the Head of the Competition Commission, Mr Thembinkosi Bonakele, and other members of the Competition Commission's Executive Committee, pending the finalisation of a forensic investigation into irregularities at the Commission.

According to today's edition of the *Financial Mail*, the probe will delve into the financial affairs of the Commission's top executives to determine whether anyone is receiving kickbacks from external legal or IT service providers.

As you are aware, I wrote to you in July 2018 requesting the appointment of an independent inquiry into allegations of financial and administrative impropriety at the Commission.

In particular, I was concerned that Ndzabandzaba Attorneys, whose principal partner Antony Ndzabandzaba previously served as head of training and development in the Commission's cartels division, received R72m in payments from the Commission between January 2015 and August 2018. Between January 2015 and January 2017, Ndzabandzaba Attorneys was channelled 31 of 44 (or 70%) of all cartel cases outsourced by the Commission at a cost of over R10 million – a strangely disproportionate and lucrative share of the spoils.

Of the Commission's R40 million irregular expenditure in 2016/17, R13 million (or one third) made its way to Ndzabandzaba Attorneys. In 2017/18, of the Commission's R86 million irregular expenditure, over R29 million (again, one third) went to Ndzabandzaba Attorneys.

I am pleased that a forensic investigation has now been launched, as confirmed on p.51 of the 2019 Budget Review and in a recent letter from National Treasury to the Economic Development Department (EDD), whose contents are reported in today's *Financial Mail*.

However, for the investigation to be thorough and credible, it must be undertaken by an independent and competent forensic investigator.

At the same time, it would be untenable for Commissioner Bonakele and other members of the Commission's Executive Committee who are potentially implicated in the forensic investigation to remain in their positions while the investigation is underway.

The investigators must undertake their work without any obstruction or interference, perceived or real. For that reason I am requesting that you suspend, with immediate effect, Commissioner Bonakele; the Head of the Cartels Division, Mr Makgale Mohlala; and the Chief Financial Officer, Mr Molatlhegi Kgauwe.

The Commission's financial health is a source of great concern. The Commission's expenditure more than doubled from R199 million in 2013/14 to R422 million in 2017/18. The Commission recorded deficits of R78 million in 2016/17 and R69 million in 2017/2018. The Commission's accumulated surpluses have now been depleted. I understand that the Commission continues to spend beyond its budget despite interventions from National Treasury.

Moreover, the Commission's irregular expenditure has ballooned. The Auditor-General uncovered irregular expenditure of R128 million at the Commission over the past two financial years (2016/17 and 2017/18), much of which benefited Ndzabandzaba Attorneys and two firms that provided services in connection with "dawn raids" – Century Technical Solutions and Exatech.

I understand that the forensic investigation has been tasked with determining whether the procurement of these service providers was legal; whether the Commission derived tangible benefit from the service providers; the nature of the service providers' shareholding; the size and frequency of payments to the service providers; and whether any members of the Commission's Executive Committee received personal benefits from the service providers.

According to the 2019 Budget Review, an amount of R125 million set aside for the Commission to investigate cartels

and anticompetitive behaviour has been placed on hold pending the completion of the forensic investigation.

It is therefore imperative that the forensic investigation should proceed expeditiously. There must not be a whiff of doubt about the independence and credibility of the investigation. The Competition Commission's reputation, integrity and institutional stability are at stake.

For that reason, I would ask you to reveal the name of the forensic investigators and their terms of reference. And I would urge you to announce immediately the suspensions of Messrs. Bonakele, Mohlala and Kgauwe.

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 email*)