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OFFICE OF THE PRESIDENT

KANTOOR VAN DIE PRESIDENT

No. 513. 30 April 1999

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It is hereby notified that the President has assented to the following Act which is hereby published for general information:—

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 35 of 1999: Competition Amendment Act, 1999.

No. 35 van 1999: Wysigingswet op Mededinging, 1999.

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.

(English text signed by the President.)
(Assented to 14 April 1999.)

ACT

To amend the Competition Act, 1998, so as to close an existing loophole in respect of merger control; to determine the status and validity period of a ministerial notice; to make pre-merger notification compulsory in certain instances; to make provision for certain matters on appeal; to provide for certain transitional arrangements; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of Schedule 3 to Act 89 of 1998

1. Schedule 3 to the Competition Act, 1998, is hereby amended—

(a) by the substitution for item 1 of the following item:

“1. A ruling issued in terms of section [6(1)(a)] 6(2)(a) of the Maintenance and Promotion of Competition Act, 1979 [(Act No. 86 of 1979)] (Act No. 96 of 1979), or notice issued in terms of section 14(1)(c) of that Act, in relation to an “acquisition” as defined in that Act, must be regarded for the purposes of *this Act*, depending on the context, to be either—

(a) a conditional approval of a merger as if it had been granted after *this Act* came into operation, by the Competition Commission in terms of section 14(1)(b)(ii) or by the Competition Tribunal in terms of section [16(2)(b)] 15(2)(b); or

(b) a prohibition of a merger as if it had been prohibited after *this Act* came into operation, by the Competition Commission in terms of section 14(1)(b)(iii) or by the Competition Tribunal in terms of section 15(2)(c).”;

(b) by the insertion after item 3 of the following item:

“3A. A notice issued by the *Minister* in terms of section 14(1)(c) of the Maintenance and Promotion of Competition Act, 1979 (Act No. 96 of 1979), in relation to a “restrictive practice” or a “monopoly situation” as defined in that Act, must be regarded as an order in terms of section 60(1)(a) of *this Act* and is valid for a period of 12 months from the date on which *this Act* comes into operation.”;

(c) by the addition to item 4 of the following paragraph:

ALGEMENE VERDUIDELIKENDE NOTA:

- [] Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordenings aan.
- _____ Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.

(Engelse teks deur die President geteken.)
(Goedgekeur op 14 April 1999.)

WET

Tot wysiging van die Wet op Mededinging, 1998, ten einde 'n bestaande skuiwergat ten opsigte van samesmeltingsbeheer uit die weg te ruim; om die status en geldigheidstydperk van 'n ministeriële kennisgewing te bepaal; om vooraf kennisgewing van samesmelting in bepaalde gevalle verpligtend te maak; om vir sekere aangeleenthede op appél voorsiening te maak; om vir sekere oorgangsmaatreëls voorsiening te maak; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

DAAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

Wysiging van Bylae 3 by Wet 89 van 1998

1. Bylae 3 by die Wet op Mededinging, 1998, word hierby gewysig—

5 (a) deur item 1 deur die volgende item te vervang:

“1. 'n Beslissing ingevolge artikel **[6(1)(a)] 6(2)(a)** van die Wet op die Handhawing en Bevordering van Mededinging, 1979 [**(Wet No. 86 van 1979)**] (Wet No. 96 van 1979), of kennisgewing ingevolge artikel 14(1)(c) van daardie Wet, uitgereik in verband met 'n “verkryging” soos in daardie Wet omskryf, moet, vir doeleindes van *hierdie Wet*, afhangende van die konteks, geag word—

10 (a) 'n voorwaardelike goedkeuring van 'n samesmelting te wees asof dit ingevolge artikel 14(1)(b)(ii) deur die Mededingingskommissie verleen was nadat *hierdie Wet* in werking getree het, of deur die Mededingingstribunaal ingevolge artikel **[16(2)(b)] 15(2)(b)**; of

15 (b) 'n verbod op 'n samesmelting te wees asof dit ingevolge artikel 14(1)(b)(iii) deur die Mededingingskommissie, of ingevolge artikel 15(2)(c) deur die Mededingingstribunaal, verbied is nadat *hierdie Wet* in werking getree het.”;

20 (b) deur na item 3 die volgende item in te voeg:

“3A. 'n Kennisgewing deur die *Minister* uitgereik ingevolge artikel 14(1)(c) van die Wet op die Handhawing en Bevordering van Mededinging, 1979 (Wet No. 96 van 1979), met betrekking tot 'n “beperkende praktyk” of 'n “monopoliesituasie” soos in daardie Wet omskryf, moet geag word 'n bevel ingevolge artikel 60(1)(a) van *hierdie Wet* te wees en is geldig vir 'n tydperk van 12 maande vanaf die datum waarop *hierdie Wet* in werking tree.”;

25 (c) deur die volgende paragraaf by item 4 te voeg:

- “(e) The chairperson of the Competition Board contemplated in section 3 of the Maintenance and Promotion of Competition Act, 1979 (Act No. 96 of 1979), must be regarded as a reference to either the Competition Commissioner contemplated in section 22 of *this Act*, or the chairperson of the Competition Tribunal contemplated in section 26 of *this Act*, as determined by the *Minister*.”; 5
- (d) by the insertion after item 4 of the following items:
- “4A. Any transaction that takes place between the date on which *this Act* is published and the date on which *this Act* comes into operation, and which would constitute an intermediate or large merger if it had taken place after *this Act* came into operation, is regarded for a period of 12 months after the date on which *this Act* comes into operation as a merger in contravention of Chapter 3 and is subject to the provisions of section 62(1), unless— 10
- (a) the transaction has been approved by the Competition Board in terms of the Maintenance and Promotion of Competition Act, 1979 (Act No. 96 of 1979); or 15
- (b) the transaction has been notified in terms of item 4B.
- 4B. Any party to a transaction contemplated in item 4A may, within three months after the date on which *this Act* comes into operation, notify the Competition Commission of the transaction in terms of section 13 as if it were an intermediate or large merger. 20
- 4C. The provisions of Chapter 3, with the changes required by the context, apply to a transaction that is notified under item 4B.
- 4D. After *this Act* comes into operation, any appeal pending before a special court contemplated in section 15 of the Maintenance and Promotion of Competition Act, 1979 (Act No. 96 of 1979), must be regarded as an appeal to the Competition Appeal Court contemplated in section 36 of *this Act* in the manner *prescribed*. 25
- 4E. Subject to items 1 to 3A, the Competition Appeal Court may, after hearing any appeal contemplated in item 4D, make any decision that the special court could have made in terms of section 15(10) of the Maintenance and Promotion of Competition Act, 1979 (Act No. 96 of 1979), and the provisions of *this Act* otherwise apply to that decision, as if it were a decision of the Competition Appeal Court in terms of *this Act*. 30
- 4F. (1) Notwithstanding sections 6 and 11, the first determinations of thresholds made by the *Minister* in terms of those sections must be made before the date on which *this Act* comes into operation. 35
- (2) Notwithstanding sections 6(2) and 11(2), the first determinations contemplated in subsection (1) take effect on the date on which *this Act* comes into operation.”; and 40
- (e) by the substitution for the expression “(Act No. 86 of 1979)”, wherever it appears, of the expression “(Act No. 96 of 1979)”.

Short title and commencement

2. This Act is called the Competition Amendment Act, 1999, and comes into operation on a date determined by the President by proclamation in the *Gazette*. 45

“(e) Die voorsitter van die Raad op Mededinging beoog in artikel 3 van die Wet op die Handhawing en Bevordering van Mededinging, 1979 (Wet No. 96 van 1979), moet geag word ’n verwysing te wees na die Mededingingskommissaris beoog in artikel 22 van hierdie Wet, of die voorsitter van die Mededingingstribunaal beoog in artikel 26 van hierdie Wet, soos deur die Minister bepaal.”;

(d) deur na item 4 die volgende items in te voeg:

“4A. Enige transaksie wat plaasvind tussen die datum waarop hierdie Wet gepubliseer word en die datum waarop hierdie Wet in werking tree, en wat ’n intermediêre of groot samesmelting sou daarstel indien dit plaasgevind het nadat hierdie Wet in werking getree het, word vir ’n tydperk van 12 maande vanaf die datum waarop hierdie Wet in werking getree het, geag ’n samesmelting in stryd met Hoofstuk 3 te wees en is onderhewig aan die bepalings van artikel 62(1), tensy—

(a) die transaksie deur die Raad op Mededinging ingevolge die Wet op die Handhawing en Bevordering van Mededinging, 1979 (Wet No. 96 van 1979), goedgekeur was; of

(b) die transaksie ingevolge item 4B aangemeld is.

4B. Enige party tot ’n transaksie in item 4A beoog, kan, binne drie maande vanaf die datum waarop hierdie Wet in werking tree, die Mededingingskommissie ingevolge artikel 13 van die transaksie in kennis stel asof dit ’n intermediêre of groot samesmelting was.

4C. Die bepalings van Hoofstuk 3, met die veranderinge deur die konteks vereis, is van toepassing op ’n transaksie wat aangemeld word kragtens item 4B.

4D. Na die inwerkingtreeding van hierdie Wet moet enige appèl hangende voor ’n spesiale hof beoog in artikel 15 van die Wet op die Handhawing en Bevordering van Mededinging, 1979 (Wet No. 96 van 1979), geag word ’n appèl tot die Appèlhof vir Mededinging beoog in artikel 36 van hierdie Wet op die voorgeskrewe wyse te wees.

4E. Behoudens items 1 tot 3A kan die Appèlhof vir Mededinging, na aanhoor van enige appèl in item 4D beoog, enige beslissing maak wat die spesiale hof ingevolge artikel 15(10) van die Wet op die Handhawing en Bevordering van Mededinging, 1979 (Wet No. 96 van 1979), sou kon maak, en die bepalings van hierdie Wet is andersins op daardie beslissing van toepassing, asof dit ’n beslissing van die Appèlhof vir Mededinging ingevolge hierdie Wet was.

4F. (1) Ondanks artikels 6 en 11 moet die eerste bepalings van die drempels wat die Minister ingevolge daardie artikels maak, gemaak word voor die datum waarop hierdie Wet in werking tree.

(2) Ondanks artikels 6(2) en 11(2) neem die eerste bepalings beoog in subartikel (1) ’n aanvang op die datum waarop hierdie Wet in werking tree.”; en

(e) deur die uitdrukking “(Wet No. 86 van 1979)”, oral waar dit voorkom, deur die uitdrukking “(Wet No. 96 van 1979)” te vervang.

Kort titel en inwerkingtreeding

2. Hierdie Wet heet die Wysigingswet op Mededinging, 1999, en tree in werking op ’n datum deur die President by proklamasie in die Staatskoerant bepaal.

