ECONOMIC DEVELOPMENT DEPARTMENT

NO. 1004 **15 SEPTEMBER 2017**

INVITATION FOR THE PUBLIC TO COMMENT ON THE AMENDMENTS TO THE METHOD OF CALCULATION AS SET OUT IN GENERAL NOTICE 216 OF 2009

I, Ebrahim Patel, Minister of Economic Development, hereby publish in terms of section 11 of the Competition Act 1998, (Act No. 89 of 1998), the proposed amendments to the Method of Calculation as set out in General Notice 216 of 2009, for public comment.

In order to provide background and context to the proposed amendments to the method of calculation, an explanatory note setting out the rationale for the proposed amendments to the Method of Calculation is attached hereto.

Interested persons must submit written comments on the proposed amendments to the Method of Calculation set out in General Notice 216 of 2009 published in Government Notice No. 31957 of 6 March 2009 not later than thirty (30) days from the date of publication of this notice to:

The Director General
Economic Development Department
Private Bag X 149
Pretoria
0001

EBRAHIM PATEL
MINISTER OF ECONOMIC DEVELOPMENT
DATE: 13 SEPTEMBER 2017

GENERAL EXPLANATORY NOTE:

[ ] Words in bold type in square brackets indicate omissions from existing enactments.

_______ Words underlined with a solid line indicate insertions in existing enactments.

SCHEDULE

Method of Calculation

[Generally accepted accounting practices apply] <u>International Financial Reporting Standards apply</u>

5. For the purposes of section 11 of the Act, the assets, and the turnover, of a firm in, into or from the Republic must be calculated in accordance with **[G.A.A.P]** <u>IFRS</u>, subject to the provisions of this notice.

Valuation of assets

6. For the purpose of section 11 of the Act, the asset value of a firm at any time is based on the gross value of the firm's assets as recorded on the firm's balance sheet for the end of the immediately previous financial year, <u>prior to the merger,</u> subject to sub-items (1) and (2).

(1) In particular –

(a) the asset value equals the total assets less any amount shown on that balance sheet for depreciation or diminution of value;

(b) the combined assets are to include all assets on the balance sheets of the firms concerned, including any goodwill or intangible assets included in their balance sheets;

(c) no deduction may be taken for liabilities or encumbrances of the firm;

(d) the combined assets are to be calculated on the basis of the combined assets before giving **[affect]** effect to the merger and accordingly the combined assets do not include any goodwill or intangible assets that would arise as a result of the merger;

(e) the combined assets are not adjusted for any investments the acquiring firm might have in the transferred firm or amounts due by one firm to the other; and

(f) assets in the Republic includes all assets arising from activities in the Republic.

(2) If, between the date of the financial statements being used to calculate the asset value of a firm, and the date on which that calculation is being made, the firm has acquired the whole or any part of a business, any subsidiary company, an investment in any associated company or any interest in a joint venture (collectively "the recently acquired assets") not shown on those financial statements, or divested itself of the whole or any part of a business, any subsidiary company, an investment in any associated company or an interest in any joint venture (collectively "the recently divested assets") shown on those financial statements –

(a) The following items must be added to the calculation of the firm's asset value if these items should, in terms of **[G.A.A.P]** IFRS, be included in the firm's asset value;

(i) The value of those recently acquired assets; and

(ii) Any asset received in exchange for those recently divested assets.

(b) The following items may be deducted in calculating the firm's asset value if these items were included in the firm's asset value:

(i) The value of those recently divested assets at the date of their divestiture; and

(ii) Any asset that was shown on the balance sheet and was subsequently used to acquire the recently acquired asset.

Calculation of annual turnover

7. (1) For the purpose of section 11 of the Act, the annual turnover of a firm at

any time is the gross revenue of that firm from income in, into or from the Republic, arising from the following transactions and events as recorded on the firm's income statement for the immediately previous financial year, subject to the provisions of sub-items (2), (3) and (4):

(a) the sale of goods;

(b) the rendering of services; and

(c) the use by others of the firm's assets yielding interest, royalties and dividends.

(2) In particular –

(a) When calculating turnover the following amounts may be excluded:

(i) any amount that is properly excluded from gross revenue in accordance with **[G.A.A.P]** IFRS;

(ii) taxes, rebates, or any similar amount calculated and paid in direct relation to revenue, as for example, sales tax, value added tax, excise duties, and sales rebates, may be deducted from gross revenue;

(b) no adjustment is made for any amount that represents a duplication arising from transactions between the acquiring firm and the transferred firm;

(c) revenue excludes gains arising from non current assets and from foreign currency transactions; and

(d) for banks and insurance firms revenue includes those amounts of income required to be included in an income statement in terms of **[G.A.A.P]** IFRS, but excluding those amounts contemplated in paragraph (c).

(3) If, between the date of the financial statements being used to calculate the turnover of a firm, and the date on which that calculation is being made, the firm has acquired the whole or any part of a business, any subsidiary company, an investment in any associated company or any interest in a joint venture (collectively "the recently acquired assets") not shown on those financial statements, or divested itself of the whole

or any part of a business, any subsidiary company, an investment in any associated company or an interest in any joint venture (collectively "the recently divested assets") shown on those financial statements –

(a) the turnover generated by those recently acquired assets must be included in the calculation of the firm's turnover if this turnover should in terms of **[G.A.A.P]** IFRS be included in the turnover of the firm; and

(b) the turnover generated by those recently divested assets in the immediately previous financial year may be deducted from the firm's turnover if this turnover was included in the turnover of the firm.

(4) If the financial statements used as a basis for calculating turnover or the turnover included in terms of sub-item 3(a) are for more or less than 12 months, the values recorded on those statements must be pro-rated to the equivalent of 12 months.

Combined valuation of firms

8. (1) If the acquiring firm is a subsidiary of a group of companies as contemplated in the Companies Act, **[1973 (Act No. 61 of 1973)]** 2008, (Act No. 71 of 2008) for the purposes of calculations required in terms of this notice –

(a) the combined assets of the firms that are part of that group, and the combined turnover of those firms, must be consolidated; and

(b) the consolidated assets and turnover of the group are to exclude turnover or assets arising as a result of transactions by one part of the group with another part of the same group.

(2) If the transferred firm controls any other firm or business for the purposes of calculations required in terms of this notice –

(a) the combined assets of those firms and businesses, and their combined turnover, must be consolidated; and

(b) the consolidated assets and turnover of the group are to exclude turnover or assets arising as a result of transactions by one part of the group with another part of the same group.

Form of financial statements

9. (1) Financial statements used as a basis for calculating assets or turnover of a firm must –

(a) be the firm's audited financial statements, for the end of the immediately previous financial year prior to the merger, if, –

(i) in terms of any law, the firm is required to produce such statements; **[or]** and

(ii) the firm has audited statements for the relevant period[.]; or

(b) otherwise, be financial statements of the firm for the end of the immediately previous financial year prior to the merger which have been prepared in accordance with **[G.A.A.P]** IFRS principles.

COMPETITION FORMS

Competition Forms may be collected from the Competition Commission or Competition Tribunal. Alternatively, please call the Commission at (012) 394-3200 or download the forms from Competition Commission's website at **www.compcom.co.za**.

Competition Commission forms may also be electronically submitted.

ECONOMIC DEVELOPMENT DEPARTMENT

EXPLANATORY NOTE:

PROPOSED AMENDMENTS TO THE METHOD OF CALCULATION AS SET OUT IN GENERAL NOTICE 216 OF 2009

The Minister of Economic Development, Mr Ebrahim Patel, hereby publishes the proposed amendments to the Method of Calculation as set out in General Notice 216 of 2009.

The proposed amendments relate to the following:

Valuation of assets and calculation of annual turnover of firms

The proposed amendments seek to clarify the Method of Calculation in respect to the valuation of assets and the calculation of the annual turnover of firms.

Replacement of Generally Accepted Accounting Practice with International Financial Reporting Standards

The current General Notice 216 of 2009 refers to the generally accepted accounting practice (G.A.A.P). G.A.A.P was replaced by International Financial Reporting Standards (IFRS) on 1 December 2012 when international accounting standards were updated. The notice is therefore updated to refer to the IFRS instead of G.A.A.P in order to refer to the most recent applicable accounting standard.

Replacement of reference to the repealed Companies Act

General Notice 216 of 2009 refers to the repealed Companies Act No. 61 of 1973. The notice is therefore updated to refer to the current Companies Act No. 71 of 2008.