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GOVERNMENT NOTICE.

DEPARTMENT OF COMMERCE AND INDUSTRIES.

No. 817.] [4 June 1965.]

REGULATION OF MONOPOLISTIC CONDITIONS ACT, 1955, AS AMENDED.

BOARD OF TRADE AND INDUSTRIES REPORT No. 1071 (M).—MONOPOLISTIC CONDITIONS IN THE DISTRIBUTION OF BOOKS AND PERIODICALS, INCLUDING NEWSPAPERS, IN THE REPUBLIC OF SOUTH AFRICA.

By direction of the Minister of Economic Affairs the contents of the above-mentioned report, submitted to the Minister by the Board of Trade and Industries, are published in the Schedule hereto in terms of paragraph (a) of sub-section (3) of section six of the Regulation of Monopolistic Conditions Act, 1955, as amended.

SCHEDULE.

REPUBLIC OF SOUTH AFRICA.

BOARD OF TRADE AND INDUSTRIES.

REPORT No. 1071 (M).

MONOPOLISTIC CONDITIONS IN THE DISTRIBUTION OF BOOKS AND PERIODICALS, INCLUDING NEWSPAPERS, IN THE REPUBLIC OF SOUTH AFRICA.

CHAPTER I.

TERMS OF REFERENCE, SCOPE OF INVESTIGATION AND GENERAL REMARKS ON THE ECONOMIC ASPECTS OF THE DISTRIBUTION OF BOOKS, PERIODICALS AND NEWSPAPERS.

Terms of Reference.

1. On 8th December, 1961, the Board received a directive from the Honourable the Minister of Economic Affairs to investigate, in terms of section three (1) (a) of the Regulation of Monopolistic Conditions Act, No. 24 of 1955, as amended, the existence otherwise of monopolistic conditions in the distribution of books and periodicals, including newspapers, in the Republic, and, if necessary, to recommend suitable remedial measures.

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GOEWERMENTSKENNISGEWING.

DEPARTEMENT VAN HANDEL EN NYWERHEID.

No. 817.] [4 Junie 1965.]

WET OP REËLING VAN MONOPOLISTIESE TOESTANDE, 1955, SOOS GEWYSIG.

VERSLAG No. 1071 (M) VAN DIE RAAD VAN HANDEL EN NYWERHEID. — MONOPOLISTIESE TOESTANDE BY DIE DISTRIBUSIE VAN BOEKE EN TYDSKRIFTE, MET INBEGRIIP VAN KOERANTE, IN DIE REPUBLIEK VAN SUID-AFRIKA.

Die inhoud van bogemelde verslag, wat die Raad van Handel en Nywerheid aan die Minister van Ekonomiese Sake voorgelê het, word in opdrag van die Minister ooreenkomstig die bepalings van paragraaf (a) van subartikel (3) van artikel ses van die Wet op Reëling van Monopolistiese Toestande, 1955, soos gewysig, in die Bylae hiervan gepubliseer.

BYLAE.

REPUBLIEK VAN SUID-AFRIKA.

RAAD VAN HANDEL EN NYWERHEID.

VERSLAG No. 1071 (M).

MONOPOLISTIESE TOESTANDE BY DIE DISTRIBUSIE VAN BOEKE EN TYDSKRIFTE, MET INBEGRIIP VAN KOERANTE IN DIE REPUBLIEK VAN SUID-AFRIKA.

HOOFSTUK I.

OPDRAG, OMVANG VAN ONDERSOEK EN ALGEMENE OPMERKINGS OOR DIE EKONOMIESE ASPEKTE VAN DIE DISTRIBUSIE VAN BOEKE, TYDSKRIFTE EN KOERANTE.

Opdrag.

1. Die Raad het op 8 Desember 1961 van Sy Edele die Minister van Ekonomiese Sake opdrag ontvang om kragtens artikel drie (1) (a) van die Wet op Reëling van Monopolistiese Toestande, No. 24 van 1955, soos gewysig, ondersoek in te stel na die bestaan al dan nie, van monopolistiese toestande by die distribusie van boeke en tydskrifte, met inbegrip van koerante, in die Republiek en indien nodig, geskikte verhelpende maatreëls aan te beveel.

1—1135

Scope and Method of Investigation.

2. At the start of the investigation questionnaires were sent to the principal newspapers owners, distributors of newspapers and periodicals, booksellers, book publishers and all the associations in the book industry, while certain institutional buyers of books were requested to furnish their views on specific aspects of the book trade. At the same time notice of the investigation was given in terms of section four (1) of the Act and interested parties were invited to submit any representations which they might consider necessary to the Board within the prescribed period*.

3. In the course of its investigation, the Board heard oral evidence from the following:—

- (i) The Cape Magazine Co. (Pty.), Ltd.;
- (ii) Wm. Dawson & Sons S.A. (Pty.), Ltd.;
- (iii) American and Overseas Publications (Pty.), Ltd.;
- (iv) S.A. Magazine Co. (Pty.), Ltd.;
- (v) Central News Agency, Ltd.;
- (vi) The South African Publishers' Association;
- (vii) The Associated Booksellers of Southern Africa Ltd.;
- (viii) The Book Trade Association of Southern Africa;
- (ix) The Overseas Publishers Representatives Association;
- (x) The Argus Printing and Publishing Co. Ltd.;
- (xi) The Cape Times, Ltd.; and
- (xii) Die Voortrekkerspers, Bpk.

4. Officers of the Board paid several visits to booksellers, publishers and distributors of books, newspapers and periodicals, while cost accountants conducted cost investigations at a number of firms concerned with the publication and distribution of books, newspapers and periodicals.

The Concepts "Publication" and "Distribution".

5. The word "publication" and "publisher" are generally used in two senses in connection with the supply and distribution of books, periodicals and newspapers, namely—

- (i) as descriptive of all the functions leading to the appearance of a book,† periodical or newspaper. The function of "publishing" here embraces the printing, or causing to be printed, of the book or periodical, negotiations with the authors and the settlement of their remuneration as well as the determination of the selling price and the manner of marketing. The publisher's function is consequently to produce or have goods produced in accordance with his instructions and for own account, while he himself assumes all the accompanying risks. These are more or less the same functions and responsibilities which normally devolve upon the entrepreneur in every industry.
- (ii) as signifying the *distribution* of a book, periodical or newspaper. It is particularly in regard to newspapers and periodicals that the word "publishing" and "publishers" are generally used to signify "distribution" and "distributors", respectively. In this sense there is no connection between "owner" and "distributor".

6. To prevent confusion, the words "publishing" and "publisher" are used in this Report only to reflect the meaning under (i) above, while the distributive function is indicated by the word "distribution".

GENERAL REMARKS ON ECONOMIC ASPECTS.

7. From an economic point of view, the publishing and distribution of publications are in many respects distinctive. The principal reason for this is the special economic

Omvang en metode van ondersoek.

2. Aan die begin van die ondersoek is vraeboë gestuur aan die vernaamste koeranteienaars, distribueerders van koerante en tydskrifte, boekhandelaars, boekuitgewers en aan al die verenigings in die boekbedryf, terwyl sekere institusionele kopers van boeke versoek is om hulle menings oor spesifieke aspekte van die boekhandel te verstrek. Terselfdertyd is ingevolge artikel vier (1) van die Wet kennis gegee van die ondersoek en is belanghebbende partye uitgenooi om enige vertoë wat hulle mag nodig ag, binne die vasgestelde tydperk by die Raad in te dien.*

3. In die loop van sy ondersoek het die Raad mondelinge getuienis van die volgende aangehoor:—

- (i) The Cape Magazine Co. (Pty.), Ltd.;
- (ii) Wm. Dawson & Sons, S.A. (Pty.), Ltd.;
- (iii) American and Overseas Publications (Pty.), Ltd.;
- (iv) S.A. Magazine Co. (Pty.), Ltd.;
- (v) Central News Agency, Ltd.;
- (vi) Die Suid-Afrikaanse Uitgewersvereniging;
- (vii) Die Verenigde Boekhandelaars van Suidelike Afrika, Bpk.;
- (viii) Die Boekhandervereniging van Suidelike Afrika;
- (ix) The Overseas Publishers Representatives' Association;
- (x) The Argus Printing and Publishing Co., Ltd.;
- (xi) The Cape Times, Ltd.; en
- (xii) Die Voortrekpers, Bpk.

4. Amptenare van die Raad het verskeie besoeke gebring aan boekhandelaars, uitgewers en distribueerders van boeke, koerante en tydskrifte, terwyl sy kosterekenmeesters koste-ondersoeke by 'n aantal firmas wat te doen het met die uitgee en distribusie van boeke, koerante en tydskrifte uitgevoer het.

Die begrippe „uitgee” en „distribueer”.

5. Die woorde „uitgee” en „uitgewer” word gewoonlik in verband met die verskaffing en verspreiding van boeke, tydskrifte en koerante, in twee betekenisse gebesig, naamlik—

- (i) as beskrywend van al die funksies wat lei tot die verskyning van 'n boek†, tydskrif of koerant. Die funksie „uitgee” (Engels „publish”) omvat hier die druk („printing”), of laat druk van die boek of tydskrif, die onderhandeling met die outeurs en die bepaling van hul vergoeding, sowel as die vaststelling van die verkoopprijs en wyse van bemaking. Die uitgewer se funksie is gevolglik om goedere te produseer, of te laat produseer ooreenkomstig sy opdragte en vir sy eie rekening, terwyl hyself al die risiko's wat daarmee gepaard gaan op hom neem. Dit is min of meer dieselfde funksies en verantwoordelikhede wat normaalweg op die entrepreneur in elke bedryfstak rus;
- (ii) as bedoelende die *distribusie* van 'n boek, tydskrif of koerant. Dit is veral met betrekking tot koerante en tydskrifte dat die woord „uitgee” en „uitgewers” algemeen gebruik word om onderskeidelik „distribueer” en „distribueerders” te beteken. In hierdie sin is daar geen verband tussen „eienaar” en „distribueerder” nie.

6. Om verwarring te voorkom, word die woorde „uitgee” en „uitgewer” verderaan slegs gebruik om die betekenis onder (i) hierbo weer te gee, terwyl die distribusiefunksie met die woord „distribueer” aangedui word.

ALGEMENE OPMERKINGS OOR EKONOMIESE ASPEKTE.

7. Ekonomies gesien, is die uitgee en distribusie van publikasies in vele opsigte eiesoortig. Die belangrikste

* Government Notice No. 111, published in Government Gazette No. 157 of 26th January, 1962.

† H. Lehman-Haupt, in *The Book in America*, 1939, describes a publisher as "the promoter who finds the money for its printing, and directly or through agencies of various kinds, distributes the book to the public", page 43.

* Goewermentskennisgewing No. 111, gepubliseer in *Staatskoerant* No. 157 van 26 Januarie 1962.

† H. Lehman-Haupt, *The Book in America*, 1939, beskryf 'n uitgewer as „the promoter who finds the money for its printing, and directly or through agencies of various kinds, distributes the book to the public.”, bl. 43.

nature of the products. Since three distinct products are concerned here, it is desirable to consider each one separately.

Books.

8. Authorities declare that the publication of books is an extremely speculative and risky undertaking and that every title has, in fact, to contend with competition from two sources. In the first place it has to compete with all the other titles of all the other publishers and, in the second place, with every other title place on the market by the same publisher. Since it is not possible to determine beforehand with any certainty what the demand for a book will be and since a book moreover has no other use than to be read, every new title is a separate venture for the publisher.

9. As in the case of most other articles, there is a direct correlation between the production costs of books and the volume of production. The greater the number of copies printed, the lower are the unit costs and the lower is the price for the eventual purchaser. Since the price in such an important factor in determining the volume of sales, it stands to reason that, in respect of every title which he publishes, the publisher must first make an estimate of the number of copies which he will be able to dispose of at various prices. He then decides on this basis the number of copies he will publish and their selling prices. Since a large impression results in lower selling prices and possibly greater sales, it may be expected that publishers' estimates will tend to be on the liberal side. Unsold stocks, however, mean a dead loss and for this reason the successful publisher has to have great insight into and technical knowledge of his business, as well as considerable business acumen.

10. The book trade, it is asserted, has to contend with three important problems, namely—

- (a) the extreme smallness of the book-reading public;
- (b) the extremely small number of members of the reading public who buy books; and
- (c) the enormous overproduction of books.

In regard to the size of the reading public, one would expect that, in view of the ever-rising standard of living, together with shorter working hours and more leisure time, and especially in view of the general increase in literacy, much more reading would be done. The actual position, however, is that these favourable circumstances which make for a wider reading public, are largely neutralised by the more rapid tempo of modern living and the increase in other forms of entertainment such as sport, the radio, television, the cinema and so forth. It is consequently asserted that the increase in the number of readers has not kept pace with the growth in population and the rise in standards of living.

11. The reading public is not, however, made up entirely of readers and buyers of books. It is, in fact, characteristic of modern people to prefer to read newspapers and periodicals, especially those containing light reading matter. In a recent survey* in the United States of how people spent their leisure time on a certain day, the findings were as follows:—

- 12 per cent visited a cinema;
- 21 per cent read a book;
- 40 per cent read a periodical;
- 74 per cent listened to the radio; and
- 85 per cent read a newspaper.

The variety of articles and the numerous illustrations contained in periodicals mean that they can be read without great effort and within the short periods available for reading. Statistics also show that the family's total expenditure on books minimal, being much smaller than in respect of other forms of entertainment, such as cinemas and sport.

* Productivity Team Report on The Provincial Press, page 28.

rede hiervoor is die besondere ekonomiese aard van die produk. Omdat drie afsonderlike produkte hier ter sprake is, is dit wenslik om elkeen ook afsonderlik te beskou.

Boeke.

8. Kenners verklaar dat die uitgee van boeke 'n uiters spekulatiewe en riskante onderneming is en dat elke titel eintlik met mededinging uit twee oorde te kampe het. In die eerste plek ding dit mee met al die ander titels van al die ander uitgewers en in die tweede plek met elke ander titel wat deur dieselfde uitgewer op die mark geplaas word. Omdat dit nie moontlik is om met sekerheid vooraf te bepaal wat die aanvraag na 'n boek sal wees nie, en dit boonop geen ander gebruiksaanwending het as om geles te word nie, is elke nuwe titel 'n afsonderlike risiko („venture") vir die uitgewer.

9. Soos met meeste ander artikels, is daar 'n direkte korrelasie tussen produksiekoste van boeke en die omvang van produksie. Hoe meer eksemplare gedruk word, hoe laer die eenheidskoste en hoe laer kan die pryse aan die uiteindelijke koper wees. Omdat die prys so 'n belangrike faktor is om die omvang van verkope te bepaal, spreek dit vanself dat die uitgewer ten opsigte van elke titel wat hy uitgee, eers 'n beraming moet maak van die aantal eksemplare wat hy moontlik teen verskillende pryse van die hand sal kan sit. Hiervolgens besluit hy dan hoeveel eksemplare, en teen watter verkoopprijs, hy sal uitgee. Omdat 'n groter oplaag laer verkoopprijs en moontlik 'n groter afset tot gevolg het, kan dit verwag word dat uitgewers se skattings sal neig om aan die liberale kant te wees. Onverkoopte voorrade beteken egter 'n dooie verlies en om die rede is die suksesvolle uitgewer iemand met groot insig in, en tegniese kennis van, sy besigheid tesame met aansienlike sakevernuif.

10. Die boekhandel het na bewering met drie vername probleme te kampe, naamlik—

- (a) die besondere beperkte omvang van die lesende publiek;
- (b) die besondere klein aantal lede van die lesende publiek wat boeke koop; en
- (c) die geweldige oorproduksie van boeke.

Wat die grootte van die lesende publiek betref, sou 'n mens verwag dat met die steeds stygende lewensstandaard gepaard met korter werk-ure en meer vrye tyd en veral vanweë die algemene toename in geletterdheid, deur baie meer gelees sal word. Feit is egter dat hierdie gunstige omstandighede vir 'n groter lesende publiek, grootliks geneutraliseer word deur die vinniger tempo in die moderne lewenswyse en die toename in ander vorms van vermaak, soos sport, die radio, televisie, bioskoop en dies meer. Dit word gevolglik beweer dat die toename in die leserstal nie tred gehou het met bevolkingsaanwas en die styging van lewenstandaarde nie.

11. Die lesende publiek is egter nie almal lesers en kopers van boeke nie. Dit is juis kenmerkend van die moderne mens dat hy by voorkeur koerante en tydskrifte, veral ontspanningstydskrifte lees. Met 'n onlangse opname* in die V.S.A. oor hoe mense op 'n sekere dag hulle vrye tyd bestee het, was die bevinding as volg:—

- 12 persent het die bioskoop besoek;
- 21 persent het 'n boek geles;
- 40 persent het 'n tydskrif geles;
- 74 persent het na die radio geluister; en
- 85 persent het 'n koerant geles.

Die verskeidenheid van artikels en die veelvuldige illustrasies bring mee dat tydskrifte sonder inspanning en in die kort tydies wat vir lees beskikbaar kom, gelees kan word. Statistieke bewys dan ook dat die totale gesinsuitgawe op boeke minimaal is, en veel kleiner as ten opsigte van ander vorme van vermaak, soos bioskope en sport.

* Productivity Team Report on The Provincial Press, pg. 28.

12. Finally there is the overproduction of books. According to a Unesco report,* approximately 5,000 million copies of books are produced annually in the world. Because English is one of the official languages of the Republic, the reading public of this country constitutes a market for the books produced throughout the whole Anglo-Saxon world. In the United Kingdom alone more than 20,000 titles are published annually, the figure for the U.S.A. being over 12,000. It is estimated that there are more than 300,000 titles of British books alone[†] in circulation at any time, apart from the titles published in America or in other Western countries. During 1954, for example, 16,250,000 books were imported into South Africa, 6,000,000 of these being paperbacks and 7,000,000 comics, while 1,250,000 copies of local books were distributed.[‡] This is an enormous quantity for a country with only 16,000,000 inhabitants, of whom a very large percentage are still mainly illiterate.

13. The problem facing every local publisher is consequently to weigh up his chances of successfully publishing a book against the background described above. On the other hand the bookseller has the problem of deciding what books he will buy and in what quantities. Since the choice is so enormously wide, it is obvious that, in spite of the utmost caution on his part, "dead stocks" will nevertheless accumulate and, unlike the position in respect of other commodities, unsold stocks in the booktrade have almost no economic value. This state of affairs should not, however, prevent the genuine bookseller from purchasing new publications and keeping them in stock at the disposal of the public. If he refuses to accept the risk of having unsold stocks, he fails in his task and his responsibility towards the author, the publisher and the reading public.

Periodicals.

14. If account is taken of the large number of periodicals and the enormous volume of the total number of copies, it is clear that the production of periodicals has become an important industry of the present epoch. In the United States alone, for example, roughly 1,200 periodicals, including the so-called "comic magazines", are published, while at least 30,000,000 copies (including comics) are annually imported by South Africa.[†] According to estimates, just over 300 periodicals (weeklies, monthlies, quarterlies or annuals) are published in South Africa. The great majority of these are, however, professional or group periodicals which are sent only to the members of certain occupations, associations or religious denominations. The number of local periodicals which compete as light reading matter on the open market for the support of the public, may be put at about 20.

15. The most important economic difference between a periodical and a book is to be found in the fact that the price of the former is not paid fully by the ultimate buyer (the "consumer"). As in the case of newspapers, the price covers only a part of the total costs of production and distribution, while advertisements are responsible for the rest of the costs and the profits. For this reason, the volume of the circulation is of double importance in the case of periodicals since, apart from lower unit costs of production, the volume of circulation determines the advertising income. Periodicals are therefore usually geared to popular taste in order to satisfy the masses' requirements in regard to entertainment with the minimum of self-exertion. This trend consequently often leads to undesirable and inferior reading matter and doubtful "stunts" which are aimed at increasing circulation. Evidence was consequently furnished to the Board about how difficult it is for the really good periodicals to compete successfully without forfeiting their own standards of good taste, decency and literary quality. This, however, is an aspect which has been investigated and reported on by the above-mentioned Cronje Commission.

12. Laastens is daar die oorproduksie van boeke. Volgens 'n Unesco-verslag word by die 5,000 miljoen eksemplare van boeke jaarliks in die wêreld geproduseer*. Omdat Engels een van die amptelike tale van die Republiek is, vorm die lesende publiek van die land 'n afsetgebied vir die boeke wat in die hele Angel-Saksiese wêreld geproduseer word. In die Verenigde Koninkryk alleen word meer as 20,000 titels jaarliks uitgegee en in die V.S.A. meer as 12,000. Na berekening is daar meer as 300,000 titels van Britse boeke alleen te enige tyd in omloop, afgesien van die titels wat in Amerika of in ander Westerse lande uitgegee word. In Suid-Afrika is gedurende 1954 dan ook 16,250,000 boeke ingevoer, waarvan 6,000,000 slapbandboeke[†] en 7,000,000 prentverhale was, terwyl 1,250,000 eksemplare van binnelandse boeke versprei is[‡]. Dit is 'n enorme hoeveelheid vir 'n land met slegs 16,000,000 inwoners, waarvan 'n baie groot persentasie nog hoofsaaklik ongeletterd is.

13. Die probleem van elke plaaslike uitgewer is dan om teen die hierbogenoemde agtergrond sy kans om 'n boek suksesvol uit te gee, op te weeg. Daarteenoor is dit die boekhandelaar se probleem om te besluit watter boeke hy sal koop en in welke hoeveelhede. Waar die keuse so geweldig groot is, spreek dit vanself dat ten spyte van die uiterste versigtigheid aan sy kant „dooie voorraad" nogtans sal ontstaan en, anders as by gewone handelsware, het onverkoopte voorrade in die boekhandel bykans geen ekonomiese waarde nie. Dit mag die egte boekhandelaar egter nie verhinder om nuwe uitgawes aan te koop en ter beskikking van die publiek in voorraad te hou nie. Weier hy om die risiko van onverkoopte voorrade te aanvaar faal hy in sy taak en verantwoordelikheid teenoor die skrywer, die uitgewer en die lesende publiek.

Tydskrifte.

14. Indien op die groot aantal tydskrifte, en die geweldige omvang van die totale aantal eksemplare gelet word, is dit duidelik dat die tydskrifwese 'n belangrike bedryf van die huidige tydvak geword het. In die Verenigde State alleen word byvoorbeeld nagenoeg 1,200 tydskrifte, insluitende die sogenaamde „comic magazines" uitgegee, terwyl minstens 30,000,000 eksemplare (insluitende prentverhale) jaarliks deur Suid-Afrika ingevoer word[†]. Na beraming word net meer as 300 tydskrifte (weekliks, maandeliks, kwartaalliks of jaarliks) in Suid-Afrika uitgegee. Die oorgrote meerderheid hiervan is egter professionele of groeptydskrifte wat slegs aan lede van sekere beroepe, verenigings of kerkgenootskappe gestuur word. Die aantal plaaslike tydskrifte wat as vermaaklikheids-tydskrifte op die ope mark vir die publiek se ondersteuning meeding, kan op omtrent 20 gestel word.

15. Die belangrikste ekonomiese verskil tussen die tydskrif en 'n boek is daarin geleë dat die eersgenoemde se prys nie ten volle deur die uiteindelijke koper (die „verbruiker") betaal word nie. Soos met koerante die geval is, dek die prys slegs 'n deel van die totale koste van produksie en distribusie, terwyl advertensies vir die res van die koste en die winste verantwoordelik is. Grootte van omset is daarom ten opsigte van tydskrifte van dubbele belang, aangesien dit, afgesien van laer eenheidskoste van vervaardiging, die advertensie-inkomste bepaal. Tydskrifte is dus meesal ingestel op die populêre smaak en om die massas se behoeftes tot vermaak met die minimum aan selfinspanning, te bevredig. Hierdie neiging lei dan ook dikwels tot ongewenste en minderwaardige lektuur en twyfelagtige metodes („Stunts") wat daarop gemik is om omset te verhoog. Getuigenis is dan ook aan die Raad verstrekk oor hoe moeilik dit vir die werklike goeie tydskrifte is om suksesvol mee te ding sonder om hul eie standarde van goeie smaak, ordentlikheid en literêre gehalte in te boet. Hierdie is egter 'n aspek wat deur die reeds genoemde Cronje-kommissie ondersoek en oor verslag gedoen is.

* Unesco, *Books for All*, 1956.

† Report of the Commission of Inquiry into Undesirable Publications, U.G. 42/1957, known as the Cronje Report, page 72.

‡ Cronje Report, pages 12 and 13.

* Unesco, *Books for all*, 1956.

† Verslag van die Kommissie van Ondersoek insake Ongewenste Publikasies, U.G. 42/1957, bekend as die Cronje-verslag, bl. 72.

‡ Cronje-verslag, bl. 12 en 13.

Newspapers.

16. A distinctive feature of the newspaper world is that in this case the entrepreneur actually offers two different commodities and does business in two different markets, namely the selling of copies of his paper to readers and the selling of advertising space to advertisers. The demand for advertising space is closely bound up with the size of the demand for copies (the volume of circulation) but it is also affected by the nature and quality of the readers. The volume of circulation is also important for another reason, namely the economic advantages attached to large-scale production. The economic advantages accompanying large-scale production, together with a higher advertisement income flowing from a wider circulation, do not necessarily mean that newspapers with a large circulation enjoy such a degree of competitive advantage that there is no room for newspapers with a smaller circulation. There will always be room for the smaller specialised newspapers which are aimed at meeting the requirements of a specific class or community. In the Republic, for example, numerous local newspapers have always existed side by side with the great national dailies.

17. Another feature of newspapers is the uniformity of the product offered at one time. Every copy of the same newspaper is identical in respect of each edition. The entrepreneur is not able in this case to vary the appearance or quality of his product to suit the divergent tastes and requirements of the respective buyers. Variation in the nature and volume of the product from day to day is admittedly possible, but the "model" for each day remains the same for all. It is this very characteristic which makes it possible for the smaller newspapers meeting a specific need to compete successfully with the large national newspapers.

18. Newspapers, in the final analysis, are highly perishable products. Normally nobody is interested in buying yesterday's or last week issue. For this reason, unsold copies also no longer have any value as newspapers and their sale cannot be stimulated by lower prices. Fortunately it may be said that the demand remains relatively stable from day to day and from week to week because newspaper reading and the preference for a particular newspaper have today become a routine habit for people. Slight fluctuations may admittedly occur when an important or sensational event increases the demand for newspapers in the case of people who do not normally buy newspapers. Experienced newspaper publishers know, however, that provision has to be made for such fluctuations. The supply of newspapers can therefore be regulated to keep unsold stocks within reasonable limits.

CHAPTER II.

ORGANIZATION OF THE BOOK TRADE.

Introduction.

19. A feature of the book trade in the Republic is the absence of genuine wholesalers* in the distribution process. The wholesale trade's function of collecting, storing and delivering in small quantities is undertaken by the larger local publishers cum booksellers themselves. They act as clearing houses for their customers and buy books from other publishers and importers, so that it is unnecessary for retailers or educational establishments to split orders in order to buy books only from the relevant publishers themselves. This results in such booksellers having to keep unusually large stocks, especially in regard to school and other text books. Since it is known in advance, however, which books are going to be used by schools or universities, and since dealers know from experience which

Koerante.

16. 'n Onderskeidende kenmerk van die koerantwese is dat die ondernemer hier inderdaad twee verskillende kommoditeite aanbied en in twee verskillende markte sake doen. Hy verkoop naamlik eksemplare van sy koerant aan lesers en verkoop advertensieruimte aan adverteerders. Die vraag na advertensieruimte hang nou saam met die grootte van die vraag na eksemplare (die sirkulasie-omvang), maar word ook beïnvloed deur die aard en kwaliteit van die lesers. Die sirkulasie-omvang is ook om 'n ander rede van belang naamlik die ekonomiese voordele verbonde aan produksie op grootskaal. Die ekonomiese voordele verbonde aan produksie op grootskaal, tesame met die hoër advertensie-inkomste wat met groter sirkulasie saamhang, beteken nie noodwendig dat die koerante met die groot sirkulasie reeds oor so 'n mate van mededingende voordeel beskik dat daar geen plek vir koerante met kleiner sirkulasies is nie. Daar sal nog altyd plek wees vir die kleiner, gespesialiseerde koerante wat ingestel is op die behoeftes van 'n spesifieke klas of gemeenskap. So het daar in die Republiek nog altyd talle plaaslike koerante naas die groot nasionale daglaaie bestaan.

17. 'n Ander eienskap van koerante is die eenvormigheid van die produk wat op 'n keer aangebied word. Elke eksemplaar van dieselfde koerant is ten opsigte van elke uitgawe identies. Die ondernemer is nie hier in staat om die voorkoms of gehalte van sy produk te varieer om by die uiteenlopende smake en behoeftes van die onderskeie kopers aan te pas nie. Variasie in aard en omvang van die produk van dag tot dag is wel moontlik, maar die "model" vir elke dag bly vir almal dieselfde. Dit is juis hierdie eienskap wat dit vir die kleiner koerante wat in 'n spesifieke behoefte voorsien, moontlik maak om suksesvol met die groot, nasionale koerante mee te ding.

18. Koerante is ten slotte hoogs bederfbare produkte. Normaalweg stel niemand daarin belang om gister, of laasweek se uitgawe, te koop nie. Daarom ook het onverkoopte eksemplare geen tweedehandse waarde as koerant meer nie en kan die verkoop daarvan nie deur laer pryse gestimuleer word nie. Gelukkig kan gesê word dat die vraag betreklik stabiel is van dag tot dag en week tot week, omdat koerantlees, en die voorkeur vir 'n bepaalde koerant, by die geroetineerde mens van vandag 'n gewoonte geword het. Geringe fluktuasies kan wel voorkom met die plaasvind van 'n belangrike of sensasiewekkende gebeurtenis wanneer mense wat normaalweg nie koerante koop nie, die vraag daarna kan vergroot. Ervare koerantuitgewers weet egter dat vir sulke fluktuasies voorsiening gemaak moet word. Die aanbod van koerante kan dus gereël word om onverkoopte voorrade binne redelike perke te hou.

HOOFSTUK II.

ORGANISASIE VAN DIE BOEKHANDEL.

Inleiding.

19. 'n Kenmerk van die boekhandel in die Republiek is die afwesigheid van egte groothandelaars* in die distribusieproses. Die groothandelsfunksie van versamel, opberg en lewer in klein hoeveelhede, word deur die groter plaaslike uitgewers-cum-boekhandelaars self onderneem. Hulle tree naamlik op as klaringshuise vir hulle klante en koop boeke van ander uitgewers en invoerders, sodat dit nie vir kleinhandelaars of opvoedkundige inrigtings nodig is om bestellings op te deel ten einde boeke slegs van die betrokke uitgewers self te koop nie. Dit bring mee dat sulke boekhandelaars buitengewone groot voorrade moet aanhou, veral wat betref skool- en ander studieboeke. Aangesien dit egter vooraf bekend is watter boeke deur skole of universiteite gebruik gaan word, en handelaars uit ondervinding weet watter inrigtings gewoon-

* Cf. "Het Centraal Boekhuis" and "Het Bestelhuis van den Boekhandel" in Holland.

* Vergelyk „Het Centraal Boekhuis" en „Het Bestelhuis van den Boekhandel" in Holland.

institutions generally order from them, it is possible to determine beforehand, with a large measure of certainty, which books, have to be kept in stock, and in what quantities. The system of distribution according to which dealers throughout the country stock the books of the various publishers, apparently works well in a country where, owing to the great distances, it is not practical to place small orders repeatedly with one central wholesaler.

20. A further feature of the book trade in the Republic is the fact that most publishers are also booksellers (retailers). It is even nothing unusual for an important publisher to have branches at various places in the country where he conducts business as an ordinary retailer. What this amounts to therefore is that most publishers operate in direct competition with the principal buyers of their products, namely the ordinary booksellers.

Associations in the Book Trade.

21. Associations of publishers and booksellers which aim at promoting their respective interests, are of very long standing. As far as is known, the first publishers' guilds in Europe were established at Bruges during the first half of the fifteenth century*. In the Netherlands the "Vereeniging ter bevordering van de belangen des Boekhandels" was established in 1815, while the "Net Book Scheme" in England dates from 1890.†

22. In the Republic the respective interests in the book trade are represented by the following associations:—

- (a) The Associated Booksellers of Southern Africa, Ltd;
- (b) The South African Publishers' Association;
- (c) The Overseas Publishers Representatives' Association; and
- (d) The Book Trade Association of Southern Africa.

(a) The Associated Booksellers of Southern Africa, Ltd.

23. As the name indicates, this Association represents the approximate total of 300 booksellers in the retail trade, 241 of whom are members of the Association. Membership is granted to booksellers who satisfy *inter alia* the following minimum requirements:—

1. "Has a clearly defined portion of his premises and windows devoted to the stocking and display of books for sale to the general public. Paper-back editions are not regarded as books for this purpose.
2. Books must be displayed and offered for sale to the general public in the trading hours applying to Booksellers, all the year round. Businesses which deal only at set seasons of the year are not admissible.
3. The shelving for book stock shall not be less than 200 running feet, exclusively devoted to the stocking of books and of a value of not less than £250 in respect of country applicants and £750 all the year round in respect of town applicants. Stationery not to be considered as books.
4. A Bookseller may be admitted to temporary membership of the Association for a probationary period of six months for which subscriptions must be paid. (Entrance fee and half-yearly subscription.) If accepted thereafter for full membership, shares will be issued.
5. Applicants who do not meet with the above qualifications may in certain circumstances and subject to

lik van hulle bestel, is dit moontlik om met 'n groot mate van sekerheid vooraf te bepaal watter boeke, en in welke hoeveelhede in voorraad gehou moet word. Die stelsel van distribusie waarvolgens handelaars orals in die land boeke van die onderskeie uitgewers in voorraad hou, werk blykbaar goed in 'n land waar dit vanweë die groot afstande, nie prakties is om telkens klein bestellings by een sentrale groothandelaar te plaas nie.

20. 'n Verdere eienskap van die boekhandel in die Republiek is die feit dat die meeste uitgewers ook boekhandelaars (kleinhandelaars) is. Dit is selfs niks buitengewoon vir 'n belangrike uitgewer om takke op verskeie plekke in die land te hê waar hy as 'n gewone kleinhandelaar sake doen nie. Dit kom dus daarop neer dat meeste uitgewers in regstreekse mededinging verkeer met die vernaamste afnemers van hulle produkte, naamlik die gewone boekhandelaars.

Verenigings in die boekhandel.

21. Verenigings van uitgewers en boekhandelaars ter bevordering van hul onderskeie belange is baie oud. Sover bekend is die eerste uitgewersgilde in Europa gedurende die eerste helfte van die vyftiende eeu te Brugge gestig.* In Nederland is die „Vereeniging ter bevordering van de belangen des Boekhandels" gedurende 1815 gestig terwyl die „Net Book Scheme" van Engeland uit 1890 dateer.†

22. In die Republiek word die onderskeie belange in die boekhandel deur die volgende verenigings verteenwoordig:—

- (a) Die Verenigde Boekhandelaars van Suidelike Afrika, Bpk.;
- (b) Die Suid-Afrikaanse Uitgewersvereniging;
- (c) Die „Overseas Publishers Representatives' Association"; en
- (d) Die Boekhandelvereniging van Suidelike Afrika.

(a) Die Verenigde Boekhandelaars van Suidelike Afrika, Bpk.

23. Soos die naam aandui, verteenwoordig hierdie vereniging die sowat 300 boekhandelaars in die kleinhandel, 241 waarvan lid is van die vereniging. Lidmaatskap word toegeken aan boekhandelaars wat onder andere aan die volgende minimum vereistes voldoen—

- „1. 'n Duidelike afgebakende gedeelte van sy perseel sowel as sy vensters afstaan vir die in voorraad neem en uitstal van boeke met die doel om dit aan die algemene publiek te verkoop. Vir hierdie doeleindes word papieromslag boeke nie as boeke beskou nie.
2. Boeke moet uitgestal en aan die algemene publiek te koop aangebied word gedurende die ure wat vir boekhandelaars van toepassing is, dwarsdeur die jaar. Sake-ondernemings wat net gedurende bepaalde tye van die jaar handel dryf in boeke is nie toelaatbaar nie.
3. Die rakruimte vir boekevoorraad mag nie minder dan 200' lang voet wees nie, wat uitsluitlik afge staan moet wees vir die aanhou van boeke en die waarde van hierdie voorraad mag nie minder dan £250 ten opsigte van plattelandse boekhandels en nie minder dan £750 vir stedelike boekhandels wees nie, dwarsdeur die jaar. Skryfbehoeftes mag nie as boeke gereken word nie.
4. 'n Boekhandelaar mag as tydelik lid van die Vereniging toegelaat word vir 'n proeftydperk van ses maande, waarvoor ledegelde betaal moet word. (Dit wil sê toetreegelde en halfjaarlikse ledegelde.) Indien hy daarna as volle lid aanvaar word sal aandele aan hom uitgereik word.
5. Applikante wat nie aan die bogenoemde vereistes voldoen nie mag onder sekere omstandighede en

* Books for All, page 15.

† Ironically enough, the standard work of the well-known economist, Alfred Marshall, on the theory of prices, *The Principles of Economics*, was the first book sold under the scheme at a prescribed price.

* Books for All, bl. 15.

† Ironies genoeg, was die bekende ekonoom, Alfred Marshall se standaardwerk oor die pryssteorie, „The Principles of Economics", die eerste boek wat onder die skema teen 'n voorgeskrewe prys verkoop is.

the approval of the Central Council, be admitted to membership."

24. During the past three years 28 applications for membership were received. Of these 24 were accepted and 4 rejected because they "did not satisfy the minimum requirements laid down". No complaints have been submitted to the Board about arbitrary rejection or unjust termination of membership. The Association is consequently not a serious stumbling block to entry into the book trade. The position is apparently that anyone who satisfies the *small requirements set for recognition* as a genuine bookseller, is acceptable as a member.

25. The most important obligation accompanying membership is an undertaking by all members to "abide by the list of prices, discount and trading terms issued by the Association with such additions, changes and departures as may be determined by the Board from time to time". The Memorandum of Association consequently makes provision for disciplinary measures which may be applied to members who fail to observe the articles, rules and regulations of the Association, and prescribes the steps for the hearing of a member who has been guilty of any infringement.

The Price and Discount Schedule.

26. One of the objectives for which the Association has been established, is "to promote uniformity of trading customs and practices among booksellers, to maintain fair prices among members of the Association . . . and so forth"†. For the realization of this objective, the Association makes use of the so-called Price and Discount Schedule (hereinafter called the P. & D. Schedule) which lays down the prices at which members may sell books to private individuals, as well as to colleges, libraries and other institutional buyers. In no case are the *basic* prices determined by the Association. In respect of books published locally, the publisher concerned determines the retail price, and the P. & D. Schedule lays down that—

- (i) for all educational books in respect of which packing and transport costs are borne by the publisher himself and on which the dealer receives a discount of not less than 30 percent, the publisher's prices shall apply. Where the dealer buys on less favourable terms, he may increase his prices according to a prescribed schedule calculated to assure him of a gross profit of at least 30 per cent;
- (ii) all non-educational books published locally shall, where the bookseller concerned conducts business within the publication, be sold at publisher's prices. In respect of sales outside the publication centre, the publisher's price is compulsory only if the publisher bears the transport and packing costs and allows a discount of not less than 33½ per cent. Where terms are less favourable for the bookseller, he must increase the publisher's prices as follows:—

Published price not exceeding R0.10 . . .	Increase by 2 cents
Published price exceeding R0.10, but less than R0.35	Increase by 4 cents.
Published price exceeding R0.35, but less than R0.75	Increase by 6 cents.
Published price exceeding R0.75, but less than R1.50	Increase by 9 cents.
Published price exceeding R1.50, but less than R2.00	Increase by 12 cents.
Published price exceeding R2	Increase by 15 cents.

27. In the case of books published overseas, the overseas publisher's price is also taken as basis and must be increased according to the extent of the discount allowed by the publisher concerned. In this way, for example, a book of which the publisher's price is 40s. in the United Kingdom, must be sold locally at the following prices,

onderhewig aan die goedkeuring van die Sentrale Raad as lede toegelaat word."

24. Gedurende die afgelope drie jaar is 28 aansoeke om lidmaatskap ontvang, waarvan 24 aanvaar en 4 geweier is omdat hulle „nie aan die neergelegde minimum vereistes voldoen het nie“. Geen klagtes is by die Raad aanhangig gemaak oor arbitrêre weiering, of onregmatige beëindiging, van lidmaatskap nie. Die Vereniging is gevolglik nie 'n ernstige struikelblok tot toetreding tot die boekhandel nie. Die posisie is blykbaar dat enigiemand wat voldoen aan die *geringe eise wat vir erkenning* as 'n egte boekhandelaar gestel word, as lid aanvaarbaar is.

25. Die belangrikste verpligting wat met lidmaatskap gepaard gaan, is 'n onderneming deur alle lede om hulle te „hou by die lys van pryse, afslag en handelsterme, deur die Vereniging uitgegee met sulke byvoegings, veranderinge en afwykings soos deur die Raad van tyd tot tyd vasgestel mag word“*. Die Akte van Oprigting maak dan ook voorsiening vir tugsmaatreëls wat op lede wat versuim om die statute, reglemente of reëls van die vereniging na te kom, toegepas mag word en skrywe die stappe voor vir die verhoor van 'n lid wat oortree het.

Die Prys- en Diskontoskedule.

26. Een van die doelstellings waarvoor die vereniging in die lewe geroep is, is „om eenvormigheid van handelsgewoontes en gebruike van boekhandelaars te bevorder, billike pryse tussen lede van die vereniging te handhaaf . . . en dies meer“*. Om hierdie doel te verwesenlik, maak die vereniging gebruik van die sogenaamde Prys- en Diskontoskedule (hierna die P. & D. Skedule genoem) waarin die pryse waarteen lede boeke aan privaat individue, sowel as aan kolleges, biblioteke en ander institusionele kopers mag verkoop, neergelê word. In geen geval word die *basiese* pryse deur die vereniging bepaal nie. Ten opsigte van boeke plaaslik uitgegee, bepaal die betrokke uitgewer die kleinhandelsprys en lê die P. & D. Skedule neer dat—

- (i) vir alle opvoedkundige boeke ten opsigte waarvan verpakkings- en vervoerkoste deur die uitgewer self gedra word en die handelaar 'n diskonto van nie minder nie as 30 persent ontvang, die uitgewersprys sal geld. Waar die handelaar teen minder gunstige terme koop, mag hy sy pryse verhoog ooreenkomstig 'n neergelegde skedule wat bereken is om hom 'n bruto wins van minstens 30 persent te gee;
- (ii) alle nie-opvoedkundige boeke plaaslik uitgegee moet, waar die betrokke boekhandelaar binne die publikasiesentrum sake doen, teen uitgewersprys verkoop word. Ten opsigte van verkope buite die publikasiesentrum, is die uitgewersprys verpligtend slegs indien die uitgewer vervoer- en verpakkingskoste dra en 'n diskonto van nie minder nie as 33½ persent toelaat. Waar terme aan die boekhandelaar minder gunstig is, moet hy die uitgewersprys as volg verhoog:—

Gepubliseerde prys van nie meer nie as R0.10	Vermeerder met 2 sente.
Gepubliseerde prys meer as R0.10, maar minder as R0.35	Vermeerder met 4 sente.
Gepubliseerde prys meer as R0.35, maar minder as R0.75	Vermeerder met 6 sente.
Gepubliseerde prys meer as R0.75, maar minder as R1.50	Vermeerder met 9 sente.
Gepubliseerde prys meer as R1.50, maar minder as R2	Vermeerder met 12 sente.
Gepubliseerde prys meer as R2	Vermeerder met 15 sente.

27. Wat betref boeke wat oorsee uitgegee word, word die oorsese uitgewersprys ook as basis geneem en moet dit verhoog word ooreenkomstig die omvang van die diskonto wat deur die betrokke uitgewer toegelaat word. So, byvoorbeeld, moet 'n boek waarvan die uitgewersprys 40s. in die Verenigde Koninkryk is, teen die volgende pryse

* Cf. Article 7 of the Memorandum of Association.

† Memorandum of Association, Article (iii) (4).

* Vgl. artikel 7 van die Akte van Oprigting.

† Akte van Oprigting artikel (iii) (4).

depending on the size of the discount granted by the publisher concerned:—

Discount.	Local Retail Price.
	R
0 per cent to 24 per cent.....	5.00
25 per cent.....	4.85
26 per cent to 39 per cent.....	4.80
40 per cent to 49 per cent.....	4.60
50 per cent or more.....	4.20

28. The prices of books imported from the United States of America, Canada, Switzerland, Germany, etc., are determined by prescribing the rates of exchange at which the relevant foreign publisher's prices must be calculated in local currency. In the case of American books with a publisher's price of at least one dollar, the rate of the dollar varies according to the discount granted, namely as follows:—

Discount.	Rate.
Less than 40 per cent.....	R0.93 to the dollar.
40 per cent to 49 per cent.....	R0.85 to the dollar.
50 per cent or more.....	R0.75 to the dollar.

The above-mentioned provisions do not apply in respect of paperbacks and books with an American publisher's price of less than one dollar. Members are also allowed, if they so desire, to calculate the local prices of all American religious books at a constant rate of R0.75 to the dollar, irrespective of the discount concerned.

29. Another important aspect of the P. & D. Schedule is the arrangement in respect of discounts. The provision that no discount may be granted to individuals applies not only to credit but also to cash transactions, as well as sales to medical practitioners, public servants, students, scholars, teachers, lecturers, ministers, nurses and all other individuals. A discount of 10 per cent on the ordinary retail prices may be granted to teachers buying books in large quantities for resale to scholars. The P. & D. Schedule makes provision, however, for the maximum discounts which may be granted to libraries. Here a distinction is drawn between books published in the United Kingdom and books published in South Africa and the rest of the world. The scale of discounts also varies in respect of the different libraries. There is, for example, a difference between the discounts laid down for the Johannesburg and the Durban city libraries, respectively, while provincial libraries receive a different discount from that enjoyed by university libraries.

30. The effect of the Association's policy in regard to prices and discounts, as embodied in the P. & D. Schedule, is that members sell books at uniform prices and that there is no price competition in the retail trade. Although there are no formal agreements between this Association and the Publishers' Association, both are affiliated to the Book Trade Association of Southern Africa which, as the co-ordinating body in the book trade, affords booksellers and publishers the opportunity of conducting discussions on policy and of settling differences mutually.

(b) The South African Publishers' Association.

31. This Association was established in 1945 with the object of promoting the interests of publishers and the publishing industry and to ensure uniformity and co-operation among members in their conduct towards organisations and persons in matter affecting the interests of its members*.

32. The Association must be regarded as a relatively passive body. It seldom takes active steps and then only if something happens which directly affects the industry in one way or another, as was the case at the time of the introduction of the Undesirable Publications Bill, the Decriminalisation Act or budgetary proposals affecting the book trade, etc. In such cases the Association serves as mouthpiece for all the publishers *vis-à-vis* the responsible bodies.

plaaslik verkoop word, afhange van die omvang van die diskonto wat die betrokke uitgewer toestaan:—

Diskonto.	Plaaslike kleinhandelsprys.
	R
0 persent tot 24 persent.....	5.00
25 persent.....	4.85
26 persent tot 39 persent.....	4.80
40 persent tot 49 persent.....	4.60
50 persent of meer.....	4.20

28. Pryse van boeke ingevoer vanaf die Verenigde State van Amerika, Kanada, Switzerland, Duitsland, ens., word bepaal deur voor te skrywe teen watter wisselkoerse die betrokke buitelandse uitgewerspryse in plaaslike geldeenheid bereken moet word. Ten opsigte van Amerikaanse boeke met 'n uitgewersprys van minstens een dollar wissel die koers van die dollar ooreenkomstig die diskonto toegestaan, as volg:—

Diskonto.	Koers.
Minder as 40 persent.....	R0.93 tot die dollar.
40 persent tot 49 persent.....	R0.85 tot die dollar.
50 persent of meer.....	R0.75 tot die dollar.

Bogenoemde bepalings geld nie ten opsigte van slapbandboeke en boeke met 'n Amerikaanse uitgewersprys van minder as een dollar nie. Lede word ook toegelaat om, indien hulle dit verkies, die plaaslike pryse van alle Amerikaanse godsdienstige boeke teen 'n konstante koers van R0.75 tot die dollar te bereken, afgesien van die betrokke diskonto.

29. 'n Ander belangrike aspek van die P. & D. Skedule is die reëling in verband met afslag. Die bepaling dat geen afslag aan individue toegestaan mag word nie, geld vir transaksies teen krediet sowel as vir kontant; verkope aan mediese praktisyns, staatsamptenare, studente, skoliere, onderwysers, dosente, predikante, verpleegsters en alle ander individue. Aan onderwysers wat boeke in groot hoeveelhede koop vir herverkoop aan skoliere, mag 'n afslag van 10 persent op die gewone kleinhandelspryse toegestaan word. Die P. & D. Skedule maak egter voorsiening vir die maksimum diskonto's wat aan biblioteke toegestaan mag word. Hier word onderskei tussen boeke in die Verenigde Koninkryk gepubliseer en boeke gepubliseer in Suid-Afrika en die res van die wêreld. Die skaal van diskonto's wissel ook ten opsigte van die verskillende biblioteke. So is daar byvoorbeeld 'n verskil tussen die diskonto's wat onderskeidelik vir die Johannesburgse en die Durbanse stadsbiblioteke neergelê is, terwyl provinsiale biblioteke 'n ander diskonto as universiteitsbiblioteke ontvang.

30. Die uitwerking van die vereniging se beleid met betrekking tot pryse en diskonto's soos beliggaam in die P. & D. Skedule, is dat lede boeke teen eenvormige pryse verkoop en dat daar geen prysmededinging in die kleinhandel is nie. Hoewel daar geen formele ooreenkomste tussen hierdie vereniging en die uitgewersvereniging bestaan nie, is albei geaffilieer met die Boekhandelvereniging van Suidelike Afrika, wat as die koördinerende liggaam in die boekhandel die geleentheid aan boekhandelaars en uitgewers bied om samesprekings oor beleid te voer en verskille onderling te skik.

(b) Die Suid-Afrikaanse Uitgewersvereniging.

31. Hierdie vereniging is gedurende 1945 gestig met die doel om die belange van uitgewers en die uitgewersbedryf te bevorder en om eenvormigheid en samewerking van lede te verseker in optrede teenoor organisasies en persone in aangeleenthede rakende die belange van sy lede.*

32. Die Vereniging moet beskou word as 'n betreklik passiewe liggaam. Hy tree selde aktief op en dan slegs indien daar iets gebeur wat die bedryf op een of ander wyse direk raak, soos tydens die Wetsontwerp op Ongewenste Publikasies; die Desimalisasiewet of begrotingsvoorstelle wat die belange van die boekhandel raak en dies meer. In sulke gevalle dien die Vereniging as mondstuk van al die uitgewers teenoor die verantwoordelike instansies.

* According to articles III A and C of the Memorandum of Association.

* Volgens artikel III A en C van die Akte van Oprigting.

33. The only test for membership is whether the applicant is a South African publisher. No applications for membership have been rejected during the past three years and no member's membership has ever yet been terminated at the instigation of the Association. The Board has consequently not received any complaints from any publisher to the effect that he has not been accepted as a member or that his membership has been terminated unilaterally by the Association. The conclusion may therefore be drawn that the Association has not prevented entry to the industry or made such entry difficult.

34. As is apparent from the above discussion of the booksellers' association, every publisher fixes the price (the so-called publisher's price) of his publications. He then delivers his books to the trade at the publisher's price concerned, minus a trade discount. This discount varies from one publisher to another. One and the same publisher may, however, have different discounts for different kinds of books, or his discounts on the same books may vary from one bookseller to another. No formal agreement on the size of discounts exists either between the various publishers or between the Publishers' Association and the booksellers' association or members thereof. As has already been mentioned in paragraph 25, this does not mean that the booksellers will always sell at the publisher's prices. Where the discount granted is below a certain level, the bookseller is authorised by the P. & D. Schedule to increase the publisher's price. Account must be taken of the fact, however, that some of the principal publishers are also booksellers and that the extent to which a bookseller may increase such a publisher's prices depends upon his competitive position *vis-à-vis* that publisher's own bookshops.

35. Where members of the Association supply books direct to institutional buyers, no agreement or understanding exists in regard to the discounts granted. Members are therefore at liberty to quote any price for the direct delivery of books according to tender. The Association also makes no attempt to ensure uniform selling conditions among its members. The publisher is wholly at liberty to decide what discount he will grant to the bookseller or any other buyer.

(c) *The Overseas Publishers Representatives' Association.*

36. As the name indicates, this Association consists of representatives of overseas publishers whose interests they represent in the Republic. In reality the Association represents *British* publishers and not so much "overseas" publishers. Its aim is consequently given as follows:—

"To protect the interest of British book publishers and publishers' representatives in Southern Africa and to act as a consultative body in all matters affecting these interests."

The Association was established in 1952, after the founding of the local Publishers' Association because "... it was felt that there should be a consultative body who could be approached on matters affecting British publishers' interests generally and who could provide the link between the Publishers' Association of Great Britain and Ireland and the Associated Booksellers of Southern Africa (Pty.), Ltd.". Together with the Associated Booksellers and the South African Publishers' Association, the O.P.R.A. constitutes the third member of the Book Trade Association of Southern Africa.

(d) *The Book Trade Association of Southern Africa.*

37. This Association was founded in 1959 with the object of co-ordinating and promoting all the interests involved in the publishing, distribution and sale of books in the Republic. Its constituent members are the three associations discussed in the foregoing paragraphs, namely the Associated Booksellers, the Publishers' Association and the Overseas Publishers Representatives' Association. The principal objectives of the Association are to promote uniform trading practices in regard to the publishing, dis-

33. Die enigste toets vir lidmaatskap is of die aansoeker 'n Suid-Afrikaanse uitgewer is. Geen aansoeke om lidmaatskap is gedurende die afgelope drie jaar afgekeur nie en geen lid se lidmaatskap is nog ooit op aandrang van die Vereniging beëindig nie. Die Raad het dan ook geen klagte van enige uitgewer ontvang dat hy nie as lid aanvaar is, of dat sy lidmaatskap eensydig deur die Vereniging beëindig is nie. Die afleiding kan dus gedoen word dat die Vereniging nie toetredende tot die bedryfstak verhinder of bemoeilik nie.

34. Soos blyk uit die bespreking hierbo van die Handelaarsvereniging, stel elke uitgewer die prys (die sogenaamde uitgewersprys) van sy publikasies vas. Hy lewer dan sy boeke aan die handel teen die betrokke uitgewersprys, minus 'n handelsdiskonto. Hierdie diskonto's wissel van een uitgewer na 'n ander. Een en dieselfde uitgewer mag egter verskillende diskonto's vir verskillende soorte boeke hê, of sy diskonto's op dieselfde boeke mag verskil van een handelaar na 'n ander. Geen formele ooreenkoms oor die grootte van diskonto's bestaan tussen of die onderskeie uitgewers of tussen die Uitgewersvereniging en die Boekhandelaarsvereniging, of sy lede nie. Soos reeds in paragraaf 25 vermeld, beteken dit nie dat die boekhandelaars altyd teen die uitgewerspryse sal verkoop nie. Waar die toegestane diskonto onder 'n sekere peil is, word die handelaar deur die P. & D. Skedule gemagtig om die uitgewersprys te verhoog. Daar moet egter rekening gehou word met die feit dat van die belangrikste uitgewers ook boekhandelaars is en dat die mate waarin 'n handelaar so 'n uitgewer se pryse kan verhoog, afhang van sy mededingende posisie teenoor daardie uitgewer se eie boekwinkels.

35. Waar lede van die Vereniging boeke direk aan institusionele kopers verskaf, bestaan daar geen ooreenkoms of verstandhouding in verband met die kortings wat toegestaan word nie. Lede is dus vry om enige prys vir die direkte lewering van boeke volgens tender te kwoteer. Ook wend die Vereniging geen poging aan om eenvormige verkoopsvoorwaardes by sy lede tot stand te bring nie. Dit staan die uitgewer heeltemal vry om te besluit watter korting hy aan die boekhandelaar, of enige ander koper, toestaan.

(c) *Die „Overseas Publishers Representatives' Association".*

36. Soos die naam aandui, bestaan hierdie Vereniging uit verteenwoordigers van buitelandse uitgewers, wie se belange hulle in die Republiek verteenwoordig. In werklikheid verteenwoordig die Vereniging *Britse* uitgewers en nie soseer „oorsese" uitgewers nie. Sy doel word dan ook as volg aangegee:

"To protect the interest of British book publishers and publishers' representatives in Southern Africa and to act as a consultative body in all matters affecting these interests."

Die Vereniging is gedurende 1952 gestig, na die totstandkoming van die plaaslike Uitgewersvereniging, omdat "... it was felt that there should be a consultative body who could be approached on matters affecting British publishers' interests generally and who could provide the link between the Publishers' Association of Great Britain and Ireland and the Associated Booksellers of Southern Africa (Pty.), Ltd." Naas die Vereniging van Boekhandelaars en die Suid-Afrikaanse Uitgewersvereniging, vorm die O.P.R.A. die derde lid van die Boekhandelvereniging van Suidelike Afrika.

(d) *Die Boekhandelvereniging van Suidelike Afrika*

37. Hierdie Vereniging is in 1959 gestig met die doel om al die belange betrokke by die uitgee, distribusie en verkoop van boeke in die Republiek, te koördineer en te bevorder. Sy konstituerende lede is die drie verenigings wat in die voorafgaande paragrawe bespreek is, naamlik die Handelaarsvereniging, die Uitgewersvereniging en die Vereniging van Oorsese Verteenwoordigers. Die vernaamste oogmerke van die Vereniging is om eenvormige handelsgebruike met betrekking tot die uitgee, distribusie en

tribution and sale of books and to maintain fair prices and discounts among members.*

38. As an organisation in which the associations of the various interests in the book trade are represented, it is obviously the highest authority and mouthpiece of the book trade. In addition, it offers a platform where the various interests can meet one another, conduct consultations, discuss clashing interests and attempt to effect reconciliations. As far as could be ascertained, the Association has taken no formal decisions or concluded any agreements according to which publishers undertake to grant trade discounts to certain booksellers or which bind booksellers to maintain prescribed prices.

Summary.

39. The book trade in South Africa is organized in three associations representing the local publishers, booksellers and representatives of overseas publishers, respectively. These three organisations are united in the Book Trade Association of Southern Africa. By means of the Price and Discount Schedule, the booksellers association controls the size of the discounts which its members may allow to all kinds of buyers and/or the amounts which they may add to publishers' prices in respect of all local as well as imported books. Although the three other associations in the industry are not active parties to the regulations of the P. & D. Schedule, they are favourably disposed towards the system and are of the opinion that uniform prices and selling conditions throughout the country are conducive to the development of a sound book industry.

40. Membership of all the associations is, it would appear, readily obtainable, and is based on fixed objective standards. The Board has consequently received no complaints that membership has been refused to any party complying with the standards, or that it has been terminated on unreasonable grounds. Entry to any sector of the industry is therefore not rendered difficult or prevented by the existing organisations.

41. Any monopolistic practices which may exist as a result of the booktrade's organisation, as described above, will be discussed later.

CHAPTER III.

THE DISTRIBUTION OF NEWSPAPERS AND PERIODICALS IN THE REPUBLIC OF SOUTH AFRICA.

The Principal Local Publishers of Newspapers and Periodicals.

42. In discussing the principal publishers of newspapers and periodicals in the Republic, the Board does not intend to give the same complete and comprehensive description of the origin history, capital structure and inter-relationships as that contained in the Press Commission's recent report.† The Board considers that a mere indication of the principal publishers and their publications, together with a reference to their financial associations with other interests and groups, where necessary, is sufficient for its terms of reference.

43. The following are the principal owners of the most important national newspapers and periodicals in the Republic, together with the names of their publications:—

A.—THE ARGUS PRINTING AND PUBLISHING CO., LTD.

Publication.	Place of Publication.	Nature of Publication.
<i>The Cape Argus</i>	Cape Town....	Afternoon paper.
<i>The Natal Daily News</i>	Durban.....	Afternoon paper.
<i>The Star</i>	Johannesburg..	Afternoon paper.
<i>The Sunday Tribune and The Sunday Post</i>	Durban.....	Sunday paper.

* Cf. articles 4 of the Association's Constitution.

† Part I of the Report of the Commission of Inquiry into the Press, dated 13th December, 1961.

verkope van boeke te bevorder en om regverdigde pryse en diskonto's tussen lede te handhaaf.*

38. As organisasie waarin die verenigings van die onderskeie belange in die boekhandel verteenwoordig is, is dit vanselfsprekend die hoogste gesag en mondstuk van die boekhandel. Daarby bied dit 'n platform waar die onderskeie belange mekaar kan ontmoet, raadpleeg en botsings van belange bespreek en probeer versoen. Sover vasgestel kan word, het die Vereniging geen formele besluite geneem of ooreenkomste aangegaan waarvolgens uitgewers onderneem om handelsdiskontos slegs aan sekere boekhandelaars toe te staan, of wat handelaars bind om voorgeskrewe pryse te handhaaf nie.

Samevatting.

39. Die boekhandel in Suid-Afrika is georganiseer in drie verenigings wat onderskeidelik die plaaslike uitgewers, boekhandelaars en verteenwoordigers van oorsese uitgewers verteenwoordig. Hierdie drie organisasies is saamgesnoer in die Boekhandelvereniging van Suidelike Afrika. Die Handelaarsvereniging beheer, deur middel van die Prys- en Diskonto Skedule, die omvang van die diskonto's wat sy lede aan alle soorte kopers mag toelaat en/of die bedrae wat hy by uitgewerspryse mag voeg ten opsigte van alle plaaslike sowel as ingevoerde boeke. Hoewel die ander drie verenigings in die bedryf nie aktief meedoen aan die voorskrifte van die P. & D. Skedule nie, is hulle die stelsel goedgesind en van mening dat eenvormige pryse en verkoopsvoorwaardes dwarsdeur die land, bevorderlik is vir die ontwikkeling van 'n gesonde boekbedryf.

40. Lidmaatskap van al die verenigings word blykbaar maklik verkry en berus op vasgestelde objektiewe standarde. Die Raad het dan ook geen klagtes ontvang dat lidmaatskap aan enige party wat aan die standarde voldoen, geweier is of op onredelike gronde beëindig is nie. Toetrede tot enige deel van die bedryf word dus nie deur die bestaande organisasies bemoeilik of verhoed nie.

41. Enige monopolistiese praktyke, wat as gevolg van die boekhandel se organisasie, soos hierbo beskryf, mag bestaan, sal verderaan bespreek word.

HOOFSTUK III.

DIE DISTRIBUSIE VAN KOERANTE EN TYDSKRIFTE IN DIE REPUBLIEK VAN SUID-AFRIKA.

Die vernaamste plaaslike uitgewers van koerante en tydskrifte.

42. By 'n bespreking van die vernaamste uitgewers van koerante en tydskrifte in die Republiek beoog die Raad nie dieselfde volledige en omvattende beskrywing van die ontstaan, geskiedenis, kapitaalstruktuur en onderlinge verhoudings wat reeds deur die Perskommissie in sy onlangse verslag† gedoen is nie. Die Raad meen dat 'n blote aanduiding van die vernaamste uitgewers en hulle publikasies, met 'n verwysing na finansiële aaneenskakeling met ander belange, groepe waar nodig, voldoende is vir sy opdrag.

43. Die volgende is die vernaamste eienaars van die belangrikste nasionale koerante en tydskrifte in die Republiek, met die name van hulle publikasies:—

A.—THE ARGUS PRINTING AND PUBLISHING CO., LTD.

Publikasie.	Plek van Publikasie.	Aard van Publikasie.
<i>The Cape Argus</i>	Kaapstad.....	Middagkoerant.
<i>The Natal Daily News</i>	Durban.....	Middagkoerant.
<i>The Star</i>	Johannesburg..	Middagkoerant.
<i>The Sunday Tribune and The Sunday Post</i>	Durban.....	Sondagkoerant.

* Vergelyk artikel 4 van die Vereniging se grondwet.

† Eerste Deel van die Verslag van die Kommissie van Ondersoek na die Pers, gedateer 13 Desember 1961.

The company also controls the following:—

Publication.	Place of Publication.	Nature of Publication.
<i>The Diamonds Fields Advertiser</i>	Kimberley.....	Morning paper.
<i>The Friend</i>	Bloemfontein...	Morning paper.
<i>The Pretoria News</i>	Pretoria.....	Afternoon paper.
<i>The Farmer's Weekly</i>	Bloemfontein...	Weekly farming periodical.
<i>Personality</i>	Bloemfontein...	Fortnightly entertainment periodical.
<i>Femina and Woman's Life</i>	Bloemfontein...	Fortnightly women's magazine.

B.—S.A. ASSOCIATED NEWSPAPERS, LTD.

Publication.	Place of Publication.	Nature of Publication.
<i>Rand Daily Mail</i>	Johannesburg..	Morning paper.
<i>Sunday Times</i>	Johannesburg..	Sunday paper.
<i>Sunday Express</i>	Johannesburg..	Sunday paper.
<i>Financial Mail</i>	Johannesburg..	Financial and economic weekly.

C.—CAPE TIMES, LTD.

Publication.	Place of Publication.	Nature of Publication.
<i>Cape Times</i>	Cape Town	Daily morning paper

D.—EASTERN PROVINCE NEWSPAPERS, LTD.

Publication.	Place of Publication.	Nature of Publication.
<i>Eastern Province Herald</i> ..	Port Elizabeth.	Morning paper.

The Company also controls—

Publication.	Place of Publication.	Nature of Publication.
<i>Evening Post</i>	Port Elizabeth..	Afternoon paper.

E.—EAST LONDON DAILY DISPATCH, LTD.

Publication.	Place of Publication.	Nature of Publication.
<i>Daily Dispatch</i>	East London....	Morning paper.

F.—THE NATAL WITNESS (PTY.), LTD.

Publication.	Place of Publication.	Nature of Publication.
<i>The Natal Witness</i>	Pietermaritzburg	Morning paper.

G.—ROBINSON & CO. (PTY.), LTD.

Publication.	Place of Publication.	Nature of Publication.
<i>The Natal Mercury</i>	Durban.....	Morning paper.

H.—DIE AFRIKAANSE PERS, BEPERK.

Publication.	Place of Publication.	Nature of Publication.
<i>Die Vaderland</i>	Johannesburg..	Afternoon paper.
<i>Dagbreek en Sondagnuus</i> ..	Johannesburg..	Sunday paper.
<i>Die Brandwag</i>	Johannesburg..	Entertainment weekly.
<i>Rooi Rose</i>	Johannesburg..	Monthly magazine for women.

I.—NASIONALE PERS, BEPERK.

Publication.	Place of Publication.	Nature of Publication.
<i>Die Burger</i>	Cape Town....	Morning paper.
<i>Die Volksblad</i>	Bloemfontein...	Afternoon paper.
<i>Die Oosterlig</i>	Port Elizabeth..	Bi-weekly paper.
<i>Die Huisgenoot</i>	Cape Town....	Entertainment weekly.
<i>Die Jongspan</i>	Cape Town....	Monthly for juveniles.
<i>Die Landbouweekblad</i>	Cape Town....	Weekly for agriculture.
<i>Sarie Marais</i>	Cape Town....	Fortnightly women's magazine.

J.—VOORTREKKERPERS, BPK.

Publication.	Place of Publication.	Nature of Publication.
<i>Die Transvaler</i>	Johannesburg..	Morning paper.
<i>Patrys</i>	Johannesburg..	Monthly for juveniles.

Die maatskappy beheer ook die volgende:—

Publikasie.	Plek van Publikasie.	Aard van Publikasie.
<i>The Diamond Fields Advertiser</i>	Kimberley.....	Oggendkoerant.
<i>The Friend</i>	Bloemfontein...	Oggendkoerant.
<i>The Pretoria News</i>	Pretoria.....	Middagkoerant.
<i>The Farmers Weekly</i>	Bloemfontein...	Weeklikse landbou-tydskrif.
<i>Personality</i>	Bloemfontein...	Twee-weeklikse ontspanningstydskrif.
<i>Femina and Women's Life</i> ..	Bloemfontein...	Twee-weeklikse vroue-tydskrif.

B.—S.A. ASSOCIATED NEWSPAPERS, LTD.

Publikasie.	Plek van Publikasie.	Aard van Publikasie.
<i>Rand Daily Mail</i>	Johannesburg..	Oggendkoerant.
<i>Sunday Times</i>	Johannesburg..	Sondagkoerant.
<i>Sunday Express</i>	Johannesburg..	Sondagkoerant.
<i>Financial Mail</i>	Johannesburg..	Finansiële en Ekonomiese Weekblad.

C.—CAPE TIMES, LTD.

Publikasie.	Plek van Publikasie.	Aard van Publikasie.
<i>Cape Times</i>	Kaapstad.....	Daaglikse Oggendkoerant.

D.—EASTERN PROVINCE NEWSPAPERS, LTD.

Publikasie.	Plek van Publikasie.	Aard van Publikasie.
<i>Eastern Province Herald</i> ...	Port Elizabeth...	Oggendkoerant.

Die maatskappy beheer ook—

Publikasie.	Plek van Publikasie.	Aard van Publikasie.
<i>Evening Post</i>	Port Elizabeth.	Middagkoerant.

E.—EAST LONDON DAILY DISPATCH, LTD.

Publikasie.	Plek van Publikasie.	Aard van Publikasie.
<i>Daily Dispatch</i>	Oos-Londen....	Oggendkoerant.

F.—THE NATAL WITNESS (PTY.), LTD.

Publikasie.	Plek van Publikasie.	Aard van Publikasie.
<i>The Natal Witness</i>	Pietermaritzburg	Oggendkoerant.

G.—ROBINSON & CO. (PTY.), LTD.

Publikasie.	Plek van Publikasie.	Aard van Publikasie.
<i>The Natal Mercury</i>	Durban.....	Oggendkoerant.

H.—DIE AFRIKAANSE PERS, BEPERK.

Publikasie.	Plek van Publikasie.	Aard van Publikasie.
<i>Die Vaderland</i>	Johannesburg..	Middagkoerant.
<i>Dagbreek en Sondagnuus</i> ..	Johannesburg..	Sondagkoerant.
<i>Die Brandwag</i>	Johannesburg..	Ontspanningsweekblad.
<i>Rooi Rose</i>	Johannesburg..	Maandblad vir vroue.

I.—NASIONALE PERS, BEPERK.

Publikasie.	Plek van Publikasie.	Aard van Publikasie.
<i>Die Burger</i>	Kaapstad.....	Oggendkoerant.
<i>Die Volksblad</i>	Bloemfontein...	Middagkoerant.
<i>Die Oosterlig</i>	Port Elizabeth.	Halfweeklikse koerant.
<i>Die Huisgenoot</i>	Kaapstad.....	Ontspanningsweekblad.
<i>Die Jongspan</i>	Kaapstad.....	Maandblad vir die jeug.
<i>Die Landbouweekblad</i>	Kaapstad.....	Weekblad vir die Landbou.
<i>Sarie Marais</i>	Kaapstad.....	Twee-weeklikse Vrouetydskrif.

J.—VOORTREKKERPERS, BPK.

Publikasie.	Plek van Publikasie.	Aard van Publikasie.
<i>Die Transvaler</i>	Johannesburg..	Oggendkoerant.
<i>Patrys</i>	Johannesburg..	Maandblad vir die jeug.

K.—DIE LANDSTEM (EDMS.), BPK.

Publication.	Place of Publication.	Nature of Publication.
<i>Die Landstem</i>	Cape Town and Johannesburg	Weekly newspaper.
<i>Mense</i>	Cape Town....	Monthly entertainment periodical.

L.—DRAKENSBERGERS, BEPERK.

Publication.	Place of Publication.	Nature of Publication.
<i>Die Nataller</i>	Durban.....	Weekly newspaper.

PRINCIPAL NON-WHITE NEWSPAPERS AND PERIODICALS.

Publication.	Owner.	Nature.
<i>World</i>	Bantu Press (Pty.), Ltd.	Daily paper, Rand, Pretoria, Vereniging (also a weekly edition distributed in the Transvaal).
<i>Ilanga Lase</i>	Bantu Press (Pty.), Ltd.	Weekly newspaper (Rand and Natal).
<i>Elethu la Rona</i> ...	Sabiko, Limited...	Weekly.
<i>Golden City Post</i> .	Golden City Post (Pty.), Ltd.	Weekly newspaper.
<i>Imvo</i>	King Printing Co., Ltd.	Weekly newspaper.
<i>True</i>	Keur Uitgewers (Edms.), Bpk.	Fortnightly entertainment periodical.
<i>Bona</i>	Bona Pers, Beperk	Monthly entertainment periodical.
<i>Drum</i>	Drum Publications.	Monthly entertainment periodical.
<i>Zonk</i>	Zonk Publications, Ltd.	Monthly entertainment periodical.
<i>Our Africa</i>	S.A. General Missions	Monthly religious periodical.
<i>Utlwang</i>	Rustenburg Herald (Pty.), Ltd.	Monthly periodical in Tswana.
<i>Indian Views</i>	M. I. Meer.....	Weekly newspaper for Indians.
<i>The Leader</i>	Saraswati Bramdaw	Weekly newspaper for Indians.
<i>Indian Opinion</i>	Phoenix Settlement Trust	Weekly newspaper for Indians.
<i>The Graphic</i>	Graphic Stationery and Publishers	Entertainment periodical for Indians.

Distributors of Periodicals and Newspapers.

44. The Central News Agency Ltd. is the largest and most important distributor of newspapers and periodicals in the Republic. Smaller companies which distribute mainly overseas periodicals through the medium of agents, such as cafés and retailers, or through the local recruitment of subscribers, include, *inter alia*, the following:—

Wm. Dawson & Sons, Cape Town;
Publishers Distributing Corporation (Tvl.) (Pty.), Ltd. Johannesburg;
S.A. Magazine Company, Johannesburg;
Cape Magazine Company, Cape Town;
Natal Magazine Company, Durban;
Eastern Province Magazine Company, Port Elizabeth;
American and Overseas Publications, Port Elizabeth;
Time-Life International (Netherlands) N.V., Amsterdam; and
Reader's Digest, Cape Town.

45. The C.N.A. may, for practical purposes, be regarded as the sole distributor of all *local* newspapers and periodicals. Where it does not distribute a local newspaper, this is because the owners concerned prefer to undertake the distributive function themselves and not because a competitive entrepreneur has obtained such rights. Agreements under which the C.N.A. distributes local newspapers and periodicals, give the C.N.A. the sole and exclusive right to distribute. Most overseas periodicals and also various books are distributed in the Republic by the C.N.A. in terms of such exclusive agreements.

The Organisation of the C.N.A.

46. The C.N.A. is a public company registered in 1903. As a partnership between A. V. Lindbergh and M. Davis it has, however, existed in Johannesburg since as early

K.—DIE LANDSTEM (EDMS.), BPK.

Publikasie.	Plek van Publikasie.	Aard van Publikasie.
<i>Die Landstem</i>	Kaapstad en Johannesburg	Weeklikse koerant.
<i>Mense</i>	Kaapstad.....	Maandelikse ontspanningstydskrif.

L.—DRAKENSBERGERS, BEPERK.

Publikasie.	Plek van Publikasie.	Aard van Publikasie.
<i>Die Nataller</i>	Durban.....	Weeklikse koerant.

VERNAAMSTE NIE-BLANKE KOERANT EN TYDSKRIFTE.

Publikasie.	Eienaar.	Aard.
<i>World</i>	Bantu Press (Pty.), Ltd.	Dagblad, Rand, Pretoria, Vereniging (ook 'n weeklikse uitgawe wat in Transvaal versprei word).
<i>Ilanga Lase</i>	Bantu Press (Pty.), Ltd.	Weeklikse koerant (Rand en Natal).
<i>Elethu la Rona</i> ...	Sabiko, Beperk...	Weekblad.
<i>Golden City Post</i> ..	Golden City Post (Pty.), Ltd.	Weeklikse koerant.
<i>Imvo</i>	King Printing Co. Ltd.	Weekblad.
<i>True</i>	Keur Uitgewers (Edms.), Bpk.	Twee-weeklikse ontspanningstydskrif.
<i>Bona</i>	Bona Pers, Beperk..	Maandelikse ontspanningstydskrif.
<i>Drum</i>	Drum Publications	Maandelikse ontspanningstydskrif.
<i>Zonk</i>	Zonk Publications, Ltd.	Maandelikse ontspanningstydskrif.
<i>Our Africa</i>	S.A. General Missions	Maandelikse godsdienstige tydskrif.
<i>Utlwang</i>	Rustenburg Herald (Pty.), Ltd.	Maandelikse tydskrif in Tswana.
<i>Indian Views</i>	M. I. Meer.....	Weeklikse koerant vir Indiërs.
<i>The Leader</i>	Saraswati Bramdaw	Weeklikse koerant vir Indiërs.
<i>Indian Opinion</i> ...	Phoenix Settlement Trust	Weeklikse koerant vir Indiërs.
<i>The Graphic</i>	Graphic Stationery and Publishers	Ontspanningstydskrif vir Indiërs.

Distribueerders van tydskrifte en koerante.

44. Die Central News Agency, Ltd., is die grootste en belangrikste distribueerder van koerante en tydskrifte in die Republiek. Kleiner maatskappye wat hoofsaaklik oorsese tydskrifte versprei deur middel van agente, soos kafees en kleinhandelaars, of deur intekenare plaaslik te werf, is onder andere die volgende:—

Wm. Dawson & Sons, Kaapstad;
Publishers Distributing Corporation (Tvl.) (Pty.), Ltd., Johannesburg;
S.A. Magazine Company, Johannesburg;
Cape Magazine Company, Kaapstad;
Natal Magazine Company, Durban;
Eastern Province Magazine Company, Port Elizabeth;
American and Overseas Publications, Port Elizabeth;
Time-Life International (Nederland) N.V., Amsterdam; en
Reader's Digest, Kaapstad.

45. Die C.N.A. kan prakties as die alleenverspreider van alle *plaaslike* koerante en tydskrifte beskou word. Waar hy nie 'n plaaslike koerant distribueer nie, is dit omdat die betrokke eienaars verkies om die distribusiefunksie self waar te neem en nie omdat 'n mededingende ondernemer die regte verkry het nie. Ooreenkomste waarvolgens C.N.A. plaaslike koerante en tydskrifte versprei, verleen aan C.N.A. die alleenreg („... the sole and-exclusive right ...”) om te versprei. Meeste oorsese tydskrifte en ook etlike boeke word deur C.N.A. in die Republiek ingevolge sulke eksklusiewe ooreenkomste gedistribueer.

Die organisasie van die C.N.A.

46. Die C.N.A. is 'n publieke maatskappy, geregistreer in 1903. As vennootskap tussen A. V. Lindbergh en M. Davis het dit egter reeds sedert 1896 in Johannesburg

as 1896. The largest share-holders when the company was floated were *The Cape Times* and *The Cape Argus*, each holding shares to the value of R60,000 out of the total capital of R201,860 issued at that stage. The newly floated company took over *inter alia* the distribution of *The Argus* and *The Cape Times*, as well as the two local branches of the overseas firm Gordon & Gotch which were mainly concerned with the distribution in South Africa of overseas newspapers and periodicals. Payment was made in shares so that Gordon & Gotch of London in this way obtained a financial interest in the C.N.A. Today the C.N.A. group consists of fourteen public companies under the control of C.N.A. Investments Ltd. whose shares are distributed as follows—

(a) Ordinary Share Capital:—

Approved: 3,000,000 at 50c each..... R1,500,000
 Issued: 1,986,402 at 50c each, held by 447 share-holders as follows:—

	Number.	Percentage.
Estate of the late A. V. Lindbergh.....	538,428	27·10
Gordon & Gotch, Ltd.....	344,505	17·34
The Argus Printing and Publishing Co., Ltd.....	323,285	16·28
Cape Times, Ltd.....	323,285	16·28
17 Shareholders, each with between 5,000 and 37,000 shares.....	175,655	8·84
411 Shareholders, each with less than 500 shares.....	281,244	14·16
	<u>1,986,402</u>	<u>100·00</u>

(b) Preference shares:—

Approved and fully taken up: 500,000 at R2.... R1,000,000
 Held by 482 shareholders, namely:—

	Number.	Percentage.
Gordon & Gotch, Ltd.....	40,000	8·00
Estate A. V. Lindbergh.....	25,325	5·06
Jhb. Cons. Inv. Co., Ltd.....	25,000	5·00
Friends Provident and Century Life Office, London.....	25,000	5·00
The London Assurance.....	20,000	4·00
12 Shareholders, each with between 5,000 and 11,000.....	79,950	15·99
465 Shareholders, each with less than 5,000.....	284,725	56·95
	<u>500,000</u>	<u>100·00</u>

47. The holders of the preference shares are not entitled to receive notice of, or to be present at, or to participate in, the company's annual general meeting, except only if certain specific matters are discussed, such as the dissolution of the company or a change in its capital structure. The control of the C.N.A. is consequently in the hands of its ordinary shareholders. As appears from the relevant list, there are four large shareholders and a combination of any two is always able to exercise a greater voting power than any other single shareholder. The two newspaper owners, namely *The Cape Times* and *The Argus*, are therefor always in a position to exercise considerable influence over the C.N.A.'s matters of policy and management.

Rights Reserved by The Cape Times and The Cape Argus.

48. The Cape Times and The Cape Argus, as the co-founders of the C.N.A., placed certain restrictions on the latter's trading activities in order to ensure the efficient distribution of their own newspapers and to prevent the newly founded distributive organisation from assuming obligations in course of time which might be injurious to be the best business interests of the *The Cape Times* and *The Cape Argus*. These restrictions are contained in the C.N.A.'s Memorandum of Association which provides *inter alia*—

- (a) that the C.N.A. will never distribute any morning or afternoon newspaper published "within the sphere of publication of the daily papers owned or controlled now or at any time hereafter by The Argus Company or by The Cape Times Ltd." without the written permission of the companies in question, and that this provision cannot be changed without the written permission of the companies concerned for as long as the distribution contracts given by those companies to the C.N.A. are still in force;

bestaan. Die grootste aandeelhouders by sy oprigting was die Cape Times en die Cape Argus, elk met aandele ter waarde van R60,000 van die totale uitgereikte kapitaal van R201,860 op daardie stadium. Die pasgestigte maatskappy het onder andere die distribusie oorgeneem van die Argus en Cape Times, asook die twee plaaslike takke van die oorsese firma Gordon en Gotch, wat hoofsaaklik die distribusie van oorsese koerante en tydskrifte in Suid-Afrika waargeneem het. Betaling het in aandele geskied, sodat Gordon & Gotch van Londen sodoende 'n finansiële belang in C.N.A. verkry het. Vandag bestaan die C.N.A. groep uit veertien openbare maatskappye, onder die beheer van C.N.A. Investments, Ltd., wie se aandele as volg versprei is—

(a) Gewone aandeelkapitaal:—

Goedgekeur: 3,000,000 teen 50c elk..... R1,500,000
 Uitgereik: 1,986,402 teen 50c elk, wat deur 447 aandeelhouders gehou word, as volg:—

	Aantal.	Persentasie.
Boedel wyle A. V. Lindbergh.....	538,428	27·10
Gordon & Gotch, Ltd.....	344,505	17·34
The Argus Printing and Publishing Co., Ltd.....	323,285	16·28
Cape Times, Ltd.....	323,285	16·28
17 Aandeelhouders met elk tussen 5,000 en 37,000 aandele.....	175,655	8·84
411 Aandeelhouders met elk minder as 500 aandele.....	281,244	14·16
	<u>1,986,402</u>	<u>100·00</u>

(b) Voorkeuraandele:—

Goedgekeur en ten volle opgeneem: 500,000 teen R2..... R1,000,000
 Word deur 482 aandeelhouders gehou, naamlik:—

	Aantal.	Persentasie.
Gordon & Gotch, Ltd.....	40,000	8·00
Boedel A. V. Lindberg.....	25,325	5·06
Jhb. Cons. Inv. Co., Ltd.....	25,000	5·00
Friends Provident and Century Life Office, London.....	25,000	5·00
The London Assurance.....	20,000	4·00
12 Aandeelhouders met elk tussen 5,000 en 11,000.....	79,950	15·99
465 Aandeelhouders met elk minder as 5,000.....	284,725	56·95
	<u>500,000</u>	<u>100·00</u>

47. Die houders van die voorkeuraandele het geen reg om kennis te kry van, of teenwoordig te wees en deel te neem aan, die maatskappy se algemene jaarvergadering nie, behalwe slegs indien sekere spesifieke aangeleenthede bespreek word soos die ontbinding van die maatskappy of 'n verandering in sy kapitaalstruktuur. Die beheer van C.N.A. is gevolglik in die hande van sy gewone aandeelhouders. Soos blyk uit die betrokke lys, is daar vier groot aandeelhouders en kan 'n kombinasie van enige twee altyd 'n groter stemkrag uitoefen as enige ander enkele aandeelhouer. Die twee koeranteienaars, te wete Cape Times en Argus, is gevolglik altyd in staat om aansienlike invloed op C.N.A. se beleidsake en bestuur uit te oefen.

Regte voorbehou deur Cape Times en Cape Argus.

48. Die Cape Times en Cape Argus het, as mede-oprigters van C.N.A., sekere beperkings op laasgenoemde se handelsvryheid gelê ten einde die doeltreffende distribusie van hulle eie koerante te verseker en om te verhoed dat die pasgestigte distribusie-organisasie met verloop van tyd verpligtings op hom neem wat skadelik vir Cape Times en Cape Argus se beste handelsbelange mag wees. Hierdie beperkings is vervat in C.N.A. se Akte van Oprigting wat onder andere bepaal dat—

- (a) C.N.A. nooit enige oggend- of middagkoerant sal distribueer wat uitgegee word „within the sphere of publication of the daily papers owned or controlled now or at any time hereafter by the Argus Company or by the Cape Times Ltd.”, sonder die skriftelike toestemming van die betrokke maatskappye, en dat hierdie bepaling nie verander kan word sonder die skriftelike toestemming van die betrokke maatskappye nie, solank as wat die distribusie-kontrakte wat daardie maatskappye aan C.N.A. toegeken het, nog van krag is;

- (b) that the C.N.A. is prohibited "from employing the plant, carts, motors, staff or other facilities of the company (C.N.A. Ltd.), in assisting or aiding in the publication or distribution of any such competing or rival publications";
- (c) that the C.N.A. undertakes "not (to) publish* any papers, periodicals, or other publications (other than those of the said The Argus Company Limited and Cape Times Limited) unless and until a deed of indemnity and guarantee" has been given to the C.N.A. Ltd. whereby its directors, officers and employees are safeguarded against any losses which they may suffer "by reason of any such paper, periodical or publication containing any libellous or defamatory statement, having been published by them or any of them."

49. A further restriction on the C.N.A. flows from the agreement concluded in 1914 with The Cape Times Limited, according to which during the existence of the agreement neither the C.N.A. nor its managing directors "shall acquire any proprietary interest in any newspaper published in Cape Town in opposition to the newspapers owned by The Cape Times Ltd.", excluding interests in newspapers controlled by The Argus Company. If the C.N.A. or its managing director has any intention of acquiring an interest in a newspaper other than the newspapers controlled by The Argus Company, they are obliged to give the Cape Times three months notice of any such intention. The Cape Times shall then have the right to cancel the present agreements. The distribution agreements with S.A. Associated Newspapers Ltd. for the distribution of the *Rand Daily Mail* and *The Sunday Times* also contain restrictions which are more or less identical with those applicable in respect of the newspapers of The Argus group. The effect of the above-mentioned restrictions is that the C.N.A. is, for example, prohibited in the Transvaal—

- (a) from distributing any *English* morning paper published on the Witwatersrand and competing with *The Rand Daily Mail*, without the permission of S.A. Associated Newspapers, Ltd.;
- (b) from distributing any afternoon paper—Afrikaans or English—published on the Witwatersrand and competing with *The Star*, without the permission of the Argus Printing and Publishing Co. Ltd., and from distributing any afternoon paper—English or Afrikaans—published in Pretoria and competing with *The Pretoria News*, without the permission of The Pretoria News and Printing Works (Pty), Ltd.;
- (c) from distributing in the Transvaal any Sunday or weekend paper competing with *The Sunday Times*, excluding the *Star*, *Sunday Express*, *Dagbreek* en *Sondagnuus* and the *Golden City Post*, without the permission of S.A. Associated Newspapers, Ltd.

50. The implications of the above-mentioned restrictions on the trading activities of the C.N.A., and any monopolistic conditions which may exist in connection with the distribution of newspapers and periodicals, will be considered in a following chapter.

Price Determination in Respect of Newspapers and Periodicals.

51. The prices of the local national newspapers and periodicals have been fixed and the same newspapers or periodicals are sold to the public throughout the country at uniform prices. These prices are not fixed by the distributors, however, but by the various owners. In regard to overseas newspapers and periodicals, the prices are fixed mainly by the owners in co-operation with the local distributor, and are embodied as a condition of distribution in the contract between the parties concerned. The fact that the national dailies are at present sold throughout the country at three cents each, and weeklies at five cents each, is the result of mutual consultation among newspaper owners and of the rule of the National Press Union

- (b) C.N.A. belet word „from employing the plant, carts, motors, staff or other facilities of the Company (C.N.A. Ltd.) in assisting or aiding in the publication or distribution of any such competing or rival publications";
- (c) C.N.A. onderneem „not (to) publish* any papers, periodicals, or other publications (other than those of the said 'The Argus Company Limited' and 'Cape Times Limited') unless and until a deed of indemnity and guarantee" aan C.N.A. Ltd. verstrekk is waardeur sy direkteure, beamptes en werknemers gevrywaar word teen enige verliese wat hulle mag ly „by reason of any such paper, periodical or publication containing any libellous or defamatory statement, having been published by them or any of them."

49. 'n Verdere beperking op C.N.A. vloei voort uit die ooreenkoms wat gedurende 1914 met die Cape Times Limited aangegaan is en waarvolgens nóg C.N.A. nóg sy besturende direkteure gedurende die bestaan van die ooreenkoms „shall acquire any proprietary interest in any newspaper published in Cape Town in opposition to the newspapers owned by the Cape Times Ltd." uitgesonderd belange in koerante wat deur die Argus Company beheer word. Indien die C.N.A. of sy besturende direkteur enige voorneme het om 'n belang in 'n koerant anders as die koerante onder beheer van die Argus Company te verkry, is hulle verplig om die Cape Times drie maande kennis te gee van so 'n voorneme. Die Cape Times sal dan die reg hê om die huidige ooreenkomste te kanselleer. Ook die distribusie-ooreenkomste met S.A. Associated Newspapers Ltd. vir die verspreiding van *Rand Daily Mail* en *Sunday Times* bevat beperkings wat omtrent identies is met dié wat ten opsigte van die koerante van die Argus-groep van toepassing is. Die uitwerking van die voorgenoemde beperkings is dat C.N.A. byvoorbeeld in Transvaal belet word om—

- (a) sonder die toestemming van S.A. Associated Newspapers Ltd. enige *Engelse* oggendkoerant te distribueer wat aan die Witwatersrand uitgegee word en wat met *Rand Daily Mail* meeding;
- (b) sonder toestemming van The Argus Printing and Publishing Co. Ltd. enige middagkoerant—Afrikaans of Engels—te distribueer wat aan die Witwatersrand uitgegee word en met die *Star* meeding en sonder toestemming van Pretoria News and Printing Works (Pty), Ltd 'n middagkoerant (Engels of Afrikaans) te distribueer wat in Pretoria uitgegee word en wat met die *Pretoria News* meeding; en
- (c) sonder die toestemming van S.A. Associated Newspapers Ltd. enige Sondag- of naweekkoerant in Transvaal versprei wat meeding met die *Sunday Times*, behalwe *The Star*, *Sunday Express*, *Dagbreek* en *Sondagnuus* en *Golden City Post*.

50. Die implikasies van die bogenoemde beperkings op die handelsvryheid van C.N.A. en enige monopolistiese toestande wat in verband met die distribusie van koerante en tydskrifte mag bestaan, sal in 'n volgende hoofstuk oorweeg word.

Prysvasstelling by koerante en tydskrifte.

51. Die pryse van die plaaslike nasionale koerante en tydskrifte is vasgestel en dieselfde koerant of tydskrif word orals teen eenvormige pryse aan die publiek verkoop. Hierdie pryse word egter nie deur die distribueerders vasgestel nie, maar deur die onderskeie eienaars. Wat oorsese koerante en tydskrifte betref, word die pryse hoofsaaklik deur die eienaars in medewerking met die plaaslike distribueerder vasgestel en as 'n voorwaarde van distribusie in die kontrak tussen die partye beliggaam. Die feit dat die nasionale dagblaie tans deurgaans teen drie sente stuk, en weeklikse koerante teen vyf sente stuk, verkoop word, is die gevolg van onderlinge raadpleging tussen koeranteienaars en die reël van die Nasionale Persunie

* Used here in the sense of "distribute".

* Word hier gebruik in die betekenis van „distribueer".

that owners may not change prices without prior consultation with the Union. Technically, the identical newspaper prices are therefore due to joint or horizontal resale price maintenance.

52. The prices of periodicals are fixed individually by the respective owners, due account being taken of the prices of other competitive periodicals in the same class. Price differences therefore do indeed occur, even among periodicals belonging to the same group or class. Where distribution is effected by a distributor, he undertakes to sell the periodical concerned to the public at the owners' fixed prices, so that a system of individual, vertical resale price maintenance is encountered here.

CHAPTER IV.

THE CREATION OF MONOPOLOSTIC CONDITIONS.

The Distribution of Books.

53. In the opinion of the Board, the Associated Booksellers of Southern Africa Ltd.'s system of prescribed discounts by means of the P. & D. Schedule, is a monopolistic condition in terms of the Act. Although the publishers' prices are fixed individually, by the separate publishers, locally as well as overseas, the Association decides what additions should be made to every price in order to calculate the retail price, and its members undertake to maintain these prescribed discounts. The result is that all booksellers sell the same books to the same type of buyers at uniform prices and that the prices of books consequently do not freely come about through the operation of the impersonal market factors of supply and demand. In the technical sense there is therefore joint or horizontal resale price maintenance in the book trade. Since such resale price maintenance directly restricts competition among booksellers, it has the effect or is calculated to have the effect of increasing or maintaining the prices of books, such a state of affairs being a monopolistic condition in terms of section two (1) (d) (iii) of the Act.

54. In regard to other associations in the book trade, the Board does not consider that their present activities create monopolistic conditions in terms of the Act. As far as could be ascertained, they are not responsible for any formal or informal agreements in connection with privileges for their members, and their existence also does not constitute a restriction or handicap in regard to entry into the industry.

The Distribution of Newspapers and Periodicals.

55. Monopolistic conditions in the distribution of newspapers and periodicals are manifested in the following field:—

- (i) The conclusion of exclusive distribution agreements;
- (ii) restrictions on distributors' trading activities by owners of newspapers and periodicals;
- (iii) resale price maintenance and/or the maintenance of prescribed prices; and
- (iv) the application of the C.N.A.'s monopolistic power.

(i) Exclusive Distribution Agreements.

56. Agreements according to which the sole right of distributing newspaper and periodicals within the Republic is granted to a single distributor, exist in respect of both overseas and local newspapers and periodicals. In the case of overseas publications, exclusive agreements exist between the overseas publishers and the various distributors in the Republic. As a result of the size of its organisation and its reputation as the largest distributor of periodicals and newspapers in the country, the C.N.A. is obviously in the most favourable position to secure such exclusive agreements and it consequently has more such agreements than any other single distributor. It is important to bear in mind, however,

dat eienaars nie pryse sonder vooraf raadpleging met die Unie, mag wysig nie. Tegnies is die identiese koerantpryse dus aan gesamentlike, of horisontale prysbinding toe te skrywe.

52. Tydskrifpryse word individueel deur die onderskeie eienaars vasgestel, met inagneming van die pryse van ander tydskrifte in dieselfde klas as waarmee meegeding word. Prysverskille kom dus wel voor, selfs tussen tydskrifte van min of meer dieselfde groep of klas. Waar distribusie deur 'n distribueerder geskied, onderneem hy om die betrokke tydskrif teen die eienaar se vasgestelde pryse aan die publiek te verkoop, sodat 'n stelsel van individuele, vertikale prysbinding hier aangetref word.

HOOFSTUK IV.

DIE SKEPPING VAN MONOPOLISTIESE TOESTANDE.

Die distribusie van boeke.

53. Na die Raad se mening is die Verenigde Boekhandelaars van Suidelike Afrika, Bpk., se stelsel van voorgeskrewe diskonto's deur middel van die P. & D. Skedule, 'n monopolistiese toestand ingevolge die Wet. Hoewel die uitgewerspryse individueel deur die afsonderlike uitgewers, plaaslik sowel as oorsee, vasgestel word, besluit die Vereniging watter toevoegings tot elke prys gedoen moet word ten einde die kleinhandelsprys te bereken en onderneem sy lede om hierdie voorgeskrewe diskonto's te handhaaf. Die gevolg is dat alle boekhandelaars dieselfde boeke aan dieselfde tipe kopers teen eenvormige pryse verkoop en pryse van boeke derhalwe nie vryelik tot stand kom deur die werking van die onpersoonlike markfaktore van vraag en aanbod nie. In die tegniese sin is daar dus gesamentlike of horisontale prysbinding in die boekhandel wat, deurdat dit mededinging tussen boekhandelaars regstreeks beperk, die uitwerking het of bereken is om die pryse van boeke te verhoog of te handhaaf, met ander woorde 'n monopolistiese toestand ingevolge artikel twee (1) (d) (iii) van die Wet.

54. Wat die ander verenigings in die boekhandel betref, meen die Raad nie dat hulle huidige aktiwiteite monopolistiese toestande ingevolge die Wet skep nie. Sover vasgestel kon word, is hulle vir geen formele of informele ooreenkomste in verband met voorregte vir hulle lede verantwoordelik nie en is hulle bestaan ook nie 'n beperking of belemmering van toetreding tot die bedryf nie.

Die distribusie van koerante en tydskrifte.

55. Monopolistiese toestande in die distribusie van koerante en tydskrifte word in die volgende rigtings geopenbaar, naamlik:—

- (i) die aangaan van eksklusiewe distribusie-ooreenkomste;
- (ii) beperkings op distribueerders se handelsvryheid deur eienaars van koerante en tydskrifte;
- (iii) prysbinding en/of handhawing van voorgeskrewe pryse; en
- (iv) die aanwending van C.N.A. se monopoliemag.

(i) Eksklusiewe distribusie-ooreenkomste.

56. Ooreenkomste waarvolgens die alleenreg vir die distribusie van koerante en tydskrifte binne die Republiek aan 'n enkel distribueerder toegeken word, bestaan ten opsigte van oorsese sowel as plaaslike koerante en tydskrifte. Wat oorsese publikasies betref, bestaan daar eksklusiewe ooreenkomste tussen die oorsese uitgewers en verskeie distribueerders binne die Republiek. Vanweë die omvang van sy organisasie en sy bekendheid as die grootste distribueerder van tydskrifte en koerante in die land, is C.N.A. vanselfsprekend in die gunstigste posisie om sulke eksklusiewe ooreenkomste te verkry en hy besit dan ook meer sulke ooreenkomste as enige ander enkele distribueerder. Dis is egter belangrik om te onthou dat C.N.A.

that the C.N.A. does not hold *all* exclusive distribution agreements. Other distributors therefore do also succeed in obtaining the sole right to distribute certain publications. In actual fact, there is nothing to prevent the share of such distributors in the total distribution of overseas newspapers and periodicals from continually expanding.

57. As far as *local* newspapers and periodicals are concerned the C.N.A. is, apart from the few owners who prefer to undertake their own distribution, the only distributor. All the agreements with the publishers concerned confer on it the sole right to distribute the relevant newspapers and/or periodicals. The agreements are generally concluded for periods of twelve months and are subject to termination by either party after notice of a certain period, usually three months. The sole right to distribute a publisher's publication is therefore not entrenched for long periods.

58. The implication of this type of agreement is that other distributors are not able to obtain and distribute stocks of the relevant publications, and that the holder of such an exclusive right has a complete monopoly over the supply of the particular newspaper or periodical for the duration of the term of the agreement. Therefore a condition arises which, since it directly restricts competition among distributors, has the effect or is calculated to have the effect of preventing or restricting the entry of new distributors, in other words, the creation of a monopolistic condition in terms of section two (1) (d) (iv) of the Act.

(ii) *Restrictions on Distributor's Trading Activities.*

59. In paragraph 48 it was shown how The Cape Times Ltd. and The Argus Company in founding the C.N.A. imposed certain restrictions on the last mentioned. These restrictions still exist today and are embodied in the C.N.A.'s Memorandum of Association. In the Transvaal, for example, where competition among newspapers is apparently the fiercest, the above-mentioned restrictions have the effect *inter alia*—

- (a) that the C.N.A. may not undertake the distribution of any Afrikaans or English afternoon paper published on the Rand or in Pretoria, without the permission of The Argus Company, and also may not distribute any English morning paper published on the Rand, without the permission of S.A. Associated Newspapers Ltd. (It may, however, distribute any Afrikaans morning paper and any English morning paper published *outside* the Witwatersrand Area, without the permission of the existing newspaper owners.);
- (b) that the C.N.A. may not distribute any Afrikaans or English weekend paper in the Transvaal, irrespective of the language in which it appears, or of the racial group for which it is intended, without the permission of S.A. Associated Newspapers Ltd.;
- (c) that S.A. Associated Newspapers, Ltd., and The Argus Printing and Publishing Co., Ltd., between them own and/or control all the principal English urban daily and Sunday newspapers published in the Transvaal. The provisions in the distribution agreements with *The Star*, *The Pretoria News*, *The Rand Daily Mail* and *The Sunday Times* enable the owners of each of these papers to use the C.N.A.'s monopolistic position in order to protect their papers against the potential competition of new newspapers.

60. The latest agreements for the distribution of *The Rand Daily Mail* and *The Sunday Times* extend from 1st January, 1956, to 31st December, 1960; after which they run on indefinitely for further periods of five years at a time unless notice of cancellation is given 12 months prior to the expiry of any such period. Agreements in respect of *The Star* and *The Pretoria News* are subject to cancellation after 12 months' notice by either party. The C.N.A. is therefore not permanently bound to the foregoing discriminatory conditions. The question, however, is whether it would be a sound business consideration, seen

nie *alle* eksklusiewe distribusie-ooreenkomste hou nie. Ander distribueerders slaag dus wel ook daarin om die alleenreg vir die distribusie van sekere publikasies te verkry. In werklikheid is daar niks wat belet dat sulke distribueerders se aandeel aan totale distribusie van oorsese koerante en tydskrifte nie steeds in omvang toeneem nie.

57. Wat plaaslike koerante en tydskrifte betref, is C.N.A. naas die enkele eienaars wat verkies om hulle eie distribusie waar te neem, die enigste distribueerder. Al die ooreenkomste met die betrokke uitgewers verleen aan hom die alleenreg om die betrokke koerante en/of tydskrifte te distribueer. Die ooreenkomste word meesal aangegaan vir tydperke van twaalf maande en is onderhewig aan opsegging aan beide kante na kennisgewing van 'n sekere tydperk, gewoonlik drie maande. Die alleenreg om 'n uitgewer se publikasie te distribueer, word dus nie vir lang termyne verskans nie.

58. Die implikasie van hierdie tipe ooreenkoms is dat ander distribueerders nie in staat is om voorrade van die betrokke publikasies te bekom en te distribueer nie en dat die houer van so 'n eksklusiewe reg vir die duur van die ooreenkoms oor 'n volkome monopolie oor die aanbod van die besondere koerant of tydskrif beskik. 'n Toestand ontstaan dus wat, deurdat dit mededinging tussen distribueerders regstreeks beperk, die uitwerking het of bereken is om die toetrede van nuwe distribueerders te verhoed of te beperk, met ander woorde die skepping van 'n monopolistiese toestand ingevolge artikel twee (1) (d) (iv) van die Wet.

(ii) *Beperkings op distribueerders se handelsvryheid.*

59. In paragraaf 48 is aangetoon hoedat die Cape Times, Ltd., en die Argus maatskappy met die oprigting van C.N.A. sekere beperkings op laasgenoemde gelê het. Hierdie beperkings bestaan vandag nog en is beliggaam in C.N.A. se Akte van Oprigting. In Transvaal byvoorbeeld, waar onderlinge mededinging tussen koerante oënskynlik die heftigste is, het die genoemde beperkings onder andere die uitwerking dat—

- (a) C.N.A. nie die distribusie van enige Afrikaanse of Engelse middagkoerant wat aan die Rand of Pretoria uitgegee word, sonder toestemming van die Argusmaatskappy mag onderneem nie en ook geen Engelse oggendkoerant wat aan die Rand uitgegee word, sonder S.A. Associated Newspapers, Ltd. se toestemming mag distribueer nie. Dit mag egter enige Afrikaanse oggendkoerant, en enige Engelse oggendkoerant wat *buite* die Witwatersrandse gebied gepubliseer word, sonder toestemming van bestaande koeranteienaars distribueer.
- (b) C.N.A. nie in Transvaal enige Afrikaanse of Engelse naweek-koerant, afgesien van die taal waarin dit verskyn, of vir watter rassegroep dit nou ookal bedoel is, sonder die toestemming van S.A. Associated Newspapers, Ltd. mag distribueer nie.
- (c) S.A. Associated Newspapers, Ltd. en The Argus Printing and Publishing Co., Ltd., besit en/of beheer tussen hulle al die vernaamste Engelse stedelike dag- en Sondagkoerante wat in Transvaal uitgegee word. Die bepalinge in die distribusie-ooreenkomste met *The Star*, *The Pretoria News*, *The Rand Daily Mail* en *The Sunday Times* stel elk van hierdie koerante se eienaars in staat om die C.N.A. se monopolistiese posisie te gebruik om hulle koerante teen die potensiële mededinging van nuwe koerante te beskerm.

60. Die jongste ooreenkomste vir die distribusie van *The Rand Daily Mail* en *The Sunday Times* strek van 1 Januarie 1956 tot 31 Desember 1960, waarna dit onbepaald vir verdere periodes van 5 jaar elk strek, tensy kennisgewing van kansellasië 12 maande vóór die verstryking van enige sodanige periode gegee is. Ooreenkomste ten opsigte van *The Star* en *The Pretoria News* is onderhewig aan kansellasië na 12 maande kennisgewing aan beide kante. Die C.N.A. is dus nie permanent aan die genoemde diskriminerende voorwaardes gebonde nie. Die vraag is egter of dit, van die C.N.A. se kant gesien,

from the C.N.A.'s point of view, to throw overboard valuable customers, such as The Argus Company and S.A. Associated Newspapers, Ltd., in order to be at liberty to distribute a new, unestablished and uncertain new publication. According to the Press Commission*, the C.N.A. is dependent for as much as 43 per cent of its total gross income on the distribution of newspapers of The Argus group. There is consequently no inducement for the C.N.A. to terminate the above agreements unilaterally and thereby voluntarily put an end to the anomalous position.

61. In the Board's opinion, the provisions in the relevant distribution agreements according to which the C.N.A. is prohibited from offering its distribution services to any party or person without let or hindrance and without the prior permission of the existing owners, is a monopolistic condition which, since it restricts competition, has the effect or is calculated to have the effect of—

- (i) curtailing the facilities available for the distribution of newspapers and periodicals;
- (ii) preventing the distribution of newspapers and periodicals in the most efficient and economic manner; and
- (iii) preventing or restricting the entry of new publishers of newspapers or periodicals.†

(iii) *Resale Price Maintenance.*

62. In paragraph 51 *et seq* it was indicated how the prices of newspapers and periodicals are arrived at, and that, in the Board's opinion, a system of joint resale price maintenance is in vogue in the case of newspapers, and of individual resale price maintenance in respect of periodicals. The prices paid by the public for the national daily newspapers are therefore the same throughout the country, just as the weekly papers (Sunday and weekend editions) are all sold at the same prices. The prices of periodicals admittedly vary from one to another, but the price of the same periodical is the same everywhere. Price competition is consequently absent in the sale to the public of both newspapers and periodicals. This restriction of competition creates a monopolistic condition in terms of the Act since it has the effect or is calculated to have the effect of enhancing or maintaining prices.‡

(iv) *Application of the C.N.A.'s Monopolistic Powers.*

63. In a previous report§, the Board pointed out that the Regulation of Monopolistic Conditions Act was not aimed at the existence of a monopolistic market form as such but had to do with the manner in which monopolistic powers were applied. During the investigation certain specific complaints in regard to the manner in which the C.N.A. applies its monopolistic powers, were brought to the attention of the Board. In the following paragraphs the Board will take a closer look at these alleged abuses of monopolistic powers in order to determine the extent to which the allegations are well founded and, if so, whether a monopolistic condition is thereby created in terms of the Act.

64. In its submissions to the Board, the C.N.A. definitely denied that the large financial interests in the C.N.A. of some newspaper owners (see paragraph 45) gave them special privileges. "None of the above shareholdings has any effect in creating obligations, rights or advantages in the ordinary conduct of the company's business which is carried out on the basis of normal business principles other than arguable initial advantages shown in the first agreement with founder newspaper shareholders and none of the aforementioned have any connection whatsoever with one another."

The Board mentions this fact that because some of the alleged malpractices about which complaints have been lodged, amount to discrimination against later entrants to the newspaper industry. These complaints are briefly the following:—

'n gesonde besigheidsoorweging sal wees om waardevolle klante soos die Argus-maatskappy en S.A. Associated Newspapers, Ltd., oorboord te gooi ten einde vry te wees om 'n nuwe, of gevestigde en onseker nuwe publikasie te kan versprei. Volgens die Perskommissie,* is die C.N.A. vir soveel as 43 persent van sy totale bruto-inkomste uit koerantdistribusie van die Argus-groep afhanklik. Daar bestaan gevolglik geen aanmoediging vir die C.N.A. om die genoemde ooreenkomste eensydig te beëindig en sodoende vrywilliglik 'n einde aan die ongerymdheid te maak nie.

61. Na die Raad se mening is die bepalings in die betrokke distribusie-ooreenkomste waarvolgens die C.N.A. belet word om sy distribusiedienste onbelemmerd en sonder vooraf toestemming van bestaande eienaars aan enige party of persoon aan te bied, 'n monopolistiese toestand wat, deurdat dit mededinging beperk, die uitwerking het of bereken is om—

- (i) die fasiliteite beskikbaar vir die distribusie van koerante en tydskrifte in te kort;
- (ii) die distribusie van koerante en tydskrifte op die mees doeltreffende en ekonomiese manier te verhoed; en
- (iii) die toetrede van nuwe uitgewers van koerante of tydskrifte te verhoed of te beperk.†

(iii) *Prysbinding.*

62. In paragraaf 51 e.v. is aangetoon hoedat die pryse van koerante en tydskrifte tot stand kom en dat, na die Raad se mening, 'n stelsel van gesamentlike prysbinding by koerante en individuele prysbinding ten opsigte van tydskrifte in swang is. Pryse van die nasionale daaglikse koerante aan die publiek is dus orals dieselfde, net soos die weeklikse koerante (Sondag- en naweekuitgawes) ook almal teen dieselfde pryse verkoop word. Pryse van tydskrifte verskil wel van een tot 'n ander, maar die prys van dieselfde tydskrif is orals dieselfde. Prysmedinging ontbreek gevolglik by die verkoop aan die publiek van beide koerante en tydskrifte. Hierdie beperking van mededinging skep 'n monopolistiese toestand ingevolge die Wet, deurdat dit die uitwerking het of bereken is om pryse te verhoog of te handhaaf.‡

(iv) *Die aanwending van C.N.A. se monopoliemag.*

63. In 'n vorige verslag§ het die Raad daarop gewys dat die Wet op Reëling van Monopolistiese Toestande nie teen die bestaan van 'n monopolistiese markvorm as sodanig gemik is nie, maar te doen het met die wyse waarop monopoliemag aangewend word. Tydens die ondersoek is sekere spesifieke klagtes oor die wyse waarop die C.N.A. sy monopoliemag aanwend, onder die Raad se aandag gebring. In die volgende paragrawe sal die Raad hierdie beweerde misbruike van monopoliemag nader beskou ten einde vas te stel in hoeverre die bewerings gegrond is en indien wel, of 'n monopolistiese toestand ingevolge die Wet daardeur geskep word.

64. In sy voorleggings aan die Raad het die C.N.A. beslis ontken dat die groot finansiële belange van sommige koeranteienaars in C.N.A. (sien paragraaf 45) aan hulle besondere voorregte besorg. „None of the above shareholdings has any effect in creating obligations, rights or advantages in the ordinary conduct of the company's business which is carried out on the basis of normal business principles other than arguable initial advantages shown in the first agreement with founder newspaper shareholders and none of the aforementioned have any connection whatsoever with one another". Die Raad noem hierdie feit omdat sekere van die beweerde misbruike waaroor gekla word op diskriminasie teenoor latere toetreders tot die koerantbedryf neerkom. Hierdie klagtes is kortliks die volgende:—

* Report, loc. cit., page 146.

† Cf. sub-sections (ii), (iv) and (vi) of section two (1) (d) of the Act.

‡ Cf. sub-section (iv) of section two (1) (d) of the Act.

§ Report No. 883 (M): Monopolistic Conditions in the Procurement, Production and Distribution of Motion Pictures in the Republic of South Africa, par. 59.

* Verslag t.a.p., bl. 146.

† Sub-artikels (ii), (iv) en (vi) van artikel twee (1) (d) van die Wet verwy.

‡ Sub-artikel (iv) van artikel twee (1) (d) van die Wet verwy.

§ Verslag No. 883 (M): Monopolistiese Toestande by die Verkryging, Vervaardiging en Distribusie van Rolprente in die Republiek van Suid-Afrika, para. 59.

(a) Tariffs.

65. The C.N.A. buys the copies of each edition of the newspapers and/or periodicals which it distributes, and negotiates with the various owners separately in regard to the prices. The difference between the price paid by the C.N.A. and the selling price to the public is its remuneration. Unsold copies are returned to the owner and the C.N.A. does not pay for them. As is apparent from the following table, the price not only varies from area to area but also in respect of the same type of publication within the same area.

TABLE A.—Prices at which the C.N.A. buys the principal newspapers from the owners for distribution.

Area.	Newspaper.	Time of Appearance.	Price per Copy (in cents).
Cape Town..	The Cape Argus...	Afternoon.	Weekdays: 1-79747 Weekends: 3-41083
	The Cape Times...	Morning...	Weekdays: 1-79747 Weekends: 3-41083
Bloemfontein. Transvaal....	The Friend.....	Morning...	1-75625
	The Rand Daily Mail	Morning...	1-750
	Die Transvaler.....	Morning...	1-722
	The Star.....	Afternoon.	1-77747
	Die Vaderland.....	Afternoon.	1-722
	The Pretoria News.	Afternoon.	1-962
	The Sunday Times.	Sunday....	2-97917
	Sunday Express....	Sunday....	2-97917
	Dagbreek en Sondag-nuus.....	Sunday....	2-97917
Natal.....	The Natal Mercury.	Morning...	1-79747
	The Natal Daily News.....	Afternoon.	1-79747
	Sunday Tribune....	Sunday....	3-28333

NOTE.—Retail prices:—

Daily editions, 3c.

Sunday and weekend editions, 5c.

66. Apart from the higher prices paid by the C.N.A. for papers in the Cape area, it is noteworthy that the same type of newspaper is bought at different rates within the same area, e.g. *The Rand Daily Mail* at 1-750 cents each, as against 1-722 cents for *Die Transvaler*, while both are morning papers and are distributed by the same organisation within the same area. The same applies to the two afternoon papers, *The Star* and *Die Vaderland*, which are paid for at the rate of 1-77747 cents and 1-722 cents, respectively. Apparently there is discrimination here against *Die Transvaler* and *Die Vaderland* because they are placed in a weaker competitive position vis-à-vis *The Rand Daily Mail* and *The Star*, respectively, owing to the lower price. It should be borne in mind, however, that the difference between the C.N.A.'s price to the owner and the price to the public represents the C.N.A.'s remuneration. If the unit costs of distributing *Die Transvaler* and *Die Vaderland* are higher than those of *The Star* and *The Rand Daily Mail*, respectively, it may be asserted that the difference in the relevant tariffs is based on economic grounds and does not amount to discrimination.

67. The C.N.A. consequently argues that the differences are economically justified because—

- (i) the circulation of *The Rand Daily Mail* and *The Star* is so much larger than that of *Die Transvaler* and *Die Vaderland*, as will be seen from the following figures:—

TABLE B.—Average Daily Circulation for the Half-year ended December, 1963.

The Rand Daily Mail.....	112,097
Die Transvaler.....	37,663
The Star.....	162,257
Die Vaderland.....	50,573

(According to the above figures, roughly three copies of *The Rand Daily Mail* and *The Star* are sold for every one copy of *Die Transvaler* and *Die*

(a) Tariewe.

65. C.N.A. koop die eksemplare van elke uitgawe van die koerante en/of tydskrifte wat hy versprei en onderhandel met die onderskeie eienaars afsonderlik oor die prys daarvan. Die verskil tussen die prys wat die C.N.A. betaal en die verkoopprijs aan die publiek, is sy vergoeding. Onverkoopte eksemplare gaan terug aan die eienaar en C.N.A. betaal nie daarvoor nie. Soos blyk uit die volgende tabel verskil die prys nie slegs tussen streke nie, maar ook ten opsigte van dieselfde tipe publikasie binne dieselfde streek.

TABEL A.—Pryse waarteen C.N.A. die Vernaamste Koerante vir Distribusie van die eienaars aankoop.

Streek.	Koerant.	Tyd van verskyning.	Prys per eksemplaar (in sente).
Kaapstad....	The Cape Argus...	Middag....	Weeksdae, 1-79747 Naweke, 3-41083
	The Cape Times...	Oggend....	Weeksdae, 1-79747 Naweke, 3-41083
Bloemfontein Transvaal....	The Friend.....	Middag....	1-75625
	Rand Daily Mail...	Oggend....	1-750
	Die Transvaler.....	Oggend....	1-722
	The Star.....	Middag....	1-77747
	Die Vaderland.....	Middag....	1-722
	The Pretoria News.	Middag....	1-962
	Sunday Times.....	Sondag....	2-97917
	Sunday Express....	Sondag....	2-97917
	Dagbreek en Sondag-nuus.....	Sondag....	2-97917
Natal.....	The Natal Mercury.	Oggend....	1-79747
	The Natal Daily News.....	Middag....	1-79747
	Sunday Tribune....	Sondag....	3-28333

NOTA.—Kleinhandelspryse:

Daaglikse uitgawes, 3c.

Sondag en naweekuitgawes, 5c.

66. Afgesien van die hoër pryse wat die C.N.A. vir koerante in die Kaapse gebied betaal, is dit opvallend dat dieselfde tipe koerante binne dieselfde streek teen verskillende tariewe aangekoop word, bv. *The Rand Daily Mail* teen 1-750 sent elk, teenoor 1-722 sent vir *Die Transvaler* terwyl albei oggendkoerante is en met dieselfde organisasie binne dieselfde gebied gedistribueer word. So ook die twee middagkoerante, *The Star* en *Die Vaderland*, wat onderskeidelik teen 1-77747 sent en 1-722 sent vergoed word. Oënskynlik is hier diskriminasie teen *Die Transvaler* en *Die Vaderland*, deurdat hulle vanweë 'n laer prys deur C.N.A. in 'n swakker mededingende posisie teenoor *The Rand Daily Mail* en *The Star* onderskeidelik geplaas word. Daar moet egter in gedagte gehou word dat die verskil tussen C.N.A. se prys aan die eienaar en die prys aan die publiek, C.N.A. se vergoeding verteenwoordig. Indien eenheidskoste van distribusie van *Die Transvaler* en *Die Vaderland* respektiewelik hoër is as dié van *The Star* en *The Rand Daily Mail*, kan aangevoer word dat die verskil in die betrokke tariewe op ekonomiese gronde berus en nie op diskriminasie neerkom nie.

67. C.N.A. voer dan ook aan dat die verskille ekonomies geregverdig is omdat—

- (i) die sirkulasie van *The Rand Daily Mail* en *The Star* soveel hoër is as dié van *Die Transvaler* en *Die Vaderland*, soos blyk uit die volgende syfers:—

TABEL B.—Gemiddelde daaglikse sirkulasiesyfer vir die halfjaar geëindig Desember 1963.

The Rand Daily Mail.....	112,097
Die Transvaler.....	37,663
The Star.....	162,257
Die Vaderland.....	50,573

Volgens bogenoemde syfers word daar omtrent drie eksemplare van *The Rand Daily Mail* en *The Star* vir elke een eksemplaar van *Die Transvaler* en

Vaderland, respectively, this fact resulting in lower unit costs of distribution for the first-mentioned two newspapers);

- (ii) the buyers of *The Rand Daily Mail* and *The Star* are much more concentrated in the middle of the city than those of *Die Transvaler* and *Die Vaderland*. (It has, for example, been ascertained that 14 per cent of *The Star's* street sales occur in the centre of Johannesburg, as compared with only 4 per cent in the case of *Die Vaderland*. It is estimated that the difference in respect of *The Rand Daily Mail* and *Die Transvaler* will be even greater. Since street sales are the most profitable part of newspaper distribution (owing to the fact that motor and rail transport need not be used), it follows that the total unit costs of distribution of *The Star* and *The Rand Daily Mail* are lower than those of *Die Transvaler* and *Die Vaderland*); and
- (iii) the tariffs are not static and are changed from time to time by negotiation. Since the above-mentioned two English newspapers are aware of the advantages which they enjoy, they insist upon better prices than those paid for the two Afrikaans newspapers concerned.

68. After considering the above-mentioned arguments, the Board is not prepared to accept that the lower prices paid for *Die Vaderland* and *Die Transvaler* are not based on economic grounds or that discrimination is practised against them in respect of tariffs. It must also be admitted that the above-mentioned two newspapers would have had much higher distribution costs if the C.N.A. had not been able to recover such a large part of its total costs from the other newspapers with their much larger circulations.

(b) *Indemnity Requirements.*

69. In its distribution agreements with *Die Voortrekkerpers*, Bpk., and *Die Afrikaanse Pers*, Bpk., the C.N.A. reserves the right to request the owner at any time during the term of the agreement to provide unlimited further or additional indemnities within twenty-four hours to the satisfaction of the C.N.A., and in the event of the owner failing to comply with such a request, the C.N.A. may terminate the agreement after 21 days' notice (24 hours in the case of *Dagbreek en Sondagnuus*). Agreements between the C.N.A. and the other newspapers distributed by it also make provision for the indemnification of the C.N.A. against claims for libel or infringement of copyright which might possibly be instituted against the C.N.A. as a result of the content of the relevant publications. In this case, too, the owners assume liability for an unlimited sum, but no provision is made for unlimited additional securities if the C.N.A. should desire them.

70. In the Board's opinion the above-mentioned practice is a case of discrimination and one which gives the C.N.A. the power to make the distribution of a newspaper, and consequently its circulation, practically impossible. The C.N.A. is therefore responsible for a monopolistic condition which, since it restricts competition, has or is calculated to have the effect of curtailing the facilities available for the distribution of newspapers.*

(c) *Settlement of Accounts.*

71. The C.N.A. settles its accounts for the publications which it distributes, on a weekly basis in the case of *The Cape Times Ltd.*, *The Argus* group and *Robinson & Co.*, while S.A. Associated Newspapers, *Voortrekkerpers* and *Dagbreekpers* are paid monthly. The newspaper owners who have to wait longer for the payment of their money to them, are consequently worse off than those who are paid weekly. The C.N.A. asserts that there is no question of discrimination here and that the practice of paying certain owners weekly can be explained historically. Since the C.N.A. has found it extremely inconvenient and impractical administratively to make weekly payments, however, this benefit has not been accorded to those

Die Vaderland onderskeidelik verkoop, wat 'n laer eenheidskoste van distribusie vir eersgenoemde koerante meebring;

- (ii) die kopers van *The Rand Daily Mail* en *The Star* baie meer in die middel van die stad gekonsentreerd is as dié van *Die Transvaler* en *Die Vaderland*. Dit is bv. vasgestel dat 14 persent van *The Star* se straatverkope in die middel van Johannesburg plaasvind, teenoor slegs 4 persent ten opsigte van *Die Vaderland*. Na beraming sal die verskil in die geval van *The Rand Daily Mail* en *Die Transvaler* nog groter wees. Aangesien straatverkope die mees winsgewendste gedeelte van koerantdistribusie is (weens afwesigheid van motor- en spoorvervoer) volg dit dat totale eenheidskoste van distribusie ten opsigte van *The Star* en *The Rand Daily Mail* laer is as van *Die Transvaler* en *Die Vaderland*;
- (iii) die tariewe is nie staties nie en word van tyd tot tyd deur onderhandelinge gewysig. Waar die genoemde twee Engelse koerante bewus is van die voordele wat hulle geniet, dring hulle aan op beter pryse as wat vir die betrokke twee Afrikaanse koerante betaal word.

68. Na oorweging van die bogenoemde argumente, is die Raad nie bereid om te aanvaar dat die laer pryse van *Die Vaderland* en *Die Transvaler* nie op ekonomiese gronde berus nie of dat daar teen hulle ten opsigte van tariewe gediskrimineer word. Dit moet ook erken word dat die genoemde twee koerante 'n veel hoër distribusiekoste sou gehad het indien die C.N.A. nie in staat was om so 'n groot deel van sy totale koste van die ander koerante met hulle veel groter sirkulasies te verhaal nie.

(b) *Skadeloosstellingsvereistes.*

69. In C.N.A. se distribusie-ooreenkomste met die *Voortrekkerpers*, Bpk. en die *Afrikaanse Pers*, Bpk., behou hy die reg voor om op enige tydstip tydens die duur van die ooreenkoms, die eienaar te versoek om binne vier-en-twintig uur onbeperkte verdere of addisionele indeminste te voorsien, tot bevrediging van C.N.A. en, indien die eienaar sou versuim om daaraan te voldoen, kan C.N.A. die ooreenkoms na kennisgewing van 21 dae beëindig (24-uur in die geval van *Dagbreek en Sondagnuus*). Ooreenkomste tussen C.N.A. en die ander koerante wat hy versprei maak ook voorsiening vir skadeloosstelling van C.N.A. teen eise wat moontlik as gevolg van die inhoud van die betrokke publikasies vir laster of skending van outeursreg, teen C.N.A. ingestel word. Ook hier onderneem die eienaars aanspreeklikheid vir 'n onbepaalde bedrag, maar geen voorsiening word gemaak vir die voorsiening van onbeperkte addisionele sekuriteite indien C.N.A. dit sou verlang nie.

70. Na die Raad se mening is die voorgenoemde praktyk 'n geval van diskriminasie en een wat aan C.N.A. die mag verleen om die distribusie van 'n koerant, en daarom sy sirkulasie, prakties onmoontlik te maak. C.N.A. is gevolglik verantwoordelik vir 'n monopolistiese toestand wat, deurdat dit mededinging beperk, die uitwerking het, of bereken is om, die fasiliteite beskikbaar vir die distribusie van koerante in te kort.*

(c) *Vereffening van rekenings.*

71. C.N.A. vereffen sy rekenings vir die publikasies wat hy distribueer weekliks aan *Cape Times Ltd.*, die *Argus*-groep en *Robinson & Co.*, terwyl S.A. Associated Newspapers, *Voortrekkerpers* en *Dagbreekpers* maandeliks betaal word. Die koeranteienaars wat langer vir oorbetalings van hulle geld moet wag, is gevolglik slegter daaraan toe as dié aan wie betaling weekliks geskied. C.N.A. beweer dat hier geen sprake van diskriminasie is nie, en dat die gebruik om sekere eienaars weekliks te betaal histories te verklaar is. Omdat hy dit egter administratief uiters ongerieflik en onprakties vind om weeklikse oorbetalings te doen, is hierdie voordeel nooit aan die eienaars met wie later ooreenkomste aangegaan is, toegestaan nie.

* Cf. Section two (1) (ii) of the Act.

* Vgl. artikel twee (1) (ii) van die Wet.

owners with whom later agreements have been concluded. As a concession, weekly interim payments are at present made to *Die Vaderland*, Associated Newspapers and *The Pretoria News*, and it appears that a further extension of this concession to the few remaining newspaper owners may be a solution to the problem. Under the circumstances the Board considers that it is not necessary to regard the C.N.A.'s practice of paying some owners monthly and others weekly as a form of discrimination amounting to a monopolistic condition, and it is consequently of the opinion that a satisfactory solution can be reached by way of private negotiations.

(d) *Refusal of Transport Facilities.*

72. Considerable dissatisfaction was caused during 1962 because the owners of a Sunday paper on the Rand refused the C.N.A. permission for the conveyance of a new Sunday paper in the Transvaal. In order to understand why it is possible for one newspaper distributed by the C.N.A. to prohibit another newspaper from being conveyed in the C.N.A.'s own vehicles, it is necessary to bear in mind that distribution agreements with the C.N.A. are concluded for—

- (1) the distribution of publications within a specified area which normally includes the urban area in which the paper is published (distribution and sales within this area are effected with the C.N.A.'s transport and labour and the C.N.A. bears all the costs involved in this connection); and
- (2) the conveyance to distribution points outside the specified area [referred to in (1) above] by means of—
 - (i) transport by rail to the C.N.A.'s account; and
 - (ii) transport nominated by the owner. In this case the owner bears the costs less what it would have cost him if railway transport had been used. Transport may be effected by means of the C.N.A.'s vehicles, private motor transport service or public motor transport services or a combination of all these means plus rail or air transport.

73. It is in respect of the mode of transport under (2) (ii) above that difficulties are experienced in connection with the permission of competing newspaper owners, as in fact occurred during 1962. The C.N.A. concludes agreements with specific newspaper owners for the use of the C.N.A.'s vehicles to consignment points outside the specified area. The owner concerned determines the routes to be followed by these vehicles, the times of departure and the connections in respect of other forms of transport (road, air or rail) to be met and bears all the additional costs involved in such a service. If other owners also wish to make use of this service, then this is a matter between the owner who originally arranged and developed it and the new owner, and the latter may transport his publications in the C.N.A.'s vehicles used for such a service, only with the permission of the original owner. Such a new owner must then either join in the existing service and bear the costs with the owner of such a service according to a formula agreed upon, or make arrangements with the C.N.A. for his own service and bear the full costs in connection with it. As the C.N.A. puts the matter: "It . . . follows that the owner who firstly pioneers a faster means of transport and is prepared to bear the additional costs in fact commands the control of such motor transport so pioneered. On our side we will provide motor transport for long distance runs for any owner designating this mode of transport provided he bears the cost."

74. From the foregoing it is clear that the ability or inability of a new owner to conclude a joint transport arrangement with existing owners, depends wholly on the owner who originally developed the service and who bears the full responsibility for the costs. If for some reason such an owner were to refuse to share his service with another owner, the latter may organise his own service.

As 'n tegemoetkoming word weeklikse interim-oorbetalings tans aan *Die Vaderland*, Associated Newspapers en *The Pretoria News* gedoen, en dit skyn asof 'n verdere uitbreiding van hierdie tegemoetkoming aan die paar oorblywende koeranteienaars 'n oplossing vir die probleem kan wees. Onder omstandighede meen die Raad dat dit nie nodig is om C.N.A. se gebruike om sommige eienaars maandeliks en ander weekliks te betaal as 'n vorm van diskriminasie wat op 'n monopolistiese toestand neerkom, te beskou nie, en meen hy dat 'n bevredigende oplossing langs die weg van private onderhandelings bereik kan word.

(d) *Weiering van vervoerfasiliteite.*

72. Aansienlike ontevredenheid is gedurende 1962 veroorsaak deurdat die eienaars van 'n Sondagkoerant aan die Rand toestemming aan C.N.A. vir die vervoer van 'n nuwe Sondagkoerant in Transvaal geweier het. Ten einde te verstaan hoekom dit moontlik is vir 'n koerant wat deur C.N.A. gedistribueer word om te belet dat 'n ander koerant in C.N.A. se eie voertuie vervoer word, is dit nodig om in gedagte te hou dat distribusie ooreenkomste met C.N.A. aangegaan word vir—

- (1) distribusie van publikasies binne 'n gespesifiseerde gebied, wat gewoonweg die stadsgedeelte waarin die koerant uitgegee word, insluit. Distribusie en verkope binne hierdie gebied geskied met C.N.A. se vervoer en arbeid en C.N.A. dra al die koste daaraan verbonde; en
- (2) vervoer na distribusiepunte buite die gespesifiseerde gebied [waarna in (1) verwys word], deur gebruik te maak van—
 - (i) vervoer per spoor vir C.N.A. se rekening; en
 - (ii) vervoer genomineer deur die eenaar. Hier dra die eenaar die koste minus wat dit sou gekos het indien vervoer per spoor geskied het. Vervoer kan wees deur middel van C.N.A. se voertuie, private motorvervoerdienste of publieke motorvervoerdienste of 'n kombinasie van al hierdie middels plus nog ook spoor- of lugvervoer.

73. Dit is ten opsigte van die wyse van vervoer onder 2 (ii) hierbo dat moeilikhede in verband met toestemming van mededingende koeranteienaars ondervind word, soos teweens ook gedurende 1962 gebeur het. C.N.A. gaan naamlik ooreenkomste met spesifieke koeranteienaars aan vir die gebruik van C.N.A. se voertuie na versendingspunte buite die gespesifiseerde gebied. Die betrokke eenaar bepaal watter roetes hierdie voertuie sal volg, die tye van vertrek en watter aansluitings ten opsigte van ander vorms van vervoer (pad, lug of spoor) gehaal moet word en dra al die addisionele koste verbonde aan so 'n diens. Indien ander eienaars ook van hierdie diens gebruik wil maak, is dit 'n aangeleentheid tussen die eenaar wat dit aanvanklik gereël en ontwikkel het en die nuwe eenaar en kan laasgenoemde alleen met toestemming van die aanvanklike eenaar, sy publikasies in C.N.A. se voertuie wat vir daardie diens gebruik word, vervoer. So 'n nuwe eenaar moet dan of inval by 'n bestaande diens en die koste met die eenaar van daardie diens volgens 'n ooreengekome formule deel, of met C.N.A. reël vir sy eie diens en die volle koste daarvan dra. Soos C.N.A. dit stel: „It . . . follows that the owner who firstly pioneers a faster means of transport and is prepared to bear the additional costs in fact commands the control of such motor transport so pioneered. On our side we will provide motor transport for long distance runs for any owner designating this mode of transport provided he bears the cost."

74. Uit die voorgaande is dit duidelik dat 'n nuwe eenaar se vermoë, of onvermoë, om 'n gesamentlike vervoerreëling met bestaande eienaars aan te gaan, geheel en al afhang van die eenaar van die diens aanvanklik ontwikkel het en die volle verantwoordelikheid van die koste daarvan dra. Indien so 'n eenaar om een of ander rede sou weier om sy diens met 'n ander eenaar te deel

Since such an arrangement may be to the benefit of both parties, however, it is advantageous for both if they can succeed in concluding an acceptable agreement. It has been ascertained, for example, that Die Afrikaanse Pers has had an arrangement with The Argus Company since as long ago as 1930 for the conveyance of *Die Vaderland* in the same vehicles as *The Star*. Such an agreement may be of great economic benefit to the publishers of the younger newspapers, since the older newspaper's publishers bear the major part of the costs of the service and since the publishers of the younger newspaper might possibly not have been in a position to finance the service independently. At the same time the publishers of the older newspaper also benefit by such an arrangement.

75. After considering the relevant complaints about the refusal of transport facilities for new newspapers in the past, the Board is of the opinion that the C.N.A. cannot be held responsible for such refusal, nor does it think that the circumstances in which the refusal occurred can be attributed to a monopolistic condition as defined in the Act. The Board nevertheless considers it undesirable that the owner who, for historical reasons, has all the say over an existing service, should retain such a sole right for an indefinite period in the future to the exclusion of other co-users' claims to recognition. It appears to the Board that, as the position changes and more users of such services come forward, the C.N.A., as owner of the vehicles and the only distributor, should participate more positively in the mutual negotiations, especially in regard to matters such as the admission of new users and the introduction of an acceptable formula for the sharing of costs.

(e) Collection of Newspapers.

76. Complaints were received that the C.N.A.'s vehicles on the Rand always load *Die Vaderland* first and then *The Star*. If *The Star* is late, then *Die Vaderland* is also delayed, but if the position is reversed, the C.N.A.'s vehicles do not wait but proceed to load *The Star* and then *Die Vaderland* has to make its own arrangements to reach the consignment points in good time. The result is that *Die Vaderland* has to be put to bed and printed earlier than *The Star*. The latter is therefore often in a position to include news which becomes available after *Die Vaderland* has already gone to press. Such a state of affairs is obviously detrimental to the newspaper which has to be printed earlier.

77. A study of the C.N.A.'s time-table for the various routes and its instructions to its employees, shows that *Die Vaderland* does indeed have to be loaded 30 minutes before *The Star* in the case of every route. This applies only to consignments outside the free-delivery area, however, i.e. where newspaper owners conclude agreements with one another for economic reasons for the joint conveyance of their newspapers. Afrikaanse Pers Bpk. has concluded such arrangements with the Argus Company and since the vehicles technically belong to the owners of *The Star*, the times of departure are the result of negotiations between the parties concerned. The disadvantage of the system of joint transport is that owners have to keep strictly to the predetermined times but it nevertheless favours the newspaper with the smaller circulation because its distribution costs are consequently much lower than they would otherwise have been. The C.N.A. therefore states that it has no objection to separate transport facilities being placed at the disposal of each owner if an owner considers that the advantages of such an independent service are more important to him than the disadvantage of much higher costs.

78. In the light of the circumstances under which the joint arrangement for the transport of *Die Vaderland* and *The Star* came into being, the Board considers that the advantages for *Die Vaderland* as a result of the present state of affairs are greater than the disadvantages and that in this instance it is not a case of discrimination on the part of the C.N.A.

kan laasgenoemde sy eie diens organiseer. Omdat so 'n reëling egter tot voordeel van beide partye kan wees, is dit vir albei voordelig indien hulle daarin kan slaag om 'n aanvaarbare ooreenkoms aan te gaan. So is vasgestel dat die Afrikaanse Pers reeds sedert 1930 'n reëling met die Argus Co. het vir die vervoer van *Die Vaderland* in dieselfde voertuie as *The Star*. So 'n reëling kan tot groot ekonomiese voordeel van die uitgewers van die jonger koerant wees, aangesien die ouer koerant se uitgewers grootste deel van die koste van die diens dra en dië van die jonger koerant moontlik nie in staat sou gewees het om die diens onafhanklik te finansier nie. Terselfdertyd baat die ouer koerant se uitgewers ook daarby.

75. Na oorweging van die betrokke klagte oor weiering van vervoerfasiliteite aan nuwe koerante in die verlede, meen die Raad nie dat die C.N.A. daarvoor verantwoordelik gehou kan word of dat die omstandighede waaronder die weiering plaasgevind het, aan 'n monopolistiese toestand soos deur die Wet omskryf gewyt kan word nie. Nogtans meen die Raad dat dit onwenslik is dat die eienaar wat om historiese redes al die seggenskap oor 'n bestaande diens besit, daardie alleenreg vir 'n onbepaalde tydperk in die toekoms moet behou, tot uitsluiting van ander medegebruikers se aansprake om erkenning. Dit kom die Raad voor dat namate die posisie verander en meer gebruikers van sulke dienste na vore kom, die C.N.A. as die eienaar van die voertuie, en die enigste distributeur, 'n meer positiewe aandeel in die onderlinge onderhandelings behoort te neem, veral met betrekking tot aangeleenthede soos die toelating van nuwe gebruikers en die instelling van 'n aanvaarbare formule vir die verdeling van kostes.

(e) Afhaal van Koerante.

76. Klagtes is ontvang dat C.N.A. se voertuie aan die Rand altyd eers *Die Vaderland* oplaai en daarna *The Star*. Is *The Star* laat, word *Die Vaderland* ook vertraag, maar is die posisie andersom, wag C.N.A. se voertuie nie, maar gaan hulle voort om die *Star* op te laai en moet *Die Vaderland* self reëlings tref om die betrokke versendingspunt betyds te haal. Die gevolg is dat *Die Vaderland* vroeër afgesluit en gedruk moet word as *The Star*. Laasgenoemde is dus dikwels in die posisie om nuus op te neem wat beskikbaar kom nadat *Die Vaderland* reeds ter perse is. So 'n toestand is vanselfsprekend nadelig vir die koerant wat vroeër gedruk moet word.

77. 'n Studie van C.N.A. se rooster van die verskillende roetes en instruksies aan sy beamptes, toon wel dat *Die Vaderland* ten opsigte van elke roete, 30 minute vóór *The Star* opgelaaï moet word. Dit geld egter slegs ten opsigte van versendings buite die vry-afleveringsgebied, dit wil sê waar koeranteienaars om ekonomiese redes ooreenkomste met mekaar aangaan vir die gesamentlike vervoer van hulle koerante. Afrikaanse Pers Bpk. het sulke reëlings met die Argus-maatskappy aangegaan en, aangesien die voertuie tegnies aan die eienaars van *The Star* behoort, is die tye van vertrek die gevolg van onderhandelings tussen die partye. Die nadeel van die stelsel van gesamentlike vervoer is dat eienaars hulle streng aan die voorafbepaalde tye moet hou, maar is nogtans in die koerant met die veel kleiner sirkulasie se guns deurdat sy distribusiekoste daardeur veel laer is as wat dit andersins sou gewees het. C.N.A. verklaar dan ook dat hy geen beswaar daarteen het om afsonderlike vervoergeriewe tot die beskikking van elke eienaar te stel indien 'n eienaar meen dat die voordele van so 'n onafhanklike diens by hom swaarder weeg as die nadeel van die veel hoër koste nie.

78. In die lig van die omstandighede waaronder die gesamentlike reëling vir die vervoer van *Die Vaderland* en *The Star* tot stand gekom het, meen die Raad dat die voordele vir *Die Vaderland* as gevolg van die huidige toestand groter is as die nadele en dat dit hier nie 'n geval van diskriminasie aan die kant van C.N.A. is nie.

(f) *Other Complaints in Regard to the Manner of Distribution.*

79. Complaints about the quality of the service rendered by the C.N.A. range from the allegation that the posters of some newspapers are displayed more prominently than those of others, to the assertion that street-sellers always first offer a competitor's newspaper to a prospective buyer, and that some owners' newspapers and periodicals are not displayed just as prominently as those of others or that some selling points are over supplied with certain editions, while other are under supplied. It was a striking fact, however, that the great majority of the owners expressed their satisfaction with the C.N.A.'s organisation and services and that even the complainants admitted that their complaints were based on alleged administrative shortcomings in the organisation and not on any intentional policy on the part of the C.N.A. to harm them or to discriminate against their interests. In addition, the complainants also stated without exception that the C.N.A. always gave their complaints a sympathetic hearing and that employees were always co-operative in their attitude. No allegations were made that the C.N.A. abuses its strong position by ignoring or disregarding the complaints of smaller concerns. As far as the Board was able to ascertain from following up specific complaints, the shortcomings in the C.N.A.'s administration and organisation are not disproportionate to the volume of its turnover and the large numbers which it serves.

(g) *The Appointment of Agents and Sub-agents.*

80. There are usually two kinds of business undertakings which are eager to be appointed agents or sub-agents of a distributor of newspapers and periodicals, namely the café type of concern (cafés, restaurants, green-grocers, etc.), and existing bookshops. The stocking and sale of newspapers and periodicals is a great asset to such business concerns because their turnover and goodwill are increased thereby. From the distributor's point of view it is not advisable to accept every new café as agent without further ado. Due account must be taken of the requirements of the public, the interests of already existing agents in the neighbourhood and the question whether the new café will succeed in its venture and be able to meet its financial obligations to the distributor and at the same time render satisfactory service to the public. The number of applications rejected is very high, as can be seen from the figures for the past five years.

TABLE C.—*Manner in which the C.N.A. decided upon applications for agencies during the past five years.*

Province.	Applications Received.	Applications Rejected.	Applications Approved.
Transvaal.....	365	88	277
Cape Province.....	371	80	291
Natal.....	163	80	83
O.F.S.....	40	10	30
	939	258	681

The unsuccessful applicants were apparently prepared to abide by the C.N.A.'s decision because, although an average of fifty applicants per annum were rejected, only five concerns addressed representations to the Board in regard to their failure to be appointed agents of the C.N.A., namely three cafés, a bookshop and a stationery dealer.

81. It is obviously not practicable to appoint as agent every person who starts a café business. The almost total absence of complaints about the manner in which the C.N.A. has exercised its discretion over the years, lends support to the assertion that the organisation is succeeding in judiciously and effectively handling the extremely difficult task of having to distinguish between deserving and other applications. In these circumstances the Board considers that there are insufficient grounds for regarding the C.N.A.'s refusal of agencies to certain concerns as an abuse of its powers.

(f) *Ander klagtes oor wyse van distribusie.*

79. Klagtes oor die gehalte van diens wat C.N.A. lewer, wissel van die aantygung dat plakkaat van sommige koerante meer prominent vertoon word as die van ander tot 'n bewering dat straatverkopers altyd 'n mededinger se koerant eerste aan 'n voornemende koper aanbied; en dat sommige eienaars se koerante en tydskrifte nie ewe prominent as die van ander uitgestal word nie of dat sommige verkooppunte van sekere uitgawes oorvoorsien en ander ondervoorsien word. Dit was egter opvallend dat die oorgrote meerderheid van eienaars hulle tevredenheid met C.N.A. se organisasie en dienste uitgespreek het en dat selfs die klaers toegegee het dat hulle klagtes op beweerde administratiewe tekortkomings in die organisasie berus en nie op 'n doelbewuste beleid aan die kant van C.N.A. om hulle te benadeel of teen hulle belange te diskrimineer nie. Daarbenewens het die klaers sonder uitsondering gemeld dat C.N.A. hulle klagtes gereeld simpatiek aanhoor en dat amptenare in hulle houding altyd tegemoetkomend is. Geen bewerings is gemaak dat C.N.A. sy sterk posisie misbruik deur klagtes van kleiner ondernemings te ignoreer of te minag nie. Sover die Raad kan vasstel deur die opvolging van spesifieke klagtes, is die tekortkominge in C.N.A. se administrasie en organisasie nie buite verhouding tot die omvang van sy omset en die groot getalle wat hy bedien nie.

(g) *Die aanstelling van agente en sub-agente.*

80. Daar is gewoonlik twee soorte sake-ondernemings wat begerig is om as agente of sub-agente van 'n distribueerder van koerante en tydskrifte aangestel te word, naamlik die kafee-tipe onderneming (kafees, restaurante, groentewinkels en dies meer) en bestaande boekwinkels. Die aanhou en verkoop van koerante en tydskrifte is vir die genoemde sake-ondernemings 'n groot bate deurdat dit hulle omset en klandisiewaarde verhoog. Van die distribueerders se kant gesien is dit nie raadsaam om elke nuwe kafee sondermeer as agent te aanvaar nie. Rekening moet gehou word met die behoeftes van die publiek, die belange van reeds bestaande agente in die omgewing en die vraag of die nuwe kafee sal slaag met sy onderneming en in staat sal wees om sy finansiële verpligtings teenoor die distribueerder na te kom en terselfdertyd aan die publiek bevredigende dienste te lewer. Die aantal aansoeke wat afgekeur word, is besonder hoog, soos blyk uit die syfers vir die afgelope vyf jaar.

TABLE C.—*Wyse waarop C.N.A. gedurende die afgelope 5 jaar oor aansoeke vir agentskappe besluit het.*

Provinsie.	Aansoeke ontvang.	Aansoeke afgekeur.	Aansoeke goedgekeur.
Transvaal.....	365	88	277
Kaap.....	371	80	291
Natal.....	163	80	83
O.V.S.....	40	10	30
	939	258	681

Blykbaar was die onsuksesvolle aansoekers bereid om by C.N.A. se beslissing te berus want, hoewel gemiddeld vyftig aansoekers per jaar afgekeur is, het slegs vyf ondernemings verhoë tot die Raad gerig oor hulle onvermoë om as agente van C.N.A. aangestel te word, te wete drie kafees, 'n boekwinkel en 'n handelaar in skryf-behoeftes.

81. Uit die aard van die saak is dit nie prakties moontlik om elke persoon wat 'n kafeebesigheid begin, as agent aan te stel nie. Die feitlik totale afwesigheid van klagtes oor die wyse waarop die C.N.A. oor die jare sy diskresie uitgeoefen het, steun die bewering dat die organisasie daarin slaag om die uiters moeilike taak van te moet onderskei tussen verdienstelike en ander aansoeke, oordeelkundig en suksesvol te behartig. Onder omstandighede is die Raad van mening dat daar nie voldoende gronde is om C.N.A. se weiering van agentskappe aan sekere ondernemings as 'n misbruik van sy mag te beskou nie.

Conclusion.

82. In regard to the distribution of books, the Board finds that the Associated Booksellers of Southern Africa, Ltd.'s system of granting uniform discounts in respect of local and overseas books creates a monopolistic condition in terms of the Act.

83. As regards the distribution of newspapers and periodicals, the Board finds that the following create monopolistic conditions in terms of the Act:—

- (i) Distribution agreements with local and overseas publishers of newspapers and/or periodicals according to which exclusive distribution rights are granted to a local distributor;
- (ii) the agreements between the C.N.A. and certain newspaper owners according to which the C.N.A. is prohibited from undertaking the distribution of new newspapers without the prior permission of the first-mentioned newspaper owners;
- (iii) the system according to which the prices of newspapers and periodicals are fixed and maintained; and
- (iv) the differences in the C.N.A.'s prescribed indemnity requirements which amount to discrimination against certain newspaper owners.

84. In the following chapter the Board will consider the above-mentioned monopolistic conditions in order to determine in terms of section three (2) of the Act whether or not there are circumstances which justify the existence of such conditions in the public interest.

CHAPTER V.

MONOPOLISTIC CONDITIONS IN THE DISTRIBUTION OF BOOKS, AND THE PUBLIC INTEREST.

85. The monopolistic conditions encountered by the Board in the distribution of books were listed in the previous chapter. In the following paragraphs the Board will discuss the effect of the monopolistic conditions on the public interest and at the same time indicate and analyse the arguments justifying them.

The Resale Price Maintenance System of the Associated Booksellers of Southern Africa, Ltd.

86. In its submission to the Board, the association acknowledges that the system according to which uniform prices are maintained, amounts to a monopolistic condition*. The association asserts, however, that circumstances exist which justify this practice in the public interest, and it then advances various arguments in support of its attitude. These arguments may be summarised as follows:—

(i) *The Special Nature of Books.*

87. The book trade differs in many respects from other industries in that books are not ordinary commodities. As the vehicles of a nation's culture, knowledge and civilisation, they constitute the most effective means of communication between people in regard to thoughts and opinions. The fact that the demand for a book may be extremely limited should not be an obstacle to its publication because such books are often the most valuable treasures in a nation's literature. It is essential that the greatest possible variety of books should be published and placed at the disposal of the reading public. The quality, quantity and variety of books published in a country are indicative of the soundness of the book trade in that country. For the development of a sound book trade it is not sufficient that publishers should be able and prepared to take risks in the publishing of new titles. There should also be booksellers who can buy, display and stock such books and bring them to the notice of the public. Only in such a climate can publishers have the faith to take upon themselves the risks involved in the publication of books.

* Memorandum of the Book Trade Association, page 2.

Gevolgtrekking.

82. Ten opsigte van die distribusie van boeke, bevind die Raad dat die Verenigde Boekhandelaars van Suidelike Afrika Bpk. se stelsel van eenvormige diskonto's ten opsigte van plaaslike en oorsese boeke, 'n monopolistiese toestand skep ingevolge die Wet.

83. Wat die distribusie van koerante en tydskrifte betref, bevind die Raad dat die volgende praktyke monopolistiese toestande skep ingevolge die Wet—

- (i) distribusie-ooreenkomste met plaaslike en oorsese uitgewers van koerante en/of tydskrifte waarvolgens eksklusiewe distribusieregte aan 'n plaaslike distribueerder verleen word;
- (ii) die ooreenkomste tussen C.N.A. en sekere koeranteienaars waarvolgens C.N.A. belet word om die distribusie van nuwe koerante sonder die vooraf toestemming van die eersgenoemde koeranteienaars te onderneem;
- (iii) die stelsel waarvolgens die pryse van koerante en tydskrifte vasgestel en gehandhaaf word; en
- (iv) die verskille in C.N.A. se neergelegde vereistes vir skadeloosstelling wat neerkom op diskriminasie teenoor sekere koeranteienaars.

84. In die volgende hoofstuk sal die Raad die bogenoemde monopolistiese toestande oorweeg ten einde ingevolge artikel drie (2) van die Wet te bepaal of daar omstandighede is wat die bestaan daarvan in die openbare belang regverdig al dan nie.

HOOFSTUK V.

MONOPOLISTIESE TOESTANDE BY DIE DISTRIBUSIE VAN BOEKE EN DIE OPENBARE BELANG.

85. In die vorige hoofstuk is die monopolistiese toestande wat die Raad by die distribusie van boeke aangetref het uiteengesit. In die volgende paragrafe sal die Raad die uitwerking van die monopolistiese toestande op die openbare belang bespreek en terselfdertyd die argumente ter regverdiging daarvan aantoon en ontleed.

Die Verenigde Boekhandelaars van Suidelike Afrika, Bpk., se stelsel van prysbinding.

86. In sy voorlegging aan die Raad erken die Vereniging dat die stelsel waarvolgens eenvormige pryse gehandhaaf word, op 'n monopolistiese toestand neerkom*. Die Vereniging beweer egter dat daar omstandighede bestaan wat hierdie praktyk in die openbare belang regverdig en voer dan verskeie argumente aan ter ondersteuning van sy standpunt. Hierdie argumente kan as volg saamgevat word:—

(i) *Die besondere aard van boeke.*

87. In menige opsigte verskil die boekhandel van ander bedryfstakke, deurdat boeke nie gewone handelsware is nie. As die draers van 'n volk se kultuur, kennis en beskawing, vorm dit die mees effektiewe middel van kommunikasie tussen mense wat betref gedagtes en opvattinge. Die feit dat die vraag na 'n boek uiters beperk mag wees, behoort nie die publikasie daarvan te verhinder nie, aangesien sulke boeke dikwels die waardevolste skatte van 'n volk se letterkunde uitmaak. Dit is noodsaaklik dat die grootste moontlike verskeidenheid van boeke gepubliseer en tot beskikking van die lesende publiek gestel word. Die kwaliteit, hoeveelheid en verskeidenheid boeke wat in 'n land gepubliseer word, dui aan hoe gesond die boekhandel in daardie land is. Om 'n gesonde boekhandel te ontwikkel, is dit nie voldoende dat uitgewers in staat en bereid moet wees om risiko's met die uitgee van nuwe titels te onderneem nie. Daar moet ook boekhandelaars wees wat daardie boeke kan koop, uitstal, in voorraad hou en onder die publiek se aandag bring. Alleen in so 'n klimaat kan uitgewers die nodige vertroue hê om die risiko's verbonde aan die uitgee van boeke te onderneem.

* Memorandum van die Book Trade Association, pg. 2.

(ii) *The Voluminous Output of Books.*

88. In Great Britain alone more than 20,000 new titles are produced every year, and 12,000 in the United States of America. At any given moment there are more than 300,000 titles of British books in print. Whereas it is the modern trend in the case of ordinary commodities to concentrate on the mass production and mass sale of a limited number of articles, variety is essential in the production and sale of books. The mass production and sale of only a few titles are definitely not in the best interests of the reading public and the cultural welfare of a nation. In the absence of a system of fixed and uniform prices it is asserted, fewer books will undoubtedly be published and it will not be possible to find a publisher for many deserving books, such a state of affairs being detrimental to the cultural and educational needs of the community.

(iii) *The Great Distance of Overseas Sources.*

89. The great distance between the Republic's book-sellers and the sources from which overseas books are supplied, increases the risk. Orders have to be placed a long time in advance and unsold stocks are not taken back. No matter how carefully a bookseller sets about making his choice from the large mass of books available, he will often misjudge the local taste and requirements and be left with unsold stocks.

(iv) *Numerous Selling Points.*

90. A sound book trade demands a large number of points of contact between the trade and the public. The absence of price cutting is the best guarantee for the development of numerous selling points. The Cronje Commission was of the opinion that the ± 300 bookshops in the country were quite inadequate and that there should be an additional 500. The Association asserts that the number of bookshops can be increased only if uniform prices are maintained and that without resale price maintenance the number will decline. Similarly, existing booksellers cannot maintain their efficient services to the community if they are not protected by fixed uniform prices.

(v) *Prices of Books.*

91. Local books are generally sold at the publishers' fixed prices. These prices take due account of the production costs and the selling potential of the books. Account must also be taken of the competition of other publishers. As stated by the Association: "The publisher can be relied upon to fix the price of a book at a figure sufficiently high to allow him a reasonable margin of profit, yet sufficiently low to allow him to compete with his rivals. A publisher who prices himself out of the market is as foolish as one who prints more copies in order to bring down the cost price per copy, thereby incurring the risk of over-estimated the sales potential and being left with unsaleable stock".*

92. In the case of overseas books, local prices are approximately 20 per cent higher than the overseas publishers' prices, leaving the local bookseller a gross margin of about 40 per cent if he sells all such books at the retail prices of the P. & D. Schedule. A large percentage of the books, however, are supplied to libraries, schools and similar educational institutions at a considerable discount, as a result of which the dealer's profit is much less than 40 per cent, averaging about 25 per cent to 33½ per cent. After the deduction of all its costs, the trade realises a net profit (before tax deductions) of about 6 per cent on sales. This figure is confirmed by the figures of the Bureau of Statistics, according to which the net profit of bookselling companies amounted to 6.6 per cent and 5.8 per cent on sales during 1958 and 1959, respectively as against only 5.4 per cent and 2.9 per cent during the same periods in respect of partnerships and individuals in the book trade.

* Association's submission, page 8.

(ii) *Die geweldige produksie van boeke.*

88. In Groot Brittanje alleen word meer as 20,000 nuwe titels jaarliks voortgebring, en 12,000 in die Verenigde State van Amerika. Daar is meer as 300,000 titels van Britse boeke in druk op enige tydstop. Waar dit die moderne neiging is om ten opsigte van gewone handels-artikels op die massa-produksie en massaverkope van 'n beperkte aantal artikels te konsentreer, is verskeidenheid by die produksie en verkoop van boeke noodsaaklik. Massaproduksie en -verkope van slegs 'n paar boeke is beslis nie in die beste belange van die lesende publiek en die kulturele welsyn van 'n volk nie. In die afwesigheid van 'n stelsel van vasgestelde en eenvormige pryse, so word dan beweer, sal daar beslis minder boeke gepubliseer word en sal vir talle verdienstelike boeke nie 'n uitgewer gevind kan word nie, tot nadeel van die kulturele en opvoedkundige behoeftes van die gemeenskap.

(iii) *Groot afstand van oorsese bron.*

89. Die groot afstand tussen die Republiek se boek-handelaars en die bronne vanwaar oorsese boeke voorsien word, verhoog die risiko. Bestellings moet lank vooruit geplaas word en onverkoopte voorrade word nie terug-geneem nie. Hoe versigtig 'n boekhandelaar ook al te werk gaan om uit die groot massa beskikbare boeke sy keuse te doen, sal hy dikwels mistas in sy oordeel oor plaaslike smaak en behoeftes en onverkoopte voorrade opdoen.

(iv) *Veelvuldige verkooppunte.*

90. 'n Gesonde boekhandel vereis 'n groot aantal kontakpunte tussen die handel en die publiek. Die afwesigheid van prysonderbiedinge is die beste waarborg vir die ontwikkeling van talle verkooppunte. Die Cronje-kommissie was van mening dat die ± 300 boekwinkels in die land heeltemal ontoereikend was en dat daar 'n verdere 500 behoort by te kom. Die aantal boekwinkels, so beweer die Vereniging, kan alleen vermeerder indien eenvormig pryse gehandhaaf word, terwyl die getalle sonder prysbinding sal verminder. So ook kan bestaande boek-handelaars nie hulle doeltreffende dienste aan die gemeenskap volhou indien hulle nie deur vasgestelde, eenvormige pryse beskerm word nie.

(v) *Pryse van boeke.*

91. Plaaslike boeke word meesal teen die uitgewer se vasgestelde pryse verkoop. Hierdie pryse hou rekening met die koste van produksie en die verkooppotensiaal van die boeke. Rekening moet ook gehou word met die mededinging van andere uitgewers. Soos deur die Vereniging gestel: „The publisher can be relied to fix the price of a book at a figure sufficiently high to allow him a reasonable margin of profit, yet sufficiently low to allow him to compete with his rivals. A publisher who prices himself out of the market is as foolish as one who prints more copies in order to bring down the cost price per copy, thereby incurring the risk of over-estimating the sales potential and being left with unsaleable stock”.*

92. Wat oorsese boeke betref, is plaaslike pryse naasten-by 20 persent hoër as die oorsese uitgewersprys, wat die plaaslike boekhandelaar 'n bruto marge van by die 40 persent laat, indien hy al daardie boeke teen die klein-handelspryse van die P. & D. Skedule verkoop. 'n Groot persentasie van die boeke word egter aan biblioteke, skole en dergelyke opvoedkundige inrigtings teen 'n aansienlike diskonto gelewer, as gevolg waarvan die handelaar se wins veel minder as 40 persent is en gemiddeld op sowat 25 persent tot 33½ persent te staan kom. Na aftrekking van al sy koste, realiseer die handel 'n netto wins (vóór aftrekking van belasting) van omtrent 6 persent op verkope. Hierdie syfer word bevestig deur die syfers van die Buro vir Statistiek, waarvolgens die netto wins van boekhandelmaatskappye 6.6 persent en 5.8 persent op verkope gedurende 1958 en 1959, respektiewelik, beloop het, teenoor slegs 5.4 persent en 2.9 persent vir dieselfde tydperke ten opsigte van vennootskappe en individue in die boekhandel.

* Vereniging se voorlegging, bl. 8.

93. In regard to libraries it is pointed out that the principal provincial and city libraries in the Republic are supplied at British publishers' prices less 12½ per cent according to the P. & D. Schedule, while libraries in the United Kingdom are limited to a discount of only 10 per cent. Some libraries in the Republic therefore buy overseas books locally at a lower price than that at which they could have ordered them direct from overseas, quite apart from the import costs. The system of granting uniform discounts to libraries is justified because if free tenders were allowed, one or two direct importers of books, who are possibly not even booksellers, would obtain all the business. The bona fide booksellers would, if they were to relinquish all their business with institutional buyers, insist upon a higher margin in respect of their remaining sales, this being detrimental to the public.

(vi) *Specific Advantages of Resale Price Maintenance.*

94. To the book trade the system means a reasonable margin of profit, as has already been indicated. In addition, dealers are protected against unfair competition since the system prevents books being used by the ordinary trade as loss leaders, as happens on such a large scale in countries where resale price maintenance is not allowed, and as also occurred in England prior to the conclusion of the so-called Net Book Agreement.

95. For the public the system has the advantages that there are more selling points that booksellers are able to stock a wider variety of quality books and maintain a better trained staff; that an assured profit on popular books enables the book trade to sell the less popular titles more cheaply and that publishers are able to undertake the publication of a large variety of books with confidence. It is admitted that, if prescribed prices are abolished, the immediate effect would be that the prices of popular books would be reduced and that libraries and other large buyers would be able to buy books at lower prices. In the long run, however, these temporary advantages would be offset by a lowering of standards and service, a decline in the number of bookshops and in the variety and number of books published. This, it is asserted, was the state of affairs in the United Kingdom before resale price maintenance was introduced there, and is today still the position in America where both the production of books and the number of booksellers per 10,000 of the population, together with those of Canada (where resale price maintenance is prohibited), are the lowest in the world.*

Evaluation of the Arguments.

96. In evaluating the above-mentioned arguments of the Association and in its endeavour to determine the effect of resale price maintenance in the book trade on the public interest, the Board is in the fortunate position that it does not have to depend merely on economic speculation. Empirical evidence exists in regard to the position in the United Kingdom prior to and after the introduction of resale price maintenance in the book trade, and also in regard to what has happened in Canada since the total prohibition of resale price maintenance in that country in December, 1951. In addition, the Board was able to take cognizance of two very important recent court decisions, namely that of the Trade Practices Appeal Authority in New Zealand which laid down on 1st August, 1962, that the price and discount schedule of that country's booksellers was justified in the public interest, and of the Restrictive Practices Court of the United Kingdom's judgment on 30th October, 1962, according to which the Net Book Agreement was declared not to be contrary to the public interest. Although the Board does not in any way regard these decisions as binding precedents, it found the evidence of the numerous experts and the views expressed by them very useful in so far as the circumstances of the countries mentioned are similar to those of the Republic.

* According to the Cronje Report and *Books for All* (Unesco).

93. Wat biblioteke betref, word daarop gewys dat die vernaamste provinsiale en stadsbiblioteke in die Republiek ooreenkomstig die P. & D. Skedule voorsien word teen Britse Uitgewersprys minus 12½ persent, terwyl biblioteke in die Verenigde Koninkryk tot 'n afslag van slegs 10 persent beperk is. Sommige biblioteke in die Republiek koop dus oorsese boeke plaaslik aan teen 'n laer prys as waar- teen hulle dit direk van oorsese kon bestel, afgesien nog van invoerkoste. Die stelsel van eenvormige diskonto's aan biblioteke is geregverdig omdat, indien vrye tenders toegelaat word, een of twee direkte invoerders van boeke, wat moontlik nie eens boekhandelaars is nie, al die besigheid sal kry. Die *bona fide* boekhandelaar sal, indien hy al sy besigheid met institusionele kopers moet afstaan, op 'n hoër marge ten opsigte van sy oorblywende verkope aandrang, wat tot nadeel van die publiek sal wees.

(vi) *Spesifieke voordele van prysbinding.*

94. Vir die boekhandel beteken die stelsel 'n redelike winsmarge, soos reeds aangetoon. Daarby word handelaars beskerm teen onregverdigde mededinging deurdat die stelsel verhoed dat boeke deur die gewone handel as lok-artikels („loss leaders”) gebruik word, soos op so 'n groot skaal gebeur in lande waar prysbinding nie toegelaat word nie, en wat ook in Engeland gebeur het vóór die sogenaamde „Net Book Agreement”.

95. Vir die publiek het die stelsel die voordeel dat daar meer verkooppunte is; dat boekhandelaars in staat is om 'n groter verskeidenheid van kwaliteit-boeke en 'n beter opgeleide personeel aan te hou; dat 'n versekerde wins op populêre boeke die boekhandel in staat stel om minder-populêre titels goedkoper te verkoop en dat uitgewers in staat is om die uitgee van 'n wye verskeidenheid boeke met vertroue te onderneem. Dit word erken dat indien met voorgeskrewe pryse weggedoen word, die onmiddellike reaksie laer pryse vir populêre boeke sal wees en dat biblioteke en ander groot kopers boeke teen laer pryse sal kan koop. Op lang termyn egter, sal hierdie tydelike voordele uitgewis word deur 'n verlaging van standarde en diens, die vermindering in die aantal boekwinkels en in die verskeidenheid en getalle boeke wat gepubliseer word. Dit was, na bewering, die toestand in die Verenigde Koninkryk voordat prysbinding daar ingevoer is, en is vandag nog die toestand in Amerika, waar beide die boekproduksie en die aantal boekhandelaars per 10,000 van die bevolking, tesame met dié van Kanada (waar prysbinding verbied word) die laagstes in die wêreld is*.

Waardebepaling van die argumente.

96. By 'n evaluasie van die bogemelde argumente van die Vereniging en in sy poging om die uitwerking van prysbinding in die Boekhandel vir die openbare belang vas te stel, is die Raad in die gelukkige posisie dat hy hom nie bloot op ekonomiese spekulasie hoef te verlaat nie. Empiriese getuienis bestaan oor die posisie in die Verenigde Koninkryk vóór en na die invoering van prysbinding in die boekhandel, asook oor wat in Kanada gebeur het sedert die algehele verbod op prysbinding in daardie land gedurende Desember 1951. Daarby kon die Raad kennis neem van twee baie belangrike onlangse hofuitsprake, te wete die van die „Trade Practices Appeal Authority” in Nieu-Seeland wat op 1 Augustus 1962 beslis het dat die prys- en diskontoskedule van daardie land se boekhandelaars in die openbare belang geregverdig is en van die „Restrictive Practices Court” van die Verenigde Koninkryk se uitspraak op 30 Oktober 1962, waarvolgens die „Net Book Agreement” nie as teen die openbare belang verklaar is nie. Hoewel die Raad hierdie uitsprake geensins as bindende presedente beskou nie, het hy die getuienis van die talle deskundiges en die menings deur hulle uitgespreek, baie nuttig gevind vir sover daardie lande se omstandighede soortgelyk is aan dié van die Republiek.

* Volgens die Cronje-verslag en *Books for All* (Unesco).

97. As regards the organised book trade's arguments in justification of resale price maintenance, the Board is prepared to concede that the existence of genuine booksellers who hold large stocks in respect of both the number of books and the variety of titles and who have trained and competent staff, is in the public interest. The trade in books embraces very much more than merely the stocking and sale of a certain number of popular novels. During the investigation the Board had the opportunity of taking note of the high demands made upon the book trade, especially by libraries and educational institutions, and was able to appreciate the benefits to the community of the so-called stockholding booksellers. The Cronje Commission also stressed the important position of the bookseller in the community and took the view that publishing and the book trade are highly responsible vocations which make high demands upon those who participate in them in so far as training, competence, experience and a sense of responsibility are concerned.*

98. The next question is whether resale price maintenance as practised by the Association, is an essential prerequisite for the realisation of a sound book trade. Resale price maintenance in all its forms is *prima facie* a monopolistic condition in that it restricts competition and increases prices or maintains them at a constant level. The usual arguments against resale price maintenance are that it encourages over-utilisation of the industry because inefficient units are protected by assured profit margins that retailers are assured of an unnecessarily high profit margin and that the consumer is forced to pay for services which he would rather do without if he had a choice. It can hardly be asserted, however, that the foregoing arguments are valid for the book trade since the book trade is not concerned with the sale of a single commodity but when a large number of separate commodities, namely individual books, each of which has its own quality and business risk. It can also not be asserted that the book trade is over-utilised since the Cronje Commission found exactly the opposite to be the case. There are also really no services accompanying the sale of books, which can be regarded as superfluous.

99. It was asserted that, in order to be able to stock a wide variety of books to the benefit of the public, booksellers must have the assurance that such books will not be sold at lower prices by a bookseller in the neighbourhood or some other business. Certain types of books, such as popular novels, sell readily and no particular proficiency is necessary in this connection. But without these bread and butter lines, the genuine bookseller can hardly afford to stock all the other books required by the public. And "a public which was offered nothing but best sellers, whether at cut-prices or not, could hardly consider itself served with books".† The assertion that without the protection afforded by resale price maintenance, the number of genuine booksellers in a country drastically declines, was proved true by experience in a number of overseas countries. In the Unesco publication‡ quoted earlier, the effect of price cutting on the book trade is described as follows:—

"In a price war, such as occurred in the British book trade at the end of the last century, the small retailers go to the wall, and only the large ones flourish. The fewer bookshops there are, the less easily can the public obtain books. To keep alive at times when books are being sold over the counter as so much merchandise, the booksellers may call upon publishers to increase their discounts. In that prices inevitably rise and again the public suffers. Consequently, the abandonment of resale price maintenance can never bring down the price of books in general. At best it might make the more expensive part of published literature cheaper by removing its sale from bookshops proper. But it would also increase the price of more serious works, reduce the public's choice and impose a burden on the serious

97. Wat die georganiseerde boekhandel se argumente ter regverdiging van prysbinding betref, is die Raad bereid om toe te gee dat die bestaan van egte boekhandelaars met 'n groot voorraad ten opsigte van sowel die aantal boeke as die verskeidenheid van titels, en wat beskik oor opgeleide en bekwame personeel in die openbare belang is. Die handel in boeke behels baie meer as net die in voorraad hou en verkoop van 'n sekere aantal populêre romans. Tydens die ondersoek het die Raad geleentheid gehad om kennis te neem van die hoë vereistes wat aan die boekhandel gestel word, veral deur biblioteke en opvoedkundige inrigtings en kon die Raad die voordele vir die gemeenskap van die sogenaamde „stock-holding booksellers" appresieer. Ook die Cronje-kommissie het die belangrike plek van die boekhandelaar in die gemeenskap beklemtoon, en die standpunt ingeneem dat „die uitgewery en die boekhandel hoogs verantwoordelike beroepe is wat hoë eise stel aan die beoefenaars daarvan wat opleiding, bekwaamheid, ervaring en verantwoordelikeheidsgevoel betref."*

98. Die vraag is vervolgens of prysbinding soos dit deur die vereniging beoefen word, 'n noodsaaklike voorvereiste is vir die verwesenliking van 'n gesonde boekhandel. Prysbinding in al sy vorme is *prima facie* 'n monopolistiese toestand deurdat dit mededinging beperk en pryse verhoog of op 'n konstante peil handhaaf. Die gewone argumente teen prysbinding is dat dit oorbesetting van 'n bedryfstak aanmoedig omdat ondoeltreffende eenhede deur versekerde winsmarges beskerm word; dat kleinhandelaars van 'n onnodige hoë winsmarge verseker word en dat die verbruiker gedwing word om vir dienste te betaal waarsonder hy liewers sou klaarkom indien hy 'n keuse gehad het. Dit kan egter kwalik beweer word dat die voorgenoemde argumente by die boekhandel geld, aangesien die boekhandel nie te doen het met die verkoop van 'n enkel kommoditeit nie, maar met 'n groot aantal aparte kommoditeite, te wete individuele boeke, elk waarvan 'n eie kwaliteit en sakerisiko verteenwoordig. Dit kan ook nie beweer word dat die boekhandel oorbeset is nie, aangesien die Cronje-kommissie presies die teendeel bevind het. Daar is ook nie juis dienste gepaard met die verkoop van boeke wat as oortollig beskou kan word nie.

99. Die bewering is gedoen dat ten einde in staat te wees om 'n wye verskeidenheid boeke tot voordeel van die publiek in voorraad te hou, boekhandelaars die versekering moet hê dat daardie boeke nie deur 'n nabygeleë boekhandelaar, of ander soort besigheid, teen laer pryse verkoop word nie. Sekere tipe boeke, soos populêre romans, verkoop maklik en geen besondere bekwaamheid is daarvoor nodig nie. Maar sonder hierdie „brood en botterlyne" kan die egte boekhandelaar kwalik bekostig om al die ander boeke wat die publiek benodig, in voorraad te hou. En „a public which was offered nothing but 'best sellers', whether at cut-prices or not could hardly consider itself served with books."† Die bewering dat sonder die beskerming wat prysbinding verleen die aantal egte boekhandelaars in 'n land drasties afneem, is bewaarheid deur die ondervinding in 'n aantal oorsese lande. In die reeds aangehaalde Unesco-publikasie‡ word die uitwerking van prysonderbieding op die boekhandel as volg beskryf—

„In a price war, such as occurred in the British book trade at the end of the last century, the small retailers go to the wall, and only the large ones flourish. The fewer bookshops there are, the less easily can the public obtain books. To keep alive at a time when books are being sold over the counter as so much merchandise, booksellers may call upon publishers to increase their discounts. In that event, prices inevitably rise and again the public suffers. Consequently, the abandonment of resale price maintenance can never bring down the price of books in general. At best, it might make the more expensive part of published literature cheaper by removing its sale from bookshops proper. But it would also increase the price of more serious works, reduce the public's choice and impose a burden on the serious

* Report, loc. cit., page 81.

† Books for All, loc. cit., page 14.

‡ Books for All.

* Verslag t.a.p., bl. 81.

† Books for All, t.a.p., bl. 14.

‡ Books for All.

reader. At worst, a 'free for all' might mean the end of serious bookselling and thus of serious publishing, with a consequent decline in the world's literature*."

100. In Canada, where resale price maintenance has been prohibited since 1957, books, especially popular fiction and cheap reprints of the classics, are used on a large scale as loss leaders by the ordinary retail trade. Supermarkets sold such books at prices considerably lower than the publishers' prices with the result that booksellers agitated for higher prices and margins. Publishers' prices, as well as the margins allowed to booksellers, consequently increased. Despite the price cutting which occurred, it was ascertained that no increase in the total book sales took place but that there was only a shift from one distribution channel to another†. At the same time the number of genuine booksellers decreased so that at present Canada, together with the United States of America, has a remarkably small number of booksellers *per capita*.

101. It is also significant that in countries such as Denmark, Norway, Sweden, Finland, France and West Germany where price agreements are prohibited by law, the book trade is specifically excluded from such provisions.

102. In the light of the foregoing, the Board considers that, in the absence of resale price maintenance in the book trade, the number of bookshops will decline. For the public this will mean fewer selling points for books and consequently a more limited choice of books and services. In addition, it may be expected that book prices will on the whole rise and that the increase will be the greatest in respect of the better type of book and educational works. As happened in Canada, it may be expected that popular books will also be sold in this country at nominal prices as loss leaders by the ordinary retail trade. This will immediately be a severe blow, especially for the smaller bookshops and they will be forced to close unless they succeed in raising the prices of the better class of book as well as educational works. The bookshops which stand the best chance of surviving a price war are those belonging to the few large publishers. Such publishers cum booksellers are able to arrange the discounts to the trade and can in this way follow a policy which makes it impossible for any competitor to handle their books. This, however, applies only to books published in this country. Popular overseas publications may be imported direct and be sold at uneconomic prices at the expense of all local booksellers. The loss of these bread and butter lines will inevitably result in higher prices for other books, as well as a decline in the number of genuine booksellers, to the detriment of the public.

103. A decline in the number of booksellers, together with uncertainty about prices and margins, would then result in fewer books being printed and published. It is extremely difficult for any publisher to make a reliable advance estimate of the number of copies of a book which he expects to sell if he is not certain beforehand who will distribute the book. Even where existing booksellers undertake to sell his book, they will hesitate to place large fixed orders if ordinary dealers may also handle the book and possibly sell it at an uneconomic price. Under such circumstances the publisher may quite possibly have a smaller number of copies printed and make the book available to his distributors at higher prices than under the present system of prescribed prices. Fixed prices together with a large number of genuine booksellers appear to be an essential prerequisite for the maximum publication of books at minimum prices.

104. Since the Board is consequently prepared to condone the system of resale price maintenance, as applied by the booksellers association, as being in the public interest, the question arises of whether it is necessary also to prescribe the prices to institutional buyers, such as

reader. At worst, a 'free for all' might mean the end of serious bookselling and thus of serious publishing, with a consequent decline in the world's literature*."

100. In Kanada, waar prysbinding sedert 1957 verbied is, is boeke, veral populêre fiksie en goedkoop herdrukke van die klassieke, op groot skaal as lokartikels deur die gewone kleinhandel gebruik. Supermarke het sulke boeke teen pryse aansienlik laer as die uitgewerspryse verkoop, met die gevolg dat boekhandelaars vir hoër pryse en marges geagiteer het. Uitgewerspryse het gevolglik gestyg, asook die marges wat aan boekhandelaars toegelaat is. Ten spyte van die prysonderbiedinge wat voorgekom het, is vasgestel dat daar nie 'n vermeerdering in die totale boekverkope plaasgevind het nie maar dat daar slegs 'n verskuiwing van een distribusiekanaal na 'n ander was.† Terselfdertyd het die aantal egte boekhandelaars verminder, sodat Kanada tans, saam met die Verenigde State van Amerika, oor 'n merkwaaardige klein aantal boekhandelaars *per capita* beskik.

101. Dit is ook insiggewend dat in lande soos Denemarke, Noorweë, Swede, Finland, Frankryk en Wes-Duitsland waar prysoreenkomste deur wetgewing verbied word, die boekhandel spesifiek van daardie bepalings uitgesluit is.

102. In die lig van die voorafgaande, is die Raad van mening dat in afwesigheid van prysbinding in die boekhandel, die aantal boekwinkels sal verminder. Vir die publiek sal dit minder verkooppunte van boeke beteken en gevolglik 'n meer beperkte keuse van boeke en diens. Daarby kan verwag word dat boekpryse oor die algemeen sal styg, en dat die styging die grootste ten opsigte van die beter tipe boek, en opvoedkundige werke, sal wees. Soos in Kanada gebeur het, kan verwag word dat populêre boeke ook hier deur die gewone kleinhandel teen nominale pryse as lokartikels verkoop sal word. Dit sal onmiddellik 'n gevoelige slag vir veral die kleiner boekwinkels wees en hulle dwing om te sluit tensy hulle daarin slaag om die pryse van die beter klas boek, asook opvoedkundige werke, te verhoog. Die boekwinkels wat die beste kans het om 'n prysoorlog te oorleef, is dié wat aan die paar groot uitgewerye behoort. Sulke uitgewers-cum-boekhandelaars is naamlik in staat om die diskonto's aan die handel te reël en kan sodoende 'n beleid volg wat dit vir enige mededinger onmoontlik maak om sy boeke te hanteer. Dit geld egter slegs vir boeke wat plaaslik uitgegee word. Populêre oorsese publikasies kan direk ingevoer en teen onekonomiese pryse ten koste van alle plaaslike boekhandelaars verkoop word. Verlies van hierdie „brood-en-botter lyn" sal noodwendig hoër pryse op ander boeke meebring, asook 'n vermindering in die aantal egte boekhandelaars, tot nadeel van die publiek.

103. 'n Vermindering in die aantal boekhandelaars, tesame met onsekerheid oor pryse en marges sal dan veroorsaak dat minder boeke gedruk en uitgegee word. Dit is uiters moeilik vir enige uitgewer om 'n betroubare vooruitberaming te doen van die aantal eksemplare wat hy meen om van 'n boek te verkoop as hy nie vooraf seker is wie die boek sal distribueer nie. Selfs waar bestaande boekhandelaars onderneem om sy boek te verkoop, sal hulle huiwer om groot vaste bestellings te plaas indien gewone handelaars die boek ook mag hanteer, en moontlik teen 'n onekonomiese prys verkoop. Die uitgewer sal onder sulke omstandighede heel moontlik 'n kleiner oplaag laat druk en die boek teen hoër pryse aan sy distribuerders beskikbaar stel as onder die huidige stelsel van voorgeskrewe pryse. Vasgestelde pryse tesame met 'n groot aantal egte boekhandelaars skyn 'n noodsaaklike voorvereiste vir die maksimum publikasie van boeke teen minimum pryse te wees.

104. Waar die Raad dan bereid is om die stelsel van prysbinding, soos toegepas deur die boekhandelaarsvereniging, te kondoneer as synde in die openbare belang, ontstaan die vraag of dit nodig is om ook die pryse aan die

* Books for All, page 14.

† Reports of Restrictive Practices Cases, Vol. 3, Part 5, in re Net Book Agreement, 1957.

* Books for All, bl. 14.

† Reports of Restrictive Practices Cases, Vol. 3, Part 5, in re Net Book Agreement, 1957.

libraries, schools, state departments, universities, etc., in the P. & D. Schedule. Whereas institutional buyers at present call for tenders, members of the Book Trade Association quote identical prices, with the result that in most cases calling for tenders has already been abolished, agreements for the required books being concluded without further ado.

105. The Board is convinced that, if large institutional buyers were to be allowed to negotiate with suppliers, or if booksellers were not bound to a fixed scale of discounts and could tender freely, it would be possible to buy books initially on more favourable terms than at present. The result of such a policy, however, would be that the largest suppliers would specialise in this type of transaction and in an effort to supply books at the lowest prices, restrict their services to a minimum. Whereas business with institutional buyers is at present shared by a large number of booksellers throughout the country, it might happen that only a few booksellers would conduct all the business with such buyers, with the result that numerous smaller booksellers would lose a large part of their present turnover. The result would be that prices to the general public would have to rise in order to offset the lost profit on sales to institutional buyers and that, in consequence of the general higher prices, the institutional buyers concerned would eventually also have to pay more. This was *inter alia* also the conclusion of the Restrictive Trade Practices Court:—

“We do not think that the net result of the abrogation of the agreement would be advantageous for any public libraries and certainly not those of smaller library authorities: on the contrary, we think that generally they would have to pay more for their books than under present circumstances, although in some cases not so much more than an ordinary member of the public would have to pay.”*

106. Dissatisfaction in regard to the present system of book sales to institutional buyers was sporadic, however, and by no means general. Where it did occur, it was to a large extent due to a natural feeling of frustration on the part of certain municipal officers who tried in vain to apply the provincial tender regulations strictly and then received identical prices from the same groups of booksellers year after year. As has already been mentioned, however, most institutional buyers have long since discontinued calling for tenders and place their orders with the various booksellers, subject to the prescribed discounts of the P. & D. Schedule. Quality of service and the geographic location of booksellers now largely determine with whom orders are placed, while some large buyers deliberately endeavour to allocate orders to all the booksellers in the neighbourhood in such a way that all share more or less equally in them. It was noteworthy that most library officers approached during the investigation, regarded the last-mentioned method of making purchases as the obvious system. The general feeling appears to be that books cannot be bought in bulk by tender as in the case of ordinary commodities, but that experts should have the opportunity of inspecting the available stocks without being disturbed. It is also considered to be definitely undesirable that a long-term contract should be granted to only one supplier because such a supplier then has no inducement to render a service of high quality. It is felt (especially since the discounts on overseas books differ so considerably) that a bookseller to whom a long-term contract has been granted, will have reason to stock and bring to the notice of buyers only those books on which he receives the highest discounts from the overseas publishers.

107. The main criticism of the present system, however, is that prices are determined artificially by persons in the book trade itself, who benefit by high prices and profits. The question is consequently whether any factors exist which protect the public against unreasonable prices

institusionele kopers, soos biblioteke, skole, staatsdepartemente, universiteite, en dies meer in die P. & D. Skedule voor te skrywe. Waar institusionele kopers tans tenders vra, kwoteer lede van die boekhandervereniging identiese pryse, met die gevolg dat in meeste gevalle reeds weggedoen is met die vra van tenders en ooreenkomste vir die benodigde boeke sonder meer aangeaan word.

105. Die Raad is oortuig dat indien groot institusionele kopers toegelaat word om met verskaffers te onderhandel, of indien boekhandelaars nie aan 'n vasgestelde diskontoskaal gebonde is nie en vryelik mag tender, boeke aanvanklik teen gunstiger terme as tans aangekoop sal kan word. Die gevolg van so 'n beleid sal egter wees dat die grootste verskaffers in hierdie tipe transaksie sal spesialiseer en in 'n poging om boeke teen die laagste pryse te lewer, hul dienste tot 'n minimum sal beperk. Waar sake met institusionele kopers tans deur 'n groot aantal boekhandelaars dwarsdeur die land gedeel word, kan dit gebeur dat slegs 'n paar boekhandelaars al die sake met sulke kopers sal doen, met die gevolg dat talle kleiner boekhandelaars 'n groot deel van hulle huidige omsette sal verloor. Die gevolg sal wees dat pryse aan die algemene publiek sal moet styg om die verlore wins op verkope aan institusionele kopers goed te maak en dat as gevolg van die algemene hoër pryse, die betrokke institusionele kopers ook uiteindelik meer sal moet betaal. Dit was onder andere ook die gevolgtrekking van die „Restrictive Trade Practices Court”—

“We do not think that the net result of the abrogation of the agreement would be advantageous for any public libraries and certainly not those of smaller library authorities: On the contrary, we think that generally they would have to pay more for their books than under present circumstances, although in some cases not so much more than an ordinary member of the public would have to pay.*

106. Ontevredenheid oor die huidige stelsel van boekverkope aan institusionele kopers was egter sporadies, en glad nie algemeen nie. Waar dit wel voorgekom het, was dit in 'n groot mate toe te skrywe aan 'n natuurlike gevoel van frustrasie aan die kant van sekere munisipale amptenare wat tevergeefs probeer het om die provinsiale tenderregulasies streng toe te pas en dan jaar na jaar identiese pryse van dieselfde groepe boekhandelaars ontvang het. Soos egter reeds vermeld, het meeste institusionele kopers lank gelede al die vra van tenders gestaak en plaas hulle bestellings by die onderskeie boekhandelaars, onderhewig aan die neergelegde diskonto van die P. & D. Skedule. Gehalte van diens en die geografiese ligging van boekhandelaars bepaal nou grootliks by wie bestellings geplaas word, terwyl sommige groot kopers doelbewus probeer om bestellings by al die boekhandelaars in die buurt op so 'n wyse toe te wys dat almal meer of min gelykop daarin deel. Dit was opvallend dat meeste biblioteekbeamptes wat tydens die ondersoek genader is, die laasgenoemde wyse van aankope as die aangewese stelsel beskou. Die algemene gevoel skyn te wees dat boeke nie soos gewone handelsware in massa per tender gekoop kan word nie, maar dat kenners die geleentheid moet hê om beskikbare voorrade ongesteurd deur te kyk. Hulle beskou dit ook as beslis onwenslik dat 'n kontrak vir 'n lang termyn aan slegs een verskaffer toegestaan word, omdat so 'n verskaffer dan alle aanmoediging om dienste van 'n hoër gehalte te lewer, ontnem word. Veral word gevoel dat waar die diskonto's op oorsese boeke so aanmerklik verskil, 'n boekhandelaar aan wie 'n langtermynkontrak toegestaan is rede sal hê om slegs daardie boeke waarop hy die hoogste diskonto's van die oorsese uitgewers ontvang, in voorraad te hou en onder die kopers se aandag te bring.

107. Die groot kritiek op die huidige stelsel is egter dat pryse kunsmatig vasgestel word deur persone wat direk in die boekhandel staan en wat by hoër pryse en winste baat. Die vraag is dan of daar enige faktore bestaan wat

* In *re* Net Book Agreement, loc. cit., page 319.

* In *re* Net Book Agreement, t.a.p. bl. 319.

and margins and, furthermore, whether a finding by the Board that the Association's system of resale price maintenance is justified in the public interest, would not amount to a *carte blanche* to the book trade effect unrestricted or unreasonable price increases in the future to the detriment of the public interest. The Board nevertheless considers that considerations do in fact exist for the protection of the public against exploitation. In the first place it must be borne in mind that publishers are continually competing against one another for this reason are forced by economic considerations to fix their prices as low as possible. The prices to the public of books published locally, are determined by the publishers, and except in cases where the discount to the dealer is unusually low, these prices are not affected at all by the P. & D. Schedule. In regard to imported books, the P. & D. Schedule lays down what the percentage increases on overseas prices may be. Two factors operate here for the protection of the public, namely (i) an excessive increase by the P. & D. Schedule would evoke protests from overseas publishers since it would adversely affect the sale of their books in the Republic, which have to compete with local publications and other forms of entertainment, and (ii) there is nothing to prevent those who live in the Republic from ordering books direct from the overseas booksellers. The book trade in most overseas countries is constantly on the look out for export markets and machinery for the exportation of their books is in existence. Several large-scale buyers of books in the Republic therefore regularly import their books themselves from overseas. This fact also explains why some libraries in the Republic locally buy books published in England at lower prices, than those at which they can buy them direct in England or at which libraries in England buy such books.* The Board therefore considers that, although the organised book trade's system of joint resale price maintenance is fraught with a certain amount of danger, there are nevertheless factors present for the protection of the public against exploitation.

108. In the light of the above considerations the Board has come to the conclusion that the system of resale price maintenance, as at present applied by the organised book trade, is on balance not contrary to the public interest. The Board consequently recommends that no steps should be taken by the Minister under the present circumstances to terminate the monopolistic condition concerned.

CHAPTER VI.

MONOPOLISTIC CONDITIONS IN THE DISTRIBUTION OF NEWSPAPERS AND PERIODICALS, AND THE PUBLIC INTEREST.

109. In the following paragraphs the Board wishes to discuss the effect on the public interest of the monopolistic conditions in the distribution of newspapers and periodicals, as outlined in chapter IV. At the same time arguments advanced in justification of these conditions will be discussed.

(i) Exclusive Distribution Agreements.

110. In regard to overseas publications it is asserted that, for convenience sake, publishers prefer to entrust the distribution of their newspapers and periodicals to only one distributor in a country where the market is of such limited size as in the Republic. The relevant distribution agreements are generally concluded after protracted negotiations during which the parties on both sides endeavour to bargain for the best terms for themselves. The negotiations do not always succeed for the very reason that there are also other local distributors who would possibly be prepared to undertake distribution

die publiek teen onredelike pryse en marges beskerm. En verder, of 'n bevinding deur die Raad dat die Vereniging se stelsel van prysbinding in die openbare belang geregverdig is, nie sal neerkom op 'n *carte blanche* aan die boekhandel om in die toekoms onbeperkte of onredelike prysverhogings tot nadeel van die openbare belang aan te bring nie. Die Raad meen dat daar tog oorwegings bestaan ter beskerming van die publiek teen uitbuiting. In die eerste plek moet in gedagte gehou word dat uitgewers in gedurige mededinging met mekaar verkeer en daarom deur ekonomiese oorwegings gedwing word om hulle pryse so laag as moontlik vas te stel. Die pryse aan die publiek van boeke plaaslik uitgegee, word deur die uitgewers vasgestel en behalwe waar die diskonto aan die handelaar buitengewoon laag is, word hierdie pryse glad nie deur die P. & D. Skedule geraak nie. Wat ingevoerde boeke betref, lê die P. & D. Skedule neer wat die persentasie verhogings op oorsese pryse mag wees. Twee faktore tree hier in ter beskerming van die publiek, nl. (i) 'n buitensporige verhoging deur die P. & D. Skedule sal protes uitlok van oorsese uitgewers, deurdadig dit die afset van hulle boeke in die Republiek, wat met plaaslike publikasies en ander vorme van vermaak moet mededing, nadelig sal tref; en (ii) daar is niks wat inwoners in die Republiek belet om boeke direk van die oorsese boekhandelaars te bestel nie. Die boekhandel in meeste oorsese lande is gedurig op die uitkyk vir uitvoermarkte en masjinerie vir die uitvoer van hulle boeke bestaan reeds. Etlke groot kopers van boeke in die Republiek, voer dan ook gereeld hulle boeke self in van oorsee. Dit verklaar ook waarom sommige biblioteke in die Republiek boeke wat in Engeland uitgegee word, plaaslik teen laer pryse aankoop as waarteen hulle dit direk in Engeland kan koop of waarteen biblioteke in Engeland daardie boeke koop.* Die Raad meen dus dat hoewel die georganiseerde boekhandel se stelsel van gesamentlike prysbinding 'n sekere mate van gevaar inhou, daar nogtans faktore aanwesig is ter beskerming van die publiek teen uitbuiting.

108. In die lig van die bogenoemde oorwegings kom die Raad tot die gevolgtrekking dat die stelsel van prysbinding, soos tans deur die georganiseerde boekhandel toegepas, *per saldo* nie teen die openbare belang is nie. Die Raad beveel gevolglik aan dat geen stappe onder die huidige omstandighede deur die Minister gedoen moet word om die betrokke monopolistiese toestand te beëindig nie.

HOOFSTUK VI.

MONOPOLISTIESE TOESTANDE BY DIE DISTRIBUSIE VAN KOERANTE EN TYDSKRIFTE EN DIE OPENBARE BELANG.

109. In die volgende paragrawe wens die Raad om monopolistiese toestande by die distribusie van koerante en tydskrifte, soos in Hoofstuk IV uiteengesit, se uitwerking op die openbare belang te bespreek. Terselfdertyd sal argumente ter regverdiging van die toestande aangevoer behandel word.

(i) Eksklusiewe distribusie-ooreenkomste.

110. Wat oorsese publikasies betref, word aangevoer dat uitgewers vanweë gerieflikheidsoorwegings verkies dat die distribusie van hulle koerante en tydskrifte in 'n land waar die mark van so 'n beperkte omvang is as dié van die Republiek, aan slegs een distribuerder toevertrou word. Die betrokke distribusie-ooreenkomste kom gewoonlik tot stand na uitgerekte onderhandelings waartydens partye aan beide kante poog om die beste voorwaardes vir hulle self af te dwing. Die onderhandelings slaag nie altyd nie, juis omdat daar ook ander plaaslike distribueerders is, wat moontlik bereid is om distribusie

* See paragraph 93.

* Sien para. 93.

on terms which are more favourable for the overseas publishers. Needless to say, the overseas publisher is interested in obtaining the maximum sale of his publication, which demands that the manner of distribution should be efficient and the price competitive. Both of these considerations are in the public interest and, it is asserted, can best be ensured by allowing the owners concerned to choose their own distributors and to negotiate freely about the services which they desire and the prices to be paid for them. The Board found no evidence that any local distributor exerts pressure on overseas publishers in an improper manner in order to obtain or retain the exclusive distribution rights for their publications.

111. In the case of *local* newspapers and periodicals, the C.N.A. at present acts as the sole distributor and is consequently the only concern which has an interest in exclusive agreements. The arguments why the right to distribute should be exclusive are also therefore solely those of the C.N.A. In the first place the C.N.A. ascribes its monopoly of the distribution of local newspapers and periodicals to the fact that, as the oldest distributor during a period of more than 60 years, it has built up a unique organisation on a national basis. As a result of sustained growth through the application of sound business methods and with adequate capital at its disposal, an organisation has been established which cannot be equalled both in size and the quality of its services. In the absence of any other undertaking which is able to render the same services at the same cost, for the owners of newspapers and periodicals there has hitherto been no other suitable alternative distributor for their publications in the Republic.

112. Secondly, the C.N.A. asserts that the grounds for its insistence on an exclusive distribution right are based upon purely economic considerations, and that it does not in any way aim at preventing the emergence of an alternative distributor. In support of the latter statement, mention may be made of the relatively short terms of the agreements and the complete absence of any restriction on the C.N.A.'s agents and sub-agents to stock and sell the publications of other distributors as well. The C.N.A. consequently informed the Board categorically that it would not refuse to distribute the newspaper or periodical of any owner merely because such an owner had not given it the exclusive right of distribution. The reservation was made, however, that the charge would then have to be higher.

113. The gist of the economic grounds upon which the C.N.A. wishes to justify its exclusive right, is that in an extensive and relatively sparsely populated country, such as the Republic, distribution costs vary according to the density of the population. In the large cities they are low and a profit is realised which must be high enough to offset the much higher costs of distribution in the sparsely populated and remote parts of the country. Prices to the public are uniform throughout the country so that the distributor is not able to adjust his prices from place to place according to the actual costs at each place. If the C.N.A. does not have the sole right of distribution for a publication, part of the edition of such a publication may be sold by a competing distributor. It is reasonable to expect, however, that such a competitor will exploit the most densely populated areas and so deprive the C.N.A. of the most profitable part of its market. The latter may then find that it must either insist upon a higher remuneration in order to offset its losses or discontinue the distribution of the publication concerned in the less profitable areas. In both cases the public interest is adversely affected and poorer distribution will result to the detriment of the public interest. In the circumstances, the Board understands the C.N.A.'s attitude that it expects a higher remuneration if it does not obtain the sole right of distribution. At the same time the Board doubts whether the owners of newspapers and periodicals would be prepared to pay a higher remuneration for the doubtful advantages which they may secure by allowing a second distributor to handle their publication as well.

teen voorwaardes te onderneem wat gunstiger vir die oorsese uitgewers is. Die oorsese uitgewer is vanselfsprekend daarin geïnteresseerd om die maksimum verkope van sy publikasie te verkry, wat vereis dat die wyse van distribusie doeltreffend en die prys mededingend moet wees, oorwegings wat albei bevorderlik is vir die openbare belang en wat, na bewering, die beste verseker kan word deur die betrokke eienaars toe te laat om self hul distributeurs te kies en vryelik oor die dienste wat hul verlang, en die pryse daarvoor, te onderhandel. Die Raad het geen bewyse gevind dat enige plaaslike distributeerder op onbehoorlike wyse druk op oorsese uitgewers uitoefen ten einde die eksklusiewe distribusieregte vir hulle publikasies te verkry, of te behou nie.

111. Wat binnelandse koerante en tydskrifte betref, tree die C.N.A. tans op as die enigste distributeerder en is hy gevolglik die enigste wat belang het by eksklusiewe ooreenkomste. Die argumente waarom die reg om te distribueer 'n eksklusiewe reg moet wees, is dan ook uitsluitlik die van C.N.A. In die eerste plek skryf C.N.A. sy monopolie vir die verspreiding van plaaslike koerante en tydskrifte daaraan toe dat hy as die oudste distributeerder gedurende 'n tydperk van meer as sestig jaar 'n unieke organisasie op nasionale grondslag opgebou het. As gevolg van volgehoue groei deur die toepassing van gesonde besigheidsmetodes en met voldoende kapitaal tot sy beskikking is 'n organisasie tot stand gebring wat beide in omvang en gehalte van diens nie geëwenaar kan word nie. By afwesigheid van enige ander onderneming wat dieselfde dienste teen dieselfde koste kan lewer was daar vir eienaars van koerante en tydskrifte tot dusver nog geen geskikte alternatiewe distributeerder van hulle publikasies in die Republiek nie.

112. Tweedens voer die C.N.A. aan dat die rede waarom aangedring word op 'n eksklusiewe distribusiereg, op suiwer ekonomiese oorwegings berus en geensins daarop gemik is om die ontstaan van 'n alternatiewe distributeerder te verhinder nie. Ter ondersteuning van die laasgenoemde stelling kan genoem word die relatiewe korttermyn van die ooreenkomste en die volkome afwesigheid van enige beperking op die C.N.A. se agente en sub-agente om ook ander distributeurs se publikasies aan te hou en te verkoop. C.N.A. het dan ook kategorieë aan die Raad verklaar dat hy nie sal weier om enige eienaar se koerant of tydskrif te distribueer bloot omdat daardie eienaar nie aan hom die eksklusiewe reg vir distribusie verleen nie. Die voorbehoud word egter gestel dat die vergoeding dan hoër sal moet wees.

113. Die ekonomiese gronde waarop C.N.A. wens om sy eksklusiewe reg te regverdig, kom daarop neer dat in 'n uitgestrekte en relatief dunbevolkte land soos die Republiek, distribusiekoste varieer volgens die bevolkingsdigtheid. In die groot stede is dit laag en word 'n wins gerealiseer wat hoog genoeg moet wees om die veel hoër koste van distribusie in die ylbewoonde en afgeleë dele goed te maak. Pryse aan die publiek is eenvormig dwarsdeur die land, sodat die distributeerder nie in staat is om sy pryse van plek tot plek aan te pas ooreenkomstig sy werklike koste by elke plek nie. Indien C.N.A. nou nie oor die alleenreg van distribusie vir 'n publikasie beskik nie, kan 'n deel van so 'n publikasie se opplaag deur 'n mededingende distributeerder verkoop word. Dit is egter redelik om te verwag dat daardie mededinger juis die mees digbewoonde gebiede sal eksploiteer en sodoende die winsgewendste deel van C.N.A. se mark wegneem. Die laasgenoemde mag dan vind dat hy of op 'n hoër vergoeding moet aandring om sy verliese goed te maak, of distribusie van die betrokke publikasie in die minder winsgewende gebiede staak. In beide gevalle word die openbare belang nadelig getref en sal swakker distribusie tot nadeel van die openbare belang die gevolg wees. Onder omstandighede begryp die Raad C.N.A. se standpunt dat hy 'n hoër vergoeding verwag indien hy nie die alleenreg vir distribusie verkry nie. Terselfdertyd twyfel die Raad of eienaars van koerante en tydskrifte bereid sal wees om 'n hoër vergoeding te betaal vir die twyfelagtige voordele wat hulle mag verkry deur toe te laat dat 'n tweede distributeerder ook hulle publikasies hanteer.

114. The question arises of what inducement there is for the C.N.A. to render efficient services to the public in the absence of competition. It is possible that the C.N.A.'s comprehensive organisation with its network of agents and sub-agents, together with its exclusive agreements with local and overseas publishers, may create the impression, in the mind of an objective outsider, that it is in such an unassailable position that it need not take any notice of the requirements of efficiency and the public interest. In this connection it should be borne in mind, however, that, as an organisation, the C.N.A. enjoys no established rights of protection and that the quality of its services is constantly under the searchlight of both the owners of the publications distributed by it, and the public. The Board was informed by various publishers and owners that their inspectors keep a constant watch on the manner in which the C.N.A. handles their publications, since effective distribution is a prerequisite for successful publication, especially under the present conditions where the different newspapers and periodicals are in fierce competition with one another and moreover have to compete with other forms of entertainment and other media of knowledge and information. In addition, the thought was expressed that the C.N.A.'s position is not as unassailable as appears at first glance. Its agreements with owners are generally for a short period, so that there is nothing to prevent owners from making alternative distribution arrangements at short notice. Several large dailies, such as *Die Burger*, *Volksblad* and *The Natal Witness*, already undertake their own distribution. The possibility is also not ruled out that more owners may in the future proceed, either separately or jointly, to undertake the distribution of their newspapers themselves. Most periodicals are already to a considerable extent distributed through the post and, according to the Board's information, it should be economically possible to distribute periodicals successfully with the assistance of existing bookshops and other distributors without enlisting the co-operation of the C.N.A. Under the above-mentioned circumstances there is only one factor which prevents the C.N.A. from losing distribution agreements, and that is the quality of its services and its general efficiency. What Schumpeter said about the monopolist's privileged position, is applicable here: "As it can be gained, so it can be retained only by alertness and energy."* The Board therefore considers that there are indeed factors which serve as an incentive to ensure that the C.N.A. renders efficient services and properly meets the public's requirements.

115. In connection with the C.N.A.'s exclusive rights of distributing local newspapers and periodicals, the Board must also still refer to a proposal of a local distributor that steps should be considered to prevent such rights being granted, so that other distributors can also share in the distribution. The advantage of such an arrangement would be that alternative distributors who at present still cannot undertake countrywide distribution, will be enabled to develop to a stage where they can do so. This will ensure greater competition to the benefit of the public and it may be expected that the publications of owners will be distributed more completely throughout the country. The Board considered these proposals but came to the conclusion that it could not support them. As has already been mentioned above, the reason for the existence of the exclusive distribution arrangements is of an economic nature, and is in no way so entrenched that a newcomer cannot also enter the field of distribution. There is nothing to prevent local newspapers and periodicals from being fully entrusted to another distributor. If owners are prepared to pay the C.N.A. a higher distribution remuneration, as explained above, there is also nothing to prevent the distribution of their publications being shared between the C.N.A. and other distributors. In the Board's opinion the whole matter is at present being arranged according to business considerations so that a compulsory change in terms of the provisions of the Act is not desirable. In addition, it is the clear intention of

114. Die vraag ontstaan watter aanmoediging daar vir C.N.A. bestaan om in die afwesigheid van mededinging doeltreffende dienste aan die publiek te lewer. Dit is moontlik dat C.N.A. se omvattende organisasie met sy netwerk van agente en sub-agente, tesame met sy eksklusiewe ooreenkomste met plaaslike en oorsese uitgewers, by 'n objektiewe buitestaander die indruk kan wek dat hy in so 'n onaantasbare posisie verkeer dat hy hom nie aan die vereistes vir doeltreffendheid en die openbare behoeftes hoef te steur nie. In hierdie verband moet egter in gedagte gehou word dat C.N.A. as organisasie geen gevestigde regte of beskerming geniet nie en dat die gehalte van sy dienste gedurig onder die soeklig is en sowel die eienaars van die publikasies wat hy distribueer as die publiek. Die Raad is deur verskeie uitgewers en eienaars meegedeel dat hulle inspekteurs gedurig 'n wakende oog hou oor die wyse waarop C.N.A. hulle publikasies hanteer, aangesien effektiewe distribusie 'n voorvereiste vir suksesvolle publikasie is, veral onder huidige toestande waar verskeie koerante en tydskrifte in intense mededinging met mekaar verkeer en boonop moet meeding met ander vorme van vermaak en ander verspreiders van kennis en inligting. Daarbenewens is die gedagte uitgespreek dat C.N.A. se posisie nie so onaantasbaar is as wat met die eerste oogopslag blyk nie. Sy ooreenkomste met eienaars is hoofsaaklik vir 'n korttermyn sodat daar niks is wat eienaars belet om alternatiewe distribusiereëlings op kort kennisgewing te tref nie. Verskeie groot dagblaaie, soos *Die Burger*, *Volksblad* en *The Natal Witness*, onderneem reeds hulle eie distribusie. Dit is ook nie uitgesluit dat meer eienaars in die toekoms daartoe mag oorgaan om of afsonderlik of gesamentlik, die distribusie van hulle koerante self te onderneem nie. Meeste tydskrifte behartig reeds 'n aansienlike deel van hul distribusie deur die pos en, na die Raad meegedeel is, behoort dit ekonomies moontlik te wees om met die hulp van bestaande boekwinkels en ander distribueerders, tydskrifte sonder C.N.A. se medewerking suksesvol te distribueer. Onder die genoemde omstandighede is daar slegs een faktor wat verhoed dat C.N.A. distribusie-ooreenkomste verloor en dit is die gehalte van sy dienste en sy algemene doeltreffendheid. Hier geld wat Schumpeter van die monopolis se bevoorregte posisie gesê het „As it can be gained, so it can be retained only by alertness and energy.”* Die Raad meen dus dat daar wel faktore bestaan wat as aansporing dien om te verseker dat C.N.A. doeltreffende dienste lewer en behoorlik aan die publiek se behoeftes voorsien.

115. Die Raad moet in verband met C.N.A. se eksklusiewe distribusieregte van plaaslike koerante en tydskrifte ook nog verwys na 'n voorstel van 'n plaaslike distribueerder dat stappe oorweeg behoort te word om te belet dat sulke regte verleen word, sodat ander distribueerders ook in die distribusie kan deel. Die voordele van so 'n reëling sal wees dat alternatiewe distribueerders, wat tans nog nie landswyse distribusie kan onderneem nie, in staat gestel word om te ontwikkel tot 'n stadium waar hulle dit wel sal kan doen. Sodoende kan daar groter mededinging wees tot voordeel van die publiek en kan verwag word dat eienaars se publikasies meer volledig oral in die land versprei word. Die Raad het hierdie voorstelle oorweeg maar tot die slotsom gekom dat hy dit nie kan ondersteun nie. Soos hierbo reeds vermeld, is die bestaansrede vir die eksklusiewe distribusiereëlings ekonomies van aard en word die geensins so verskans dat 'n nuwe toetreders nie ook tot distribusie kan toetree nie. Daar is niks wat plaaslike koerante en tydskrifte belet om die distribusie van hulle koerante en tydskrifte ten volle aan 'n ander distribueerder toe te vertrou nie. Indien hulle bereid is om aan C.N.A. 'n hoër distribusievergoeding te betaal, soos hierbo verduidelik, is daar ook niks wat belet dat die distribusie van hulle publikasies tussen C.N.A. en ander distribueerders verdeel word nie. Die hele kwessie word, na die Raad se mening, tans ooreenkomstig besigheids-oorewegings gereël sodat 'n gedwonge verandering kragtens die bepalings van die Wet, nie wenslik is nie. Daarby is dit die duidelike bedoeling van die Wet om ongereg-

* J. A. Schumpeter, *Capitalism, Socialism and Democracy*, page 102.

* J. A. Schumpeter, *Capitalism, Socialism and Democracy*, bl. 102.

the Act to eliminate unjustified monopolistic conditions, and not to regulate competition between parties in the market.

116. After consideration of the disadvantages attached to the exclusive distribution agreements, the absence of sound competition theoretically being the most important of these, and also of the advantages attached to the efficient distribution of newspapers and periodicals throughout the country by one large organisation according to distribution arrangements voluntarily made to the benefit of all the parties concerned, the Board has come to the conclusion that this monopolistic condition cannot on balance be regarded as contrary to the public interest.

(ii) *Restriction of the C.N.A.'s Right to Undertake the Distribution of New Newspapers Without the Permission of Certain Newspaper Owners.*

117. Neither the C.N.A. nor the relevant owners who are responsible for the above-mentioned restriction on the C.N.A.'s trading activities, advanced any reasons to justify the monopolistic condition created thereby. The parties in question have admitted that the practice is responsible for a monopolistic condition in terms of the Act and have intimated that they will not oppose its removal.

118. In the Board's opinion it is extremely undesirable that the organisation which is at present the only distributor of local newspapers and periodicals, is not at liberty to place its services at the disposal of new publishers without the permission of existing owners. In the Board's opinion such a situation is not conducive to the maintenance of a free press in a democratic country. The Board could also find no circumstances which justify this monopolistic condition in the public interest.

(iii) *Resale Price Maintenance.*

119. The arguments why resale price maintenance in the case of newspapers and periodicals would be justified in the public interest, may be summarised under two heads, namely:—

- (a) Newspapers and periodicals are not *bought* by the end-point seller at his own risk like ordinary commodities. (The publisher regularly provides the distributor or his agents with a number of copies of which the latter sells as many as he can at a prescribed price per copy. The remainder are returned to the owner and the distributor does not pay for them. It may therefore be asserted that the distributor never becomes the owner and, strictly speaking, also therefore cannot be the "seller". The seller is and remains the publisher who also determines the prices. The distributor and his agents or streetsellers are therefore not able to determine prices and merely act on the instructions of the publisher, so that they are much rather in the position of commission agents or employees of the publishers than independent retailers who are free to follow their own price policy); and
- (b) newspapers and periodicals are sold at a nominal price which does not cover the total costs of production. This is possible because the income from advertisements constitutes a large part of the total costs and profits.

120. The Board concedes that newspaper sellers are in such a special position that it is virtually impossible for them in practice to charge different prices for the same newspapers at different selling points. The fact remains, however, that the national dailies are sold to the public at three cents each and weeklies at five cents each. These uniform prices are the result of mutual consultation and amount to joint resale price maintenance, and the question is whether this joint resale price maintenance is justified in the public interest.

121. According to the theory of prices, the lowest prices to the consumer are ensured by free, independent price formation. The Board doubts, however, whether the

verdigde monopolistiese toestande te verwyder, en nie om mededinging onderling tussen partye in die mark te reël nie.

116. Na oorweging van die nadele verbonde aan die eksklusiewe distribusie-ooreenkomste, waarvan die afwesigheid van gesonde mededinging teoreties die belangrikste is, en die voordele verbonde aan die doeltreffende distribusie van koerante en tydskrifte dwarsdeur die land deur een groot organisasie en ooreenkomstig distribusie-reëlings wat vrywilliglik en tot voordeel van alle partye getref is, kom die Raad tot die gevolgtrekking dat hierdie monopolistiese toestand per saldo nie as teen die openbare belang beskou kan word nie.

(ii) *Beperking op C.N.A. se reg om distribusie van nuwe koerante te onderneem sonder toestemming van sekere koeranteienaars.*

117. Nóg die C.N.A., nóg die betrokke eienaars wat vir die bogenoemde beperking op die C.N.A. se handelsvryheid verantwoordelik is, het enige redes ter regverdiging van die monopolistiese toestand wat daardeur geskep word, aangevoer. Die betrokke partye het toegegee dat die praktyk vir 'n monopolistiese toestand ingevolge die Wet verantwoordelik is en te kenne gegee dat hulle nie die verwydering daarvan sal teenstaan nie.

118. Na die Raad se mening is dit uiters onwenslik dat die organisasie wat tans die enigste distribueerder van plaaslike koerante en tydskrifte is, nie vry is om sy dienste ter beskikking van nuwe uitgewers te stel sonder bestaande eienaars se toestemming nie. So 'n toestand is na die Raad se mening nie bevorderlik vir die handhawing van 'n vrye pers in 'n demokratiese land nie. Die Raad kon ook geen omstandighede vind wat hierdie monopolistiese toestand in die openbare belang regverdig nie.

(iii) *Prysbinding.*

119. Die argumente waarom prysbinding by koerante en tydskrifte in die openbare belang geregverdig sou wees, kan onder twee hoofde saamgevat word, nl.:—

- (a) Koerante en tydskrifte word nie soos gewone handelsware deur die eindpunt-verkoper vir sy eie risiko gekoop nie. Die uitgewer voorsien die distribueerder of sy agente gereeld van 'n aantal eksemplare, waarvan die laasgenoemde soveel as hy kan teen 'n voorgeskrewe bedrag per eksemplaar van die hand sit. Die res gaan terug aan die eienaar en die distribueerder betaal nie daarvoor nie. Dit kan dus beweer word dat die distribueerder nooit eienaar word nie en streng gesproke daarom ook nie die „verkoper” kan wees nie. Die verkoper is en bly die uitgewer, wat ook die pryse bepaal. Die distribueerder en sy agente of straatverkopers is dus nie by magte om pryse te bepaal nie en handel bloot in opdrag van die uitgewer, sodat hulle baie meer in die posisie van kommissie-agente, of werknemers van die uitgewers verkeer as onafhanklike kleinhandelaars wat vry is om 'n eie prysbeleid te volg; en
- (b) koerante en tydskrifte word teen 'n nominale prys verkoop, wat nie die totale koste van produksie dek nie. Dit is moontlik omdat advertensie-inkomste 'n groot deel van totale koste en winste uitmaak.

120. Die Raad gee toe dat koerantverkopers in so 'n besondere posisie verkeer dat dit vir hulle prakties bykans onmoontlik is om verskillende pryse vir dieselfde koerante by verskillende verkoopspeunte te vra. Feit is egter dat die nasionale dagblaaie teen 3 sent elk en die weeklikse koerante teen 5 sent elk aan die publiek verkoop word. Hierdie eenvormige pryse is die gevolg van onderlinge raadpleging en kom neer op gesamentlike prysbinding en die vraag is of hierdie gesamentlike prysbinding in die openbare belang geregverdig is.

121. Ooreenkomstig die prysteorie word die laagste pryse aan die verbruiker verseker deur vrye, onafhanklike prysvorming. Die Raad twyfel egter of die pryse vir

prices of newspapers would have been still lower in the absence of mutual consultation. As has been asserted above, the price is already a nominal sum, the reason for this being found in the connection between income from advertisements and the volume of circulation. Since the volume of circulation largely determines the income from advertisements, publishers endeavour to keep prices to the public as low as possible in order to stimulate sales. The result is that newspapers are at present among the cheapest commodities in the country, their prices having risen less than those of most other consumer goods, in comparison with prewar prices.* The possibility is also not ruled out that, without consultation, the prices of some newspapers would have been higher than they are at present, because certain owners might have been of the opinion that, owing to the established demand for their newspapers, it would have been possible to recover a larger part of their total costs from the public without sacrificing part of the circulation. This possibility is greatest in the case of daily newspapers in respect of which alternative choices are more limited than in respect of weekly newspapers. If one owner should make the attempt and succeed, the prices of all newspapers would in all probability soon be raised, this being a development which is in direct conflict with the public interest. On the other hand, the possibility of a price reduction in the absence of consultation in regard to prices, is highly unlikely owing to the small increase in the prices of newspapers in comparison with the rise in the prices of production factors. It is also very improbable that newspaper sales will be greatly affected by slight price changes in a community where strong preferences exist for the various newspapers.

122. In the light of the foregoing analysis, the Board is of the opinion that the manner in which the prices of newspapers and periodicals are determined, is justified in the public interest.

(iv) *Discrimination in Regard to Indemnity Requirements.*

123. The C.N.A., the distributor responsible for the discrimination against certain Johannesburg newspaper owners, admitted that the provision in the relevant distribution agreements according to which the C.N.A. can at any time demand *unlimited* additional guarantees, is a monopolistic condition. The C.N.A. asserted further that these drastic requirements were introduced at a time when, owing to the political circumstances then existing, there was reason for adopting unusual measures against claims for libel. Such circumstances have disappeared in the meanwhile, however, and the C.N.A. has advanced no arguments in justification of the continuation of this monopolistic condition, and will also not oppose its removal.

124. The Board regards the existence of the relevant monopolistic condition as extremely undesirable because it gives the C.N.A. the power at any time to make such excessive demands that the owners concerned cannot comply with them. In this way the publication of important newspapers can be obstructed or curtailed to the great inconvenience of that section of the population which is served by them. The Board could find no circumstances which justify this monopolistic condition in the public interest.

CONCLUSION.

125. In pursuance of the Minister's directive to the Board in terms of section *three* (1) (a) of the Regulation of Monopolistic Conditions Act, Act No. 24 of 1955, as amended, the Board has found that monopolistic conditions as defined in section *two* of the said Act, exist in the distribution of books and periodicals, including newspapers, such conditions, in the Board's opinion, not being justified in the public interest, namely (i) the restriction of the C.N.A.'s right to undertake the distribution of new-

koerante in afwesigheid van onderlinge raadpleging nog laer sou gewees het. Soos hierbo aangevoer, is die prys reeds 'n nominale prys en die rede daarvoor is geleë in die verband tussen advertensie-inkomste en sirkulasie-omvang. Omdat sirkulasie-omvang grootliks die advertensie-inkomste bepaal, strewe uitgewers daarna om pryse aan die publiek so laag as moontlik te hou ten einde verkope te stimuleer. Die gevolg is dat koerante tans van die goedkoopste kommoditeite in die land is en in vergelyking met voor-oorlogse pryse, minder gestyg het as meeste verbruiksgoedere.* Die moontlikheid is ook nie uitgesluit dat sonder raadpleging, sommige koerante se pryse hoër as tans sou gewees het nie, omdat sekere eienaars vanweë die gevestigde vraag na hulle koerante, van mening kon gewees het dat 'n groter deel van hul totale koste van die publiek verhaal sou kon word sonder om 'n deel van sirkulasie in die boet. Hierdie moontlikheid is die grootste ten opsigte van daaglikse koerante, waar alternatiewe keuses meer beperk is as ten opsigte van weeklikse koerante. Indien een eienaar dit sou probeer en daarin slaag, sou alle koerante se pryse na alle waarskynlikheid spoedig verhoog word, 'n ontwikkeling wat direk strydig met die openbare belang sou wees. Aan die ander kant is die moontlikheid van 'n prysverlaging in die afwesigheid van raadpleging oor pryse, baie onwaarskynlik, vanweë die geringe styging in koerantpryse, in vergelyking met die styging in die pryse van produksiefaktore. Ook is dit baie onwaarskynlik dat koerantverkope in 'n gemeenskap waar daar sterk voorkeure vir die onderskeie koerante bestaan veel geraak sal word deur geringe prysveranderinge.

122. In die lig van die bogenoemde uiteensetting is die Raad van mening dat die wyse waarop die pryse van koerante en tydskrifte vasgestel word, in die openbare belang geregverdig is.

(iv) *Diskriminasie met betrekking tot skadeloosstellingsvereistes.*

123. Die C.N.A., die distribueerder wat vir die diskriminasie teen sekere Johannesburgse koeranteienaars verantwoordelik is, het erken dat die bepaling in die betrokke distribusie-ooreenkomste waarvolgens C.N.A. te enige tyd *onbeperkte* addisionele waarborge kan eis, 'n monopolistiese toestand is. Verder het die C.N.A. aangevoer dat hierdie drastiese vereistes gedurende 'n tydperk ingestel is toe daar weens die destydse politieke omstandighede, rede bestaan het om buitengewone maatreëls teen eise vir laster te tref. Daardie omstandighede het egter intussen verdwyn en die C.N.A. voer geen argumente aan ter regverdiging van die voortbestaan van hierdie monopolistiese toestand nie en sal ook nie die verwydering daarvan teenstaan nie.

124. Die Raad beskou die bestaan van die betrokke monopolistiese toestand as uiters onwenslik, omdat dit aan die C.N.A. die mag verleen om te enige tyd sulke buitensporige eise te stel dat die betrokke eienaars nie daaraan kan voldoen nie. Sodoende kan die publikasie van belangrike koerante verhinder of ingekort word, tot groot ongerief van die bevolkingsdeel wat daardeur bedien word. Die Raad kon geen omstandighede vind wat hierdie monopolistiese toestand in die openbare belang regverdig nie.

GEVOLGTREKKING.

125. Na aanleiding van die Minister se opdrag aan die Raad ingevolge artikel *drie* (1) (a) van die Wet op Reëling van Monopolistiese Toestande, Wet No. 24 van 1955, soos gewysig, het die Raad monopolistiese toestande soos in artikel *twee* van die genoemde Wet omskryf, by die distribusie van boeke en tydskrifte, met inbegrip van koerante, gevind wat na die Raad se mening nie in die openbare belang geregverdig is nie, naamlik (i) die beperking op C.N.A. se reg om die distribusie van nuwe koe-

* The increase in the consumer-price index since 1938 at present amounts to 235 per cent, in comparison with just over 100 per cent in respect of newspapers.

* Die styging in die verbruikersprysindeks sedert 1938, kom tans op 235 persent te staan, teenoor net meer as 100 persent t.o.v. koerante.

newspapers without the permission of certain newspaper owners, and (ii) discrimination by the C.N.A. in regard to indemnity requirements.

RECOMMENDATIONS.

126. In terms of section three (2) of the Act, the Board recommends to the Minister that the monopolistic conditions referred to in the foregoing paragraph should, by notice in the *Government Gazette*, be prohibited in terms of section six (1) (b) of the said Act and subject to the provision of sub-section (2) of article three of the Act.

S. P. VILJOEN, *Chairman.*

S. S. GROVÉ, *Deputy-Chairman.*

A. A. SMIT, *Member.*

N. PRINSLOO, *Member.**

B. GAIGHER, *Member.*

*Absent on duty.

D. J. MOUTON, *Head, Monopoly Section.*
Pretoria, 2nd May, 1964.

rante te onderneem sonder toestemming van sekere koeranteienaars, en (ii) diskriminasie deur C.N.A. met betrekking tot skadeloosstellingsvereistes.

AANBEVELING.

126. Die Raad beveel ingevolge artikel drie (2) van die Wet by die Minister aan dat die monopolistiese toestande waarna in die voorafgaande paragraaf verwys word, ingevolge artikel ses (1) (b) van genoemde Wet en behoudens die bepaling van sub-artikel (2) van artikel drie van die Wet by kennisgewing in die *Staatskoerant* verbied word.

S. P. VILJOEN, *Voorsitter.*

S. S. GROVÉ, *Adjunk-voorsitter.*

A. A. SMIT, *Lid.*

N. PRINSLOO, *Lid.**

B. GAIGHER, *Lid.*

* Afwesig op diens.

D. J. MOUTON, *Hoof, Monopolieseksie.*
Pretoria, 2de Mei 1964.



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Vol. 169

CAPE TOWN, 9th JUNE, 1965.
KAAPSTAD, 9 JUNIE 1965.

[No. 1136.

DEPARTMENT OF THE PRIME MINISTER.

DEPARTEMENT VAN DIE EERSTE MINISTER.

No. 819.]

[9th June, 1965.

No. 819.]

[9 Junie 1965.

It is hereby notified that the State President has assented to the following Acts which are hereby published for general information:

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring gegee het aan die onderstaande Wetse wat hierby ter algemene inligting gepubliseer word:-

No. 70 of 1965: Hotels Act, 1965.

2

No. 70 van 1965: Wet op Horeke, 1965.

ECADSY

.. 3

No. 71 of 1965: Water Amendment Act, 1965.

26

No. 71 van 1965: Water wysingswet, 1965.

.. 27

No. 70, 1965.]

ACT

To provide for the development and improvement of accommodation establishments and to that end to establish an Hotel Board and to prescribe its powers, duties and functions; to amend the Liquor Act, 1928, and the South African Tourist Corporation Act, 1947; and to provide for other incidental matters.

(English text signed by the State President.)
(Assented to 26th May, 1965.)

BE IT ENACTED by the State President, the Senate and the House of Assembly of the Republic of South Africa, as follows:—

Definitions.

1. In this Act, unless the context otherwise indicates—
 - (i) "accommodation establishment" means any premises wherein or whereon the business of supplying lodging and meals for reward is or is intended to be conducted; (vii)
 - (ii) "board" means the Hotel Board established under section two; (x)
 - (iii) "certificate of registration" means a certificate of registration issued under section nineteen; (xii)
 - (iv) "hotel" means an accommodation establishment which is registered as an hotel under this Act; (iv)
 - (v) "hotelier" in relation to an hotel, means the natural person charged with the management thereof; (v)
 - (vi) "inspector" means a person designated as an inspector under section twenty-five; (viii)
 - (vii) "liquor" means liquor as defined in the Liquor Act; (i)
 - (viii) "Liquor Act" means the Liquor Act, 1928 (Act No. 30 of 1928); (ii)
 - (ix) "lodging" means bedroom accommodation and the services ordinarily associated therewith; (vi)
 - (x) "Minister" means the Minister of Tourism; (ix)
 - (xi) "prescribed" means prescribed by or under this Act; (xiv)
 - (xii) "register", when used as a noun, means the register referred to in section thirteen, and when used as a verb, means enter in such register, and "registered" has a corresponding meaning; (xi)
 - (xiii) "regulation" means a regulation made and in force under this Act; (xiii)
 - (xiv) "this Act" includes any regulation. (iii)

Establishment of Hotel Board.

2. As from a date to be fixed by the State President by proclamation in the *Gazette* there shall be established a body to be known as the Hotel Board, which shall be a body corporate, capable of suing and being sued in its corporate name and of performing all such acts as are necessary for or incidental to the carrying out of its objects, the exercise of its powers and the performance of its functions.

Object of board.

3. The object for which the board is established is to foster the development and improvement of accommodation establishments with a view to achieving and maintaining the highest possible standards in the quality of the accommodation, meals and services provided by such establishments.

Functions and powers of the board.

4. It shall be the function and duty of the board to endeavour to achieve the object for which it is established with all the means at its disposal, and for the purpose of achieving that object the board shall, subject to the provisions of this Act, have power, in addition to any other powers vested in it by this Act—

No. 70, 1965.]

WET

Om voorsiening te maak vir die ontwikkeling en verbetering van huisvestingsinrigtings en te dien einde 'n Hotelraad te stig en om sy bevoegdhede, pligte en werksaamhede te bepaal; om die Drankwet, 1928, en die Wet op die Suid-Afrikaanse Toeristekorporasie, 1947, te wysig; en om vir ander bykomstige aangeleenthede voorsiening te maak.

(Engelse teks deur die Staatspresident geteken.)
(Goedgekeur op 26 Mei 1965.)

DAAR WORD BEPAAL deur die Staatspresident, die Senaat en die Volksraad van die Republiek van Suid-Afrika, soos volg:—

1. In hierdie Wet, tensy uit die samehang anders blyk, beteken— Woordomskrwing.

- (i) „drank” drank soos in die Drankwet omskryf; (vii)
- (ii) „Drankwet” die Drankwet, 1928 (Wet No. 30 van 1928); (viii)
- (iii) „hierdie Wet” ook 'n regulasie; (xiv)
- (iv) „hotel” 'n huisvestingsinrigting wat kragtens hierdie Wet as 'n hotel geregistreer is; (iv)
- (v) „hotelier” met betrekking tot 'n hotel, die natuurlike persoon wat met die bestuur daarvan belas is; (v)
- (vi) „huisvesting” slaapkamer-akkommodasie en die dienste wat gewoonlik daarmee geassosieer word; (ix)
- (vii) „huisvestingsinrigting” enige perseel waarin of waarop die besigheid om huisvesting en etes teen vergoeding te verskaf, gedryf word of na voorneme gedryf gaan word; (i)
- (viii) „inspekteur” iemand wat kragtens artikel vyf-en-twintig as 'n inspekteur aangewys is; (vi)
- (ix) „Minister” die Minister van Toerisme; (x)
- (x) „raad” die kragtens artikel twee gestigte Hotelraad; (ii)
- (xi) „register” die in artikel dertien bedoelde register; en „registreer” om in sodanige register in te skryf, en het „geregistreer” 'n ooreenstemmende betekenis; (xii)
- (xii) „registrasiesertifikaat” 'n kragtens artikel negentien uitgereikte registrasiesertifikaat; (iii)
- (xiii) „regulasie” 'n regulasie wat kragtens hierdie Wet uitgevaardig en van krag is; (xiii)
- (xiv) „voorgeskrewe” of „voorgeskryf” by of kragtens hierdie Wet voorgeskryf. (xi)

2. Op 'n datum deur die Staatspresident by proklamasie in die Staatskoerant bepaal, word daar 'n liggaam gestig met die naam van die Hotelraad, wat met regs persoonlikheid bekleed is en wat in sy naam as regspersoon as eiser en verweerder in regte kan optree, en wat alle handeling kan verrig wat nodig is vir of in verband staan met die uitvoering van sy oogmerk, die uitoefening van sy bevoegdhede en die verrigting van sy werksaamhede. Stigting van Hotelraad.

3. Die oogmerk waarmee die raad gestig word, is om die ontwikkeling en verbetering van huisvestingsinrigtings te bevorder ten einde die hoogste moontlike standarde in die gehalte van die huisvesting, etes en dienste wat deur sodanige inrigtings verskaf word, te bereik en te handhaaf. Oogmerk van raad.

4. Die werksaamheid en plig van die raad is om met al die middele waaroor hy beskik die oogmerk waarmee hy gestig is, te probeer verwesenlik, en ten einde die oogmerk te verwesenlik het die raad, behoudens die bepalings van hierdie Wet, die bevoegdheid, benewens enige ander bevoegdhede wat deur hierdie Wet aan hom verleen is,— Werksaamhede en bevoegdhede van die raad.

- (a) to give advice and guidance and render assistance to any person in connection with the establishment, expansion or conduct of an hotel or of an accommodation establishment for the registration of which as an hotel, application has been or is intended to be made;
- (b) to lend or advance money in respect of the renovation, reconstruction or extension of existing hotels or, with the approval of the Minister, for the establishment of new hotels;
- (c) to adopt such measures as it may consider necessary to encourage the development along sound lines of hotels of a standard commensurate with the requirements of the people of the Republic and foreign tourists;
- (d) to adopt such measures as it may consider necessary or desirable to achieve and maintain a satisfactory standard in the quality of the accommodation and service provided by hotels;
- (e) to encourage the adoption of measures for providing adequate training and instruction for persons employed or intending to take up employment in the hotel industry or, with the approval of the Minister, itself to adopt any such measures, including the undertaking of financial obligations and the incurring of expenditure;
- (f) to call for such information and obtain such statistics (including financial statements) in regard to hotels as may be deemed necessary, and to compile statistical data relating to all or any hotels;
- (g) to publish periodically a list of hotels together with such particulars of such hotels as may be determined by the board;
- (h) to publish any other information directly or indirectly relating to hotels, and to sell advertising space in any publication of the board;
- (i) to hire, acquire, let or sell any movable property, and, with the approval of the Minister—
 - (i) to hire or acquire any immovable property, other than hotel property; and
 - (ii) to hypothecate, let or sell any immovable property;
- (j) with the approval of the Minister—
 - (i) in order to protect the financial interests of the board, to hire or acquire any immovable hotel property in respect of which any money has been lent or advanced in terms of paragraph (b);
 - (ii) to hire or acquire any immovable hotel property which the board requires for the purpose of exercising its powers under paragraph (e);
 - (iii) to acquire any existing hotel business which is conducted on any hotel property hired or acquired in terms of sub-paragraph (i) or (ii), or to establish a new hotel business on any hotel property hired or acquired in terms of sub-paragraph (ii); and
 - (iv) to conduct or dispose of any hotel business acquired or established in terms of sub-paragraph (iii).
- (k) to insure with any person against any loss, damage, risk or liability which the board may incur;
- (l) generally, with the approval of the Minister, to do such things as will, in the opinion of the board, contribute towards the attainment of its object.

**Constitution
of board.**

5. (1) The board shall consist of seven members to be appointed by the State President, of whom three shall be persons actively engaged in the hotel industry or possessing such special knowledge or experience of the hotel industry generally or of any branch or aspect thereof as in the opinion of the State President makes them suitable persons for appointment as members of the board.

- (2) (a) One of the said three members shall be a person selected by the State President from a list of names submitted by such organizations as the Minister may from time to time recognize as being representative of the hotel industry.
- (b) Whenever such a member is to be appointed the Minister shall by notice in writing invite the organizations referred to in paragraph (a) to nominate a specified number of persons whose names are to be included in the list.

- (a) om aan enigiemand advies, leiding en hulp te verskaf in verband met die daarstelling, uitbreiding of bestuur van 'n hotel of van 'n huisvestingsinrigting ten opsigte waarvan daar om registrasie as 'n hotel aansoek gedoen is of na voorneme gedoen gaan word;
- (b) om geld te leen of voor te skiet ten opsigte van die opknapping, herbouing of uitbreiding van bestaande hotelle of, met die goedkeuring van die Minister, vir die oprigting van nuwe hotelle;
- (c) om die maatreëls te tref wat hy nodig ag om die ontwikkeling op 'n gesonde grondslag aan te moedig van hotelle van 'n standaard wat voldoen aan die vereistes van die bevolking van die Republiek en buitelandse toeriste;
- (d) om die maatreëls te tref wat hy nodig of wenslik ag om 'n bevredigende standaard in die gehalte van huisvesting en diens wat deur hotelle verskaf word, te bereik en te handhaaf;
- (e) om die tref van maatreëls vir die verskaffing van geskikte opleiding en onderrig aan persone wat in die hotelbedryf werksaam is of voornemens is om daarin in diens te tree, aan te moedig of om, met die goedkeuring van die Minister, self sodanige maatreëls, met inbegrip van die aanvaarding van finansiële verpligtings en die aangaan van uitgawes, te tref;
- (f) om die inligting in te win en die statistiek (met inbegrip van finansiële state) te versamel met betrekking tot hotelle wat nodig geag word, en om statistiese gegewens betreffende alle of enige hotelle saam te stel;
- (g) om periodiek 'n lys van hotelle tesame met die besonderhede omtrent sodanige hotelle wat die raad bepaal, te publiseer;
- (h) om enige ander inligting wat direk of indirek op hotelle betrekking het, te publiseer en om advertensieruimte in enige publikasie van die raad te verkoop;
- (i) om roerende goed te huur, te verkry, te verhuur of te verkoop en om, met die goedkeuring van die Minister—
 - (i) onroerende goed, behalwe hoteleindom, te huur of te verkry; en
 - (ii) onroerende goed te verhipotekeer, te verhuur of te verkoop;
- (j) om, met die goedkeuring van die Minister—
 - (i) ten einde die geldelike belange van die raad te beskerm, onroerende hoteleindom ten opsigte waarvan geld ingevolge paragraaf (b) geleen of voorgesket is, te huur of te verkry;
 - (ii) onroerende hoteleindom wat die raad vir die doel van die uitoefening van sy bevoegdhede kragtens paragraaf (e) nodig het, te huur of te verkry;
 - (iii) 'n bestaande hotelbesigheid wat gedryf word op hoteleindom wat ingevolge sub-paragraaf (i) of (ii) gehuur of verkry is, te verkry, of 'n nuwe hotelbesigheid op hoteleindom wat ingevolge sub-paragraaf (ii) gehuur of verkry is, tot stand te bring; en
 - (iv) 'n hotelbesigheid wat ingevolge sub-paragraaf (iii) verkry of tot stand gebring is, te dryf of van die hand te sit;
- (k) om versekering teen enige verlies, skade, risiko of aanspreeklikheid wat die raad mag ly of oploop met enige persoon aan te gaan;
- (l) om, in die algemeen, met die goedkeuring van die Minister, die dinge te doen wat volgens die raad se oordeel sal bydra tot die verwesenliking van sy oogmerk.

5. (1) Die raad bestaan uit sewe lede wat deur die Staatspresident aangestel word, van wie drie persone moet wees wat aktief by die hotelbedryf betrokke is of sodanige spesiale kennis of ondervinding van die hotelbedryf in die algemeen of van enige vertakking of aspek daarvan besit dat dit van hulle, na die mening van die Staatspresident, geskikte persone maak vir aanstelling as lede van die raad. Samestelling van raad.

- (2) (a) Een van bedoelde drie lede moet iemand wees wat deur die Staatspresident gekies word uit 'n lys van name wat voorgelê word deur die organisasies wat die Minister van tyd tot tyd as verteenwoordigend van die hotelbedryf erken.
- (b) Wanneer so 'n lid aangestel moet word, moet die Minister die in paragraaf (a) bedoelde organisasies skriftelik versoek om 'n gespesifiseerde getal persone, wie se name in die lys opgeneem moet word, te benoem.

- (c) If the nominations required under paragraph (b) are not lodged with the Minister within the period stated in the notice inviting such nominations, the Minister may compile a list of names of persons whom he considers suitable for appointment, and such list shall for all purposes be deemed to be a list of names submitted by such organizations.

(3) Two of the said three members shall be appointed on the recommendation of the Minister made after consultation with the organizations referred to in paragraph (a) of sub-section (2) and such other organizations and such persons as the Minister may deem fit.

Period of office and remuneration of members of the board.

6. (1) A member of the board shall be appointed for such period, not exceeding three years, as the State President may determine at the time of appointment.

(2) Any person whose period of office as a member of the board has expired, shall be eligible for reappointment.

(3) A person who has reached the age of sixty-five years shall not be appointed or reappointed as a member of the board for a longer period than one year at a time.

(4) A member of the board (other than a person who is in the full-time employment of the State) shall hold office upon such conditions (including payment of remuneration and allowances) as the Minister may, in consultation with the Minister of Finance, determine.

(5) Any remuneration or allowances which may become payable under sub-section (4) shall be paid out of the funds of the board.

Chairman and acting chairman.

7. (1) One of the members of the board shall be designated by the State President as chairman of the board: Provided that no person who has a direct interest in an accommodation establishment or the liquor trade shall be so designated.

(2) If the chairman of the board ceases to hold office as a member of the board or as chairman of the board the State President shall, subject to the provisions of sub-section (1), designate a new chairman.

(3) Whenever the chairman of the board is absent or unable to perform his functions as chairman, the Minister may designate another member of the board to act as chairman during such absence or inability.

(4) Such member shall, when acting as chairman, have all the powers and perform all the duties of the chairman.

Disqualifications, termination of membership and filling of vacancies.

8. (1) No person shall be appointed or hold office as a member of the board—

- (a) if he is an unrehabilitated insolvent; or
- (b) if he has been convicted of an offence and sentenced to imprisonment without the option of a fine.

(2) The State President may remove from office any member of the board (other than a person who is in the full-time employment of the State)—

- (a) who has failed to comply with a condition of his appointment;
- (b) who, in the opinion of the State President, has been guilty of improper conduct or has habitually neglected his duties as a member of the board; or
- (c) who has, without the written permission of the chairman of the board, been absent from three consecutive meetings of the board of which he had notice.

(3) The period of office of a member of the board who is in the full-time employment of the State may be terminated at any time if in the opinion of the State President there are good reasons for doing so.

(4) If any member of the board ceases to hold office, the State President shall, with due regard to the provisions of section five, appoint a person to fill the vacancy on the board.

- (c) Indien die kragtens paragraaf (b) vereiste benoemings nie by die Minister ingelewer word binne die tydperk vermeld in die kennisgewing waarby sodanige benoemings versoek word nie, kan die Minister 'n lys saamstel van name van persone wat hy geskik ag vir aanstelling en sodanige lys word vir alle doeleindes geag 'n lys van name te wees wat deur sodanige organisasies voorgelê is.

(3) Twee van bedoelde drie lede word aangestel op aanbeveling van die Minister gedoen na oorlegpleging met die in paragraaf (a) van sub-artikel (2) bedoelde organisasies en die ander organisasies en die persone wat die Minister goedvind.

6. (1) 'n Lid van die raad word aangestel vir die tydperk, maar hoogstens drie jaar, wat die Staatspresident ten tyde van die aanstelling bepaal.

Ampstermyn en besoldiging van lede van die raad.

(2) Iemand wie se ampstermyn as lid van die raad verstryk het, kan weer aangestel word.

(3) Iemand wat die ouderdom van vyf-en-sestig jaar bereik het, word nie op 'n keer vir 'n langer tydperk as een jaar as 'n lid van die raad aangestel of heraangestel nie.

(4) 'n Lid van die raad (behalwe iemand wat voltyds in diens van die Staat is) beklee sy amp op die voorwaardes (met inbegrip van die betaling van besoldiging en toelaes) wat die Minister, in oorleg met die Minister van Finansies, bepaal.

(5) Enige besoldiging of toelaes wat kragtens sub-artikel (4) betaalbaar word, word uit die fondse van die raad betaal.

7. (1) Een van die lede van die raad word deur die Staatspresident as voorsitter van die raad aangewys: Met dien verstande dat niemand wat 'n regstreekse belang in 'n huisvestings-inrigting of die drankhandel het aldus aangewys mag word nie.

Voorsitter en waarnemende voorsitter.

(2) Indien die voorsitter van die raad ophou om sy amp as 'n lid van die raad of as voorsitter van die raad te beklee, wys die Staatspresident, behoudens die bepalings van sub-artikel (1), 'n nuwe voorsitter aan.

(3) Wanneer die voorsitter van die raad afwesig is of nie in staat is om sy werksaamhede as voorsitter te verrig nie, kan die Minister 'n ander lid van die raad aanwys om gedurende bedoelde afwesigheid of onvermoë as voorsitter waar te neem.

(4) Terwyl hy as voorsitter waarneem, het sodanige lid al die bevoegdhede en verrig hy al die pligte van die voorsitter.

8. (1) Niemand word as 'n lid van die raad aangestel of dien as sodanig nie—

Onbevoegdhede, beëindiging van lidmaatskap en vul van vakatures.

(a) as hy 'n ongerehabiliteerde insolvente persoon is; of

(b) as hy aan 'n misdryf skuldig bevind is en gevonnissen is tot gevangenisstraf sonder die keuse van 'n boete.

(2) Die Staatspresident kan enige lid van die raad (behalwe iemand wat voltyds in diens van die Staat is) van sy amp onthef—

(a) wat versuim het om aan 'n voorwaarde van sy aanstelling te voldoen;

(b) wat, na die mening van die Staatspresident, hom skuldig gemaak het aan onbehoorlike gedrag of wat gereeld sy pligte as lid van die raad verwaarloos het; of

(c) wat, sonder die skriftelike toestemming van die voorsitter van die raad, van drie agtereenvolgende vergaderings van die raad waarvan hy kennis gedra het, afwesig was.

(3) Die ampstermyn van 'n lid van die raad wat voltyds in diens van die Staat is, kan te eniger tyd beëindig word as daar na die mening van die Staatspresident goeie redes daarvoor bestaan.

(4) Indien 'n lid van die raad ophou om sy amp te beklee, stel die Staatspresident, met behoorlike inagneming van die bepalings van artikel vyf, iemand aan om die vakature in die raad te vul.

Meetings of the board.

9. (1) The first meeting of the board shall be held at a time and place to be determined by the Minister, and all subsequent meetings shall, subject to the provisions of sub-section (2), be held at such times and places as may be determined by the board: Provided that if at the close of any meeting the board has not determined the time and place for its next meeting, such time and place shall be fixed by the chairman of the board.

(2) The chairman of the board shall, when directed by the Minister to do so, call a special meeting of the board to be held at a time and place determined by the Minister.

Quorum, majority decision and chairman's casting vote.

10. (1) A majority of all the members of the board shall form a quorum for any meeting of the board.

(2) At all meetings of the board the chairman or the acting chairman of the board shall preside: Provided that if neither the chairman nor the acting chairman is present at any meeting, some other member of the board chosen by the members present shall preside.

(3) The decision of a majority of the members of the board present at any meeting thereof shall constitute a decision of the board, and in the event of an equality of votes in regard to any matter, the person presiding at the meeting in question shall have a casting vote in addition to his deliberative vote.

(4) No decision taken by or act done under the authority of the board shall be invalid by reason only of an interim vacancy on the board or of the fact that a person who is disqualified from being a member of the board, or with respect to whose appointment the provisions of this Act had not been observed, sat or acted as a member at the time when the decision was taken or the act was performed or authorized, if the decision was taken or the act was performed or authorized by the requisite majority of the members of the board present at the time who were entitled to sit and act as members.

Committees of board.

11. (1) The board may appoint advisory committees to assist it in the performance of its functions and the carrying out of its duties.

(2) The board may appoint such persons, including persons other than members of the board, as it may deem fit to be members of any such committee.

(3) There shall be payable to a member of a committee of the board (other than a member of the board or a person who is in the full-time employment of the State) such travelling and subsistence allowances, while he is engaged in the carrying out of his duties as a member of such committee, as the Minister may, in consultation with the Minister of Finance, determine.

(4) Any allowance which may become payable under sub-section (3) shall be paid out of the funds of the board.

Employees of the board.

12. (1) The board may, subject to the provisions of sub-sections (2) and (3), from time to time appoint such employees as it may deem necessary to assist it in the performance of its functions and the carrying out of its duties.

(2) The Minister may—

(a) after consultation with the board and in consultation with the Minister of Finance, determine the number and grading of the employees necessary for the performance and carrying out by the board of its functions and duties; or

(b) with the concurrence of the Minister of Finance and subject to such limitations and conditions as the Minister may deem fit, authorize the board to determine the number and grading of any such employees or of any class of such employees.

(3) Employees of the board shall be subject to such conditions of service (including conditions relating to remuneration and allowances) as the Minister may, after consultation with the board and in consultation with the Minister of Finance, determine.

Establishment and keeping of register.

13. The board shall establish and keep in the prescribed form a register for the registration of accommodation establishments and hoteliers under this Act.

Registration of accommodation establishments.

14. (1) Any person who—

(a) conducts an accommodation establishment in respect of which an hotel liquor licence and a certificate of classification is held under the Liquor Act;

(b) is erecting or intends to erect or is making or intends to make additions or alterations to an accommodation

9. (1) Die eerste vergadering van die raad word gehou op 'n tyd en plek wat die Minister bepaal, en alle daaropvolgende vergaderings word, behoudens die bepalings van sub-artikel (2), gehou op die tye en plekke wat die raad bepaal: Met dien verstande dat indien die raad aan die einde van 'n vergadering nie die tyd en plek vir sy volgende vergadering bepaal het nie, die voorsitter van die raad sodanige tyd en plek moet bepaal.

(2) Die voorsitter van die raad moet, wanneer hy deur die Minister gelas word om dit te doen, 'n buitengewone vergadering van die raad belê wat gehou moet word op 'n tyd en plek wat die Minister bepaal.

Vergaderings
van die raad.

10. (1) Die meerderheid van al die lede van die raad maak 'n kworum vir 'n raadsvergadering uit.

(2) By alle vergaderings van die raad moet die voorsitter of die waarnemende voorsitter van die raad voorsit: Met dien verstande dat as nóg die voorsitter, nóg die waarnemende voorsitter by 'n vergadering aanwesig is, 'n ander lid van die raad wat gekies word deur die lede wat aanwesig is, moet voorsit.

(3) Die beslissing van 'n meerderheid van die lede van die raad wat op 'n raadsvergadering aanwesig is, maak 'n besluit van die raad uit, en by 'n staking van stemme oor enige aangeleentheid het die persoon wat op die betrokke vergadering voorsit, benewens sy beraadslagende stem ook 'n beslissende stem.

(4) Geen besluit geneem deur die raad of handeling op gesag van die raad verrig, is ongeldig bloot vanweë 'n tydelike vakature in die raad of omdat 'n persoon wat onbevoeg is om 'n lid van die raad te wees, of met betrekking tot wie se aanstelling die bepalings van hierdie Wet nie nagekom is nie, as 'n raadslid sitting geneem of opgetree het toe die besluit geneem of die handeling verrig of gemagtig is nie, indien die besluit geneem of die handeling verrig of gemagtig is deur die vereiste meerderheid van die lede van die raad wat toe aanwesig was en geregtig was om as lede sitting te neem en op te tree.

Kworum,
meerderheids-
besluit en
voorsitter se
beslissende stem.

11. (1) Die raad kan adviserende komitees aanstel om hom by die verrigting van sy werksaamhede en die uitvoering van sy pligte by te staan.

(2) Die raad kan die persone, insluitende persone wat nie lede van die raad is nie, aanstel wat hy goedgevind om lede van enige sodanige komitee te wees.

(3) Daar word aan 'n lid van 'n komitee van die raad (behalwe 'n lid van die raad of iemand wat voltyds in diens van die Staat is) die reis- en verblyfstoelae betaal terwyl hy besig is met die uitvoering van sy pligte as lid van sodanige komitee, wat die Minister, in oorleg met die Minister van Finansies, bepaal.

(4) Enige toelae wat kragtens sub-artikel (3) betaalbaar word, word uit die fondse van die raad betaal.

Komitees van
die raad.

12. (1) Die raad kan, behoudens die bepalings van sub-artikels (2) en (3), van tyd tot tyd die werknemers aanstel wat hy nodig ag om hom by die verrigting van sy werksaamhede en die uitvoering van sy pligte by te staan.

(2) Die Minister kan—

(a) na oorlegpleging met die raad en in oorleg met die Minister van Finansies, die getal en range bepaal van die werknemers wat nodig is vir die verrigting en uitvoering deur die raad van sy werksaamhede en pligte; of

(b) met die instemming van die Minister van Finansies en onderworpe aan die beperkings en voorwaardes wat die Minister goedgevind, die raad magtig om die getal en range van enige sodanige werknemers of van enige klas sodanige werknemers te bepaal.

(3) Werknemers van die raad is onderworpe aan die diensvoorwaardes (met inbegrip van voorwaardes betreffende besoldiging en toelae) wat die Minister, na oorlegpleging met die raad en in oorleg met die Minister van Finansies, bepaal.

Werknemers
van die raad.

13. Die raad moet 'n register in die voorgeskrewe vorm aanlê en hou vir die registrasie kragtens hierdie Wet van huisvestingsinrigtings en hoteliers.

Aanlê en hou
van register.

14. (1) Enige persoon wat—

(a) 'n huisvestingsinrigting dryf ten opsigte waarvan 'n hotel-dranklisensie en 'n klassifikasiesertifikaat ingevolge die Drankwet gehou word;

(b) 'n huisvestingsinrigting waarvoor 'n voorwaardelike magtiging vir 'n hotel-dranklisensie ingevolge die Drankwet gehou word, oprig of van voorneme is om so

Registrasie
van huisves-
tingsinrigtings.

establishment for which a conditional authority for an hotel liquor licence is held under the Liquor Act;

- (c) conducts an accommodation establishment in respect of which an on-consumption licence, other than an hotel liquor licence or a club liquor licence, is held under the Liquor Act;
- (d) is erecting or intends to erect or is making or intends to make additions or alterations to an accommodation establishment for which a conditional authority for an on-consumption licence, other than an hotel liquor licence or a club liquor licence, is held under the Liquor Act;
- (e) conducts an accommodation establishment where liquor is not sold and where it is not intended to sell liquor;
- (f) is erecting or intends to erect or is making or intends to make additions or alterations to an accommodation establishment where liquor is not sold and where it is not intended to sell liquor,

may apply to the board for the registration of such establishment as an hotel.

(2) Every application for the registration of an accommodation establishment under this Act shall be submitted to the board in such manner and form as may be prescribed, and shall be accompanied by such application fee as may be prescribed.

(3) The board shall, upon receipt of an application in terms of paragraph (a) of sub-section (1), register the accommodation establishment in question as an hotel.

(4) The board shall, upon receipt of an application in terms of paragraph (b), (c), (d), (e) or (f) of sub-section (1), register the accommodation establishment in question as an hotel if in its opinion—

- (a) in the case of an application in terms of the said paragraph (c) or (e), the accommodation establishment complies with the requirements determined in terms of sub-section (2) of section *fifteen* for any grade of hotel in any group for which provision is made in terms of this Act and in which such establishment is capable of being included; or
- (b) in the case of an application in terms of the said paragraph (b), (d) or (f), the accommodation establishment, when erected or when the additions or alterations have been completed, will comply with the requirements determined in terms of sub-section (2) of section *fifteen* for any grade of hotel in any group for which provision is so made and in which such establishment is capable of being included.

(5) If the board does not find it possible—

- (a) in the case of an application referred to in paragraph (a) of sub-section (4), to form such an opinion as is referred to in that paragraph, it shall refuse the application; and
- (b) in the case of an application referred to in paragraph (b) of sub-section (4), to form such an opinion as is referred to in that paragraph, it may refuse the application or postpone the matter for further consideration for such period or periods as it may deem fit.

Board shall determine groups and grades of hotels.

15. (1) The board shall by notice in the *Gazette* determine groups and grades of hotels for the purposes of this Act, and in doing so it may adopt any basis of differentiation it may deem fit.

(2) The board shall in like manner determine the requirements which are to be complied with before an hotel can qualify for any particular group or grade.

Board to determine the group and grade of each hotel.

16. The board shall as soon as possible after the registration of an accommodation establishment as an hotel in terms of section *fourteen* determine the group to which it belongs and grade it.

'n inrigting op te rig of uitbreidings of veranderings aan so 'n inrigting maak of van voorneme is om sodanige uitbreidings of veranderings te maak;

- (c) 'n huisvestingsinrigting dryf ten opsigte waarvan 'n binneverbruik-lisensie, behalwe 'n hotel-dranklisensie of 'n klub-dranklisensie, ingevolge die Drankwet gehou word;
- (d) 'n huisvestingsinrigting waarvoor 'n voorwaardelike magtiging vir 'n binneverbruik-lisensie, behalwe 'n hotel-dranklisensie of 'n klub-dranklisensie, ingevolge die Drankwet gehou word, oprig of van voorneme is om so 'n inrigting op te rig of uitbreidings of veranderings aan so 'n inrigting maak of van voorneme is om sodanige uitbreidings of veranderings te maak;
- (e) 'n huisvestingsinrigting dryf waar drank nie verkoop word nie en waar dit nie die voorneme is om drank te verkoop nie;
- (f) 'n huisvestingsinrigting waar drank nie verkoop word nie en waar dit nie die voorneme is om drank te verkoop nie, oprig of van voorneme is om so 'n inrigting op te rig of uitbreidings of veranderings aan so 'n inrigting maak of van voorneme is om sodanige uitbreidings of veranderings te maak,

kan by die raad aansoek doen om die registrasie van sodanige inrigting as 'n hotel.

(2) Elke aansoek om die registrasie van 'n huisvestingsinrigting kragtens hierdie Wet moet aan die raad voorgelê word op die wyse en in die vorm wat voorgeskryf word en moet vergesel gaan van die registrasiegeld wat voorgeskryf word.

(3) Die raad moet, by ontvangs van 'n aansoek ingevolge paragraaf (a) van sub-artikel (1), die betrokke huisvestingsinrigting as 'n hotel registreer.

(4) Die raad moet, by ontvangs van 'n aansoek ingevolge paragraaf (b), (c), (d), (e) of (f) van sub-artikel (1), die betrokke huisvestingsinrigting as 'n hotel registreer indien, na sy mening—

- (a) in die geval van 'n aansoek ingevolge genoemde paragraaf (c) of (e), die huisvestingsinrigting voldoen aan die vereistes wat ingevolge sub-artikel (2) van artikel vyftien bepaal is vir enige graad van hotel in 'n groep waarvoor daar ingevolge hierdie Wet voorsiening gemaak word en waarin sodanige inrigting ingesluit sou kon word; of
- (b) in die geval van 'n aansoek ingevolge genoemde paragraaf (b), (d) of (f), die huisvestingsinrigting, wanneer dit opgerig is of wanneer die uitbreidings of veranderings gemaak is, sal voldoen aan die vereistes wat ingevolge sub-artikel (2) van artikel vyftien bepaal is vir enige graad van hotel in 'n groep waarvoor aldus voorsiening gemaak word en waarin sodanige inrigting ingesluit sou kon word.

(5) Indien die raad dit nie moontlik vind—

- (a) in die geval van 'n in paragraaf (a) van sub-artikel (4) bedoelde aansoek, om tot so 'n mening te geraak soos dié waarna in daardie paragraaf verwys word nie, moet hy die aansoek weier; en
- (b) in die geval van 'n in paragraaf (b) van sub-artikel (4) bedoelde aansoek, om tot so 'n mening te geraak soos dié waarna in daardie paragraaf verwys word nie, kan hy die aansoek weier of die aangeleentheid vir verdere oorweging uitstel vir die tydperk of tydperke wat hy goedgevind.

15. (1) Die raad moet vir die doeleindes van hierdie Wet by kennisgewing in die *Staatskoerant* groepe en grade van hotelle bepaal, en wanneer hy dit doen, kan hy enige grondslag van differensiasie wat hy goedgevind, toepas.

Raad moet groepe en grade van hotelle bepaal.

(2) Die raad moet op dieselfde wyse die vereistes waaraan voldoen moet word voordat 'n hotel vir 'n bepaalde groep of graad in aanmerking kan kom, bepaal.

16. Die raad moet so spoedig moontlik na die registrasie van 'n huisvestingsinrigting as 'n hotel ingevolge artikel veertien die groep waartoe dit behoort bepaal en dit gradeer.

Raad moet groep en grade van elke hotel bepaal.

Inspections and investigations.

17. Before registering an accommodation establishment (other than an establishment to which sub-section (3) of section *fourteen* relates) as an hotel in terms of section *fourteen* or determining the group to which an hotel belongs or grading an hotel in terms of section *sixteen* the board shall cause such establishment or hotel to be inspected by one or more inspectors, and may make or cause to be made such further investigations in regard thereto as it may deem fit.

Registration of accommodation establishments which do not comply with the determined requirements.

18. (1) (a) Notwithstanding anything to the contrary in this Act contained, the board may, if in its opinion special circumstances exist which make it desirable to do so, with the approval of the Minister register as an hotel an accommodation establishment which does not comply with the requirements determined in terms of sub-section (2) of section *fifteen* for any group of hotels or for any grade of hotel.

(b) The provisions of this Act in regard to the determination of the group to which an hotel belongs or the grading of hotels shall not apply in respect of an hotel registered in terms of paragraph (a).

(2) The board may at any time cancel any registration effected in terms of this section.

Certificates of registration.

19. (1) (a) The board shall issue to the hotelier of an hotel a certificate of registration in the prescribed form in respect of such hotel.

(b) Any such certificate shall remain the property of the board.

(2) The hotelier shall cause such certificate to be displayed at all times in a prominent position at or near the main entrance of the hotel.

(3) If any hotel ceases to be an hotel, the person who occupied the post of hotelier immediately before such hotel ceased to be an hotel shall forthwith return the certificate of registration which was issued in respect of such hotel to the board for cancellation.

(4) Any person who fails to comply with the provisions of sub-section (2) or (3) shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred rand or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

Cancellation of registration and change of grading.

20. The board may at any time after having given the hotelier concerned a reasonable opportunity of making such representations in writing as he may wish to make in regard to the matter—

(a) regrade any hotel, if in its opinion reasonable and sufficient grounds exist for doing so; or

(b) cancel the registration of any hotel if there has been a failure to comply with the requirements determined in terms of sub-section (2) of section *fifteen* for any grade of hotel whatsoever falling within the group to which such hotel belongs.

Applications for regrading of hotels.

21. (1) The hotelier of any hotel may, subject to such conditions as may be prescribed, apply to the board in the prescribed manner and form for the regrading of such hotel.

(2) The board shall consider the application and give such decision thereon and take such action as it considers appropriate.

Review of decisions of the board and appeal to Minister.

22. (1) If any person is aggrieved by any decision of the board with regard to—

(a) any application for the registration of an accommodation establishment as an hotel or of an hotelier;

(b) the cancellation of the registration of any hotel or hotelier; or

(c) the grading of any hotel,

the board shall, at the request of such person and on payment of such fee as may be prescribed, reconsider its previous decision.

(2) Any such person shall have the right to appear before the board and to be heard either personally or through a representative, to give evidence himself and to call other persons as witnesses.

(3) Any person who is aggrieved by any decision of the board upon such reconsideration with regard to—

17. Voordat hy 'n huisvestingsinrigting (behalwe 'n huisvestingsinrigting waarop sub-artikel (3) van artikel *veertien* betrekking het) ingevolge artikel *veertien* as 'n hotel registreer of ingevolge artikel *sestien* die groep waartoe 'n hotel behoort, bepaal of 'n hotel gradeer, moet die raad sodanige inrigting of hotel deur een of meer inspekteurs laat inspekteer en kan hy die verdere ondersoek met betrekking daartoe instel of laat instel wat hy goedvind.

Inspeksies en ondersoek.

18. (1) (a) Ondanks andersluidende bepalings van hierdie Wet, kan die raad, indien daar na sy mening spesiale omstandighede bestaan wat dit wenslik maak om dit te doen, met die goedkeuring van die Minister, 'n huisvestingsinrigting wat nie aan die vereistes wat ingevolge sub-artikel (2) van artikel *vyftien* vir enige groep van hotelle of vir enige graad van hotel bepaal is, voldoen nie, as 'n hotel registreer.

Registrasie van huisvestingsinrigtings wat nie aan die bepaalde vereistes voldoen nie.

(b) Die bepalings van hierdie Wet met betrekking tot die bepaling van die groep waartoe 'n hotel behoort of die gradering van hotelle is nie ten opsigte van 'n hotel wat ingevolge paragraaf (a) geregistreer is van toepassing nie.

(2) Die raad kan te eniger tyd 'n registrasie wat ingevolge hierdie artikel tot stand gebring is, intrek.

19. (1) (a) Die raad reik aan die hotelier van 'n hotel 'n registrasiesertifikaat in die voorgeskrewe vorm ten opsigte van sodanige hotel uit.

Registrasiesertifikaat.

(b) Sodanige sertifikaat bly die eiendom van die raad.

(2) Die hotelier moet sodanige sertifikaat te alle tye op 'n opvallende plek by of naby die hoofingang van die hotel laat tentoonstel.

(3) Indien 'n hotel ophou om 'n hotel te wees, moet die persoon wat die pos van hotelier beklee het onmiddellik voordat sodanige hotel opgehou het om 'n hotel te wees, onverwyld die registrasiesertifikaat wat ten opsigte van sodanige hotel uitgereik is, aan die raad vir kansellering terugbesorg.

(4) Iemand wat versuim om aan die bepalings van sub-artikel (2) of (3) te voldoen, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens tweehonderd rand of met gevangenisstraf vir 'n tydperk van hoogstens ses maande of met sowel sodanige boete as sodanige gevangenisstraf.

20. Die raad kan te eniger tyd nadat hy die betrokke hotelier 'n redelike geleentheid gegee het om die skriftelike verzoek te rig wat die hotelier verlang om met betrekking tot die aangeleentheid te maak—

Intrekking van registrasie en verandering van gradering.

(a) 'n hotel hergradeer, indien daar na die raad se mening redelike en voldoende gronde bestaan om dit te doen; of

(b) die registrasie van 'n hotel intrek indien daar 'n versuim was om te voldoen aan die vereistes wat ingevolge sub-artikel (2) van artikel *vyftien* bepaal is vir enige graad van hotel hoegenaamd wat in die groep val waartoe sodanige hotel behoort.

21. (1) Die hotelier van 'n hotel kan, onderworpe aan die voorgeskrewe voorwaardes, by die raad aansoek doen, op die wyse en in die vorm wat voorgeskryf is, om die hergradering van sodanige hotel.

Aansoek om hergradering van hotelle.

(2) Die raad moet die aansoek oorweeg en gee die beslissing ten opsigte daarvan en doen die stappe wat hy paslik ag.

22. (1) Indien enige persoon hom veronreg ag deur 'n besluit van die raad met betrekking tot—

Heroorweging van besluite van raad en appèl na Minister.

(a) 'n aansoek om die registrasie van 'n huisvestingsinrigting as 'n hotel of van 'n hotelier;

(b) die intrekking van die registrasie van 'n hotel of hotelier; of

(c) die gradering van 'n hotel, moet die raad, op versoek van sodanige persoon en by betaling van die voorgeskrewe gelde, sy vorige besluit heroorweeg.

(2) Enige sodanige persoon is geregtig om voor die raad te verskyn en om aangehoor te word, hetsy persoonlik of deur middel van 'n verteenwoordiger, om self getuienis af te lê en om ander persone as getuies te roep.

(3) Enige persoon wat hom veronreg ag deur 'n besluit van die raad by sodanige heroorweging met betrekking tot—

- (a) any application for the registration of an accommodation establishment as an hotel or of an hotelier; or
- (b) the cancellation of the registration of any hotel or hotelier,

may appeal to the Minister against such decision and the Minister's decision shall be final.

(4) The decision of the Minister on an appeal shall for all purposes be deemed to be a decision of the board.

Registration
of hotelier.

23. (1) Subject to the provisions of sub-section (5), no person shall conduct the business of an hotel unless the hotelier of the hotel in question is registered.

(2) Every application for the registration of an hotelier under this Act shall be submitted to the board, by the person who conducts or intends to conduct the hotel business in question, in such manner and form as may be prescribed.

(3) Unless the person for whose registration application is made is disqualified in terms of the regulations from being registered as an hotelier, the board shall upon receipt of such application forthwith register such person as the hotelier of the hotel in question: Provided that the disqualifications prescribed will only apply in a case of an application for registration as hotelier of an hotel in which the board has a financial interest.

(4) The board may at any time cancel the registration of any hotelier who is in terms of the regulations disqualified from being an hotelier.

(5) If for any reason any person registered as the hotelier of an hotel ceases to be the hotelier of that hotel, any subsequent hotelier of that hotel shall during a period of three months thereafter be deemed to be registered in terms of this section.

(6) Any person who contravenes the provisions of sub-section (1) shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred rand or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

Enquiries by
the board.

24. (1) The board may, in accordance with the provisions of this section, conduct an enquiry into any matter falling within the scope of its functions, including any matter affecting the registration of any accommodation establishment as an hotel or the grading of any hotel, and for that purpose the board may, by registered letter, signed by its chairman or acting chairman, as the case may be, summon any person to give evidence at the enquiry or to produce any book, document or thing which may, in the opinion of the board, be relevant to the subject matter of the enquiry.

(2) The board may call and examine any person present at the enquiry, whether or not he has been summoned to attend under sub-section (1), and may inspect and retain for a reasonable period any book, document or thing the production of which was required under sub-section (1): Provided that, in connection with the examination of any such person or the production of any such book, document or thing, the law relating to privilege as applicable to a person subpoenaed to give evidence or to produce any book, document or thing before a court of law, shall apply.

(3) (a) Whenever the board deems it necessary to do so, it may direct any person to give his evidence at any such enquiry on oath or affirmation.

(b) The member of the board presiding at such enquiry may administer the oath to, or accept an affirmation from, the person concerned.

(4) Any person who has been summoned to give evidence at any such enquiry shall be entitled to receive as witness fees from the funds of the board an amount equal to the amount which he would have received as witness fees if he had been summoned to attend at a criminal trial in a superior court held at the place specified in the summons sent to him.

(5) Any person who—

(a) having been summoned to give evidence at an enquiry under sub-section (1), without sufficient cause (the onus of proof whereof shall rest upon him) fails to attend at the time and place specified in the summons, or fails to remain in attendance until the conclusion of the enquiry or until excused by the member of the board presiding at the enquiry from further attendance, or fails to produce any book, document or thing in his possession or custody or under his control, which he has been summoned to produce; or

- (a) 'n aansoek om die registrasie van 'n huisvestings-inrigting as 'n hotel of van 'n hotelier; of
- (b) die intrekking van die registrasie van 'n hotel of hotelier, kan by die Minister teen sodanige beslissing appèl aanteken en die Minister se beslissing is afdoende.
- (4) Die Minister se beslissing op appèl word vir alle doeleindes geag 'n beslissing van die raad te wees.

23. (1) Behoudens die bepalings van sub-artikel (5), mag niemand die besigheid van 'n hotel dryf nie tensy die hotelier van die betrokke hotel registreer is. Registrasie van hotelier.

(2) Elke aansoek om die registrasie van 'n hotelier ingevolge hierdie Wet moet aan die raad voorgelê word, op die wyse en in die vorm wat voorgeskryf word, deur die persoon wat die betrokke hotelbesigheid dryf of van voorneme is om dit te dryf.

(3) Tensy die persoon om wie se registrasie aansoek gedoen word, ingevolge die regulasies gediskwalifiseer is om as hotelier registreer te word, moet die raad by ontvangs van sodanige aansoek sodanige persoon onverwyld as die hotelier van die betrokke hotel registreer: Met dien verstande dat die voorgeskrewe diskwalifikasies slegs sal geld met betrekking tot 'n aansoek om registrasie as hotelier van 'n hotel waarin die raad 'n geldelike belang het.

(4) Die raad kan te eniger tyd die registrasie van 'n hotelier wat ingevolge die regulasies gediskwalifiseer is om 'n hotelier te wees, intrek.

(5) Indien iemand wat as die hotelier van 'n hotel registreer is om enige rede ophou om die hotelier van daardie hotel te wees, word enige volgende hotelier van daardie hotel gedurende 'n tydperk van drie maande daarna geag ingevolge hierdie artikel registreer te wees.

(6) Iemand wat die bepalings van sub-artikel (1) oortree, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens tweehonderd rand of met gevangenisstraf vir 'n tydperk van hoogstens ses maande of met sowel sodanige boete as sodanige gevangenisstraf.

24. (1) Die raad kan, ooreenkomstig die bepalings van hierdie artikel, 'n ondersoek instel betreffende enige aangeleentheid wat binne die bestek van sy werksaamhede val, met inbegrip van enige aangeleentheid wat die registrasie van 'n huisvestings-inrigting as 'n hotel of die gradering van 'n hotel raak, en vir dié doel kan die raad by aangetekende brief deur sy voorsitter of waarnemende voorsitter, na gelang van die geval, onderteken, enigiemand dagvaar om by die ondersoek getuienis af te lê of 'n boek, stuk of saak oor te lê wat na die raad se mening op die onderwerp van die ondersoek betrekking het. Ondersoeke deur die raad.

(2) Die raad kan 'n by die ondersoek aanwesige persoon oproep en ondervra, hetsy hy kragtens sub-artikel (1) gedagvaar is om aanwesig te wees al dan nie, en kan enige boek, stuk of saak waarvan die oorlegging kragtens sub-artikel (1) gelas is, inspekteer en vir 'n redelike tydperk hou: Met dien verstande dat in verband met die ondervraging van so iemand, of die oorlegging van so 'n boek, stuk of saak, die regsreëls met betrekking tot privilegie wat geld in die geval van 'n persoon wat gedagvaar is om voor 'n geregshof getuienis af te lê of 'n boek, stuk of saak oor te lê, van toepassing is.

(3) (a) Wanneer die raad dit nodig ag om dit te doen, kan hy enigiemand gelas om by sodanige ondersoek sy getuienis onder eed of na die maak van 'n bevestiging af te lê.

(b) Die lid van die raad wat by sodanige ondersoek voorsit kan aan die betrokke persoon 'n eed oplê of van hom 'n bevestiging aanneem.

(4) Iemand wat gedagvaar is om by so 'n ondersoek getuienis af te lê, is geregtig om uit die fondse van die raad as getuieloon 'n bedrag te ontvang wat gelyk is aan die bedrag wat hy as getuieloon sou ontvang het as hy gedagvaar was om 'n strafgeding in 'n hoër hof gehou op die plek vermeld in die dagvaarding wat aan hom gestuur is, by te woon.

(5) Iemand wat—

(a) nadat hy gedagvaar is om by 'n ondersoek kragtens sub-artikel (1) getuienis af te lê, sonder voldoende rede (waarvan die bewyslas op hom rus) versuim om op die tyd en plek in die dagvaarding vermeld, te verskyn, of versuim om aanwesig te bly totdat die ondersoek voltooi is of totdat die lid van die raad wat by die ondersoek voorsit hom verlof gegee het om weg te bly, of versuim om 'n boek, stuk of saak in sy besit of bewaring of onder sy beheer, en tot oorlegging waarvan hy gedagvaar is, oor te lê; of

- (b) having been called under sub-section (2), without sufficient cause (the onus of proof whereof shall rest upon him) refuses to be sworn or to make affirmation as a witness after he has been directed by the board to do so, or refuses to testify, or refuses or fails to answer fully and satisfactorily to the best of his knowledge and belief any question lawfully put to him,

shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred rand or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(6) Any person who, after having been sworn or having made affirmation, gives false evidence before the board at an enquiry on any matter, knowing such evidence to be false or not knowing or believing it to be true, shall be guilty of an offence and liable on conviction to a fine not exceeding four hundred rand or to imprisonment for a period not exceeding twelve months or to both such fine and such imprisonment.

(7) If requested to do so by any witness the board shall hear his evidence *in camera*.

Designation of inspectors.

25. (1) The board may designate such of its suitably qualified employees as inspectors as it may deem necessary for the proper enforcement of this Act.

(2) Every inspector shall be furnished with a certificate signed by an employee of the board designated thereto by the board and stating that he has been designated as an inspector under this Act.

(3) An inspector shall, on demand by any person affected by the exercise or the performance by him of any power or function under this Act, exhibit the certificate referred to in sub-section (2).

Powers of inspectors.

26. (1) Any inspector may, for the purposes of this Act—

- (a) without previous notice, at all reasonable times enter any premises of an accommodation establishment which is registered as an hotel under this Act or in respect of which an application for registration has been made under section *fourteen*, and, after having informed the person who is for the time being in charge or control of such establishment of the purpose of his visit, make such examination and enquiry as he may deem necessary;
- (b) while he is upon or in the premises or at any other reasonable time, question any person who conducts or intends to conduct such accommodation establishment, or any employee of such person, in the presence of or apart from others, and require from any such person or employee the production there and then, or at a time and place fixed by the inspector, of any book, notice, record, list or other document which is or has been upon or in the premises or in the possession or custody or under the control of such person or employee if in his opinion examination of that book, notice, record, list or document is necessary for the purpose of any investigation which he is carrying out;
- (c) at any reasonable time require from any person who has the possession or custody or control of any book, notice, record, list or other document relating to such premises or to the business conducted thereon, the production there and then, or at a time and place fixed by the inspector, of that book, notice, record, list or document if in his opinion examination of that book, notice, record, list or document is necessary for the purpose of any investigation which he is carrying out;
- (d) examine and make extracts from and copies of any such book, notice, record, list or document, and require an explanation of any entries in any such book, notice, record, list or document, and seize any such book, notice, record, list or document as in his opinion may afford evidence of a contravention or evasion of any provision of this Act.

(2) Any person conducting or intending to conduct an accommodation establishment entered by an inspector under sub-section (1), and any employee of such person, shall at all times

- (b) nadat hy kragtens sub-artikel (2) opgeroep is, sonder voldoende rede (waarvan die bewyslas op hom rus) weier om as getuie die eed af te lê of 'n bevestiging te maak nadat hy deur die raad gelas is om dit te doen, of weier om getuienis af te lê, of weier of versuim om na sy beste wete en oortuiging enige wettig aan hom gestelde vraag ten volle en op bevredigende wyse te beantwoord,

is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens tweehonderd rand of met gevangenisstraf vir 'n tydperk van hoogstens ses maande of met sowel sodanige boete as sodanige gevangenisstraf.

(6) Iemand wat, nadat hy die eed afgelê of 'n bevestiging gemaak het, omtrent enige onderwerp valse getuienis voor die raad by 'n ondersoek aflê met die wete dat daardie getuienis vals is, of terwyl hy nie weet of glo dat dit juis is nie, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens vierhonderd rand of met gevangenisstraf vir 'n tydperk van hoogstens twaalf maande of met sowel sodanige boete as sodanige gevangenisstraf.

(7) Indien hy deur 'n getuie versoek word om dit te doen, moet die raad die getuie se getuienis *in camera* aanhoor.

25. (1) Die raad kan sodanige van sy werknemers met geskikte kwalifikasies as inspekteurs aanwys as wat hy vir die behoorlike uitvoering van hierdie Wet nodig ag. Aanwysing van inspekteurs.

(2) Elke inspekteur moet van 'n sertifikaat voorsien word wat deur 'n daartoe deur die raad aangewysde werknemer onderteken is en waarin verklaar word dat hy kragtens hierdie Wet as 'n inspekteur aangewys is.

(3) 'n Inspekteur moet op versoek van enigiemand wat geraak word deur die uitoefening of die verrigting deur hom van enige bevoegdheid of werksaamheid kragtens hierdie Wet, die in sub-artikel (2) bedoelde sertifikaat vertoon.

26. (1) 'n Inspekteur kan, vir die doeleindes van hierdie Wet— Bevoegdhede van inspekteurs.

(a) sonder voorafgaande kennisgewing, te eniger redelike tyd enige perseel van 'n huisvestingsinrigting wat kragtens hierdie Wet as 'n hotel geregistreer is of ten opsigte waarvan 'n aansoek om registrasie kragtens artikel veertien gedoen is, betree en, nadat hy die persoon wat asdan toesig of beheer oor sodanige inrigting het van die doel van sy besoek verwittig het, die ondersoek instel en die navrae doen wat hy nodig ag;

(b) terwyl hy op of in die perseel is of op enige ander redelike tyd, enige persoon wat bedoelde huisvestingsinrigting dryf of van voorneme is om dit te dryf of enige werknemer van sodanige persoon in die teenwoordigheid of afgesonder van andere ondervra, en van enige sodanige persoon of werknemer vereis om daar en dan, of op 'n tyd en plek wat die inspekteur bepaal, enige boek, kennisgewing, aantekening, lys of ander stuk oor te lê wat op of in die perseel of in besit of bewaring of onder beheer van sodanige persoon of werknemer is of was, indien die ondersoeking van daardie boek, kennisgewing, aantekening, lys of stuk na sy mening nodig is vir die doel van 'n ondersoek wat hy besig is om uit te voer;

(c) te eniger redelike tyd van enige persoon wat enige boek, kennisgewing, aantekening, lys of ander stuk betreffende sodanige perseel of die besigheid wat daarop gedryf word, in sy besit of bewaring of onder sy beheer het, die oorlegging van daardie boek, kennisgewing, aantekening, lys of stuk daar en dan of op 'n tyd en plek deur die inspekteur bepaal, eis, indien die ondersoeking van daardie boek, kennisgewing, aantekening, lys of stuk na sy mening nodig is vir die doel van 'n ondersoek wat hy besig is om uit te voer;

(d) enige sodanige boek, kennisgewing, aantekening, lys of stuk ondersoek en uittreksels daaruit en afskrifte daarvan maak, en 'n uitleg vorder van enige inskrywings in sodanige boek, kennisgewing, aantekening, lys of stuk, en beslag lê op sodanige boek, kennisgewing, aantekening, lys of stuk wat na sy mening bewys kan lewer van 'n oortreding of ontduiking van 'n bepaling van hierdie Wet.

(2) Enige persoon wat 'n huisvestingsinrigting wat kragtens sub-artikel (1) deur 'n inspekteur betree is, dryf of wat van voorneme is om dit te dryf en enige werknemer van sodanige persoon

furnish such reasonable facilities as are required by the inspector for the purpose of exercising his powers under the said sub-section.

(3) Any person who—

- (a) hinders or obstructs an inspector in the exercise of his powers or the performance of his duties; or
- (b) without valid excuse refuses or fails to answer to the best of his ability any questions which an inspector in the exercise of his powers or the performance of his duties has put to him; or
- (c) refuses or fails to comply to the best of his ability with any requirement made by an inspector in the exercise of his powers or the performance of his duties; or
- (d) wilfully furnishes to an inspector any information which is false or misleading,

shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred rand or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

Secrecy to be observed.

27. (1) No member of the board or of any committee thereof, or employee of the board, or person allowed to be present at any meeting of the board or of any committee thereof or at any interrogation of anybody by an inspector, shall disclose to any person, except for the purpose of the performance of his duties or functions under this Act or when required to do so by any court or under any law, any information in relation to the financial or business affairs of any person, establishment or business, acquired in the performance of his duties or functions under this Act or while attending any such meeting or interrogation, as the case may be: Provided that the provisions of this sub-section shall not apply in respect of any information acquired at any enquiry conducted in terms of section *twenty-four* and while such enquiry was conducted in public.

(2) Any person who contravenes the provisions of sub-section (1) shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred rand or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

Finances of the board.

28. (1) (a) The hotelier of any hotel shall, if required by the regulations to do so—

- (i) add to the price of such services rendered thereat from time to time as may be prescribed, a surcharge at such a rate as may be prescribed; or
- (ii) from time to time pay to the board amounts by way of levies calculated on such a basis and at such a rate as may be prescribed.

(b) Any rate prescribed in terms of paragraph (a) may be different in respect of hotels in different groups or of different grades.

(c) Any such surcharge shall be collected by the hotelier and any amount collected by way of such surcharge shall be paid to the board.

(2) The times at which and the manner in which any amount payable under sub-section (1) shall be paid, and the particulars to be furnished when making payment of any such amount, shall be prescribed.

(3) If any hotelier fails to pay to the board any amount payable in terms of this section, the board may recover such amount from the hotelier or from the person who conducts the hotel business in question by action in any competent court.

(4) The board may receive and use, for the purposes of any activity in which it may lawfully engage, any money or property which has been advanced, granted or donated to it or has otherwise accrued to it.

(5) The board shall open an account or accounts with a bank or banks approved by the Minister and shall deposit therein all moneys received by it from any source, and any expenditure incurred by the board shall be met from such account or accounts.

(6) Any moneys not required for immediate use or as a reasonable operating balance shall be invested by the board with the Public Debt Commissioners or in such other manner as the Minister may, in consultation with the Minister of Finance, determine.

moet te alle tye die redelike fasiliteite verskaf wat deur die inspekteur vereis word om sy bevoegdhede kragtens bedoelde sub-artikel uit te oefen.

(3) Enigiemand wat—

- (a) 'n inspekteur by die uitoefening van sy bevoegdhede of die uitvoering van sy pligte hinder of belemmer; of
- (b) sonder geldige verskoning weier of versuim om 'n vraag wat 'n inspekteur by die uitoefening van sy bevoegdhede of die uitvoering van sy pligte aan hom gestel het, na die beste van sy vermoë te beantwoord; of
- (c) weier of versuim om na die beste van sy vermoë aan 'n vereiste deur 'n inspekteur by die uitoefening van sy bevoegdhede of die uitvoering van sy pligte gestel, te voldoen; of
- (d) opsetlik aan 'n inspekteur inligting verstrek wat vals of misleidend is,

is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens tweehonderd rand of met gevangenisstraf vir 'n tydperk van hoogstens ses maande of met sowel sodanige boete as sodanige gevangenisstraf.

27. (1) Geen lid van die raad of 'n komitee daarvan, of werknemer van die raad, of persoon wat toegelaat is om teenwoordig te wees by 'n vergadering van die raad of 'n komitee daarvan of by 'n ondervraging van enige persoon deur 'n inspekteur, mag aan enigiemand inligting aangaande die finansiële of besigheid-sake van enige persoon, inrigting of besigheid, wat hy by die uitvoering van sy pligte of werksaamhede ingevolge hierdie Wet of terwyl hy by sodanige vergadering of ondervraging teenwoordig was, na gelang van die geval, verkry het, bekend maak nie, behalwe met die doel om sy pligte of werksaamhede ingevolge hierdie Wet uit te voer of wanneer dit deur 'n hof of ingevolge 'n wetsbepaling van hom vereis word: Met dien verstande dat die bepalings van hierdie sub-artikel nie van toepassing is ten opsigte van inligting wat verkry is by 'n ondersoek wat ingevolge artikel vier-en-twintig ingestel is en terwyl sodanige ondersoek in die openbaar gehou is nie.

Geheimhouding.

(2) Enigiemand wat die bepalings van sub-artikel (1) oortree is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens tweehonderd rand of met gevangenisstraf vir 'n tydperk van hoogstens ses maande of met sowel sodanige boete as sodanige gevangenisstraf.

28. (1) (a) Die hotelier van 'n hotel moet, indien die regulasies vereis dat hy dit doen—

Finansies van die raad.

- (i) by die prys van sodanige dienste wat van tyd tot tyd daar gelewer word as wat voorgeskryf word, 'n toeslag teen die skaal wat voorgeskryf word, voeg; of
- (ii) van tyd tot tyd aan die raad bedrae betaal by wyse van heffings bereken op die grondslag en teen die skaal wat voorgeskryf word.

(b) Enige skaal wat ingevolge paragraaf (a) voorgeskryf word kan verskillend wees ten opsigte van hotelle in verskillende groepe of van verskillende grade.

(c) Enige sodanige toeslag moet deur die hotelier ingevorder word en enige bedrag wat by wyse van sodanige toeslag ingevorder word, word aan die raad betaal.

(2) Die tye wanneer en die wyse waarop enige ingevolge sub-artikel (1) betaalbare bedrag betaal moet word, en die besonderhede wat verstrek moet word wanneer betaling van so 'n bedrag geskied, word voorgeskryf.

(3) Indien 'n hotelier versuim om enige ingevolge hierdie artikel betaalbare bedrag aan die raad te betaal, kan die raad sodanige bedrag van die hotelier of van die persoon wat die betrokke hotelbesigheid dryf by aksie in 'n bevoegde hof verhaal.

(4) Die raad kan enige geld of eiendom wat aan hom voorgeskiet, toegestaan of geskenk is of wat op 'n ander wyse aan hom toegeval het, ontvang en vir die doeleindes van enige bedrywigheid wat hy wettiglik mag onderneem, gebruik.

(5) Die raad moet 'n rekening of rekenings by 'n deur die Minister goedgekeurde bank of banke open en moet alle gelde wat deur hom uit enige bron ontvang word, daarin stort, en uitgawes deur die raad aangegaan word uit sodanige rekening of rekenings betaal.

(6) Gelde wat nie vir onmiddellike gebruik of as 'n redelike bedryfsaldo nodig is nie, moet deur die raad by die Openbare Skuldkommissarisse of op die ander wyse wat die Minister, in oorleg met die Minister van Finansies, bepaal, belê word.

(7) The board shall keep a proper record of its property and of all its financial transactions, and shall in each year prepare accounts of its income and expenditure and a balance sheet showing in all necessary detail the assets and liabilities of the board.

Borrowing
powers of
the board.

29. (1) The board may from time to time, with the approval of the Minister acting in consultation with the Minister of Finance, borrow moneys in such amounts and in such manner and on such terms and conditions as may be authorized, for the purpose of—

- (a) lending or advancing moneys in respect of hotels on such terms and conditions as may be determined by the board, with the approval of the Minister acting in consultation with the Minister of Finance;
- (b) repaying any moneys borrowed by it under this Act or advanced to it by the Government;
- (c) paying interest in respect of any moneys borrowed by it; or
- (d) acquiring any movable or immovable property.

(2) The Minister of Finance may on behalf of the Government, on such terms and conditions as he may deem fit, guarantee the repayment of any moneys borrowed by the board together with any interest thereon and any charges incurred in connection therewith.

(3) Notwithstanding anything contained in the Stamp Duties Act, 1962 (Act No. 59 of 1962), no stamp duty shall be payable in respect of the issue of any marketable security by the board or the registration of the transfer thereof.

Auditing of
accounts.

30. The books and statements of account of the board shall be audited by the Controller and Auditor-General.

Reports to
the Minister.

31. (1) The board shall, within six months after the end of each financial year, furnish to the Minister a report upon the activities of the board during that financial year, together with a balance sheet and a complete statement of income and expenditure for that year, and shall in the report so furnished give particulars as to—

- (a) the extent and value of all classes of property owned by the board;
- (b) the expenses of management and administration and all other expenses of the board;
- (c) the erection and construction, repair, improvement or alteration of any building or equipment and the cost thereof;
- (d) the price or rent of any land or any other immovable property acquired or hired; and
- (e) any other matter with which the Minister may require the board to deal.

(2) Every report furnished to the Minister under sub-section (1) shall be laid upon the Table by him in the Senate and in the House of Assembly as soon as possible after receipt thereof.

Bilking.

32. Any person who leaves an hotel without paying his account for lodging and meals supplied, shall, unless he has arranged with the person conducting the hotel business or the hotelier or any person who at the time of leaving was in charge or in control of such hotel for the later payment of such account, be guilty of an offence and liable on conviction to a fine not exceeding four hundred rand or to imprisonment for a period not exceeding twelve months or to both such fine and such imprisonment.

Publication of
false
information and
prohibition on
the use of the
designation
"hotel",
"motel", etc.

33. (1) Any person who publishes or causes or allows to be published in any manner whatsoever, any false or misleading information regarding the nature of any hotel, its grade or its situation, or the amenities offered or provided at such hotel shall, unless he proves to the satisfaction of the court that he published such information or caused or allowed it to be published in good faith and without having any reason to believe that it was false or misleading, be guilty of an offence and liable on conviction to a fine not exceeding two hundred rand or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(7) Die raad moet behoorlik boekhou van sy eiendom en van al sy finansiële transaksies, en moet elke jaar rekenings van sy inkomste en uitgawe en 'n balansstaat, wat met die nodige besonderhede die bate en laste van die raad aangee, opstel.

29. (1) Die raad kan van tyd tot tyd, met die goedkeuring van die Minister handelende in oorleg met die Minister van Finansies, die bedrae geld leen wat gemagtig word en wel op die wyse en voorwaardes wat gemagtig word, met die doel—

Leningsbevoegdheid van die raad.

- (a) om geld te leen of voor te skiet ten opsigte van hotelle op die voorwaardes wat die raad, met die goedkeuring van die Minister handelende in oorleg met die Minister van Finansies, bepaal;
- (b) om gelde wat ingevolge hierdie Wet deur hom geleen is of wat deur die Regering aan hom voorgesket is, terug te betaal;
- (c) om rente te betaal ten opsigte van gelde deur hom geleen; of
- (d) om roerende of onroerende goed te verkry.

(2) Die Minister van Finansies kan namens die Regering, op die voorwaardes wat hy goetvind, die terugbetaling van enige gelde wat deur die raad geleen word tesame met enige rente daarop en enige koste wat in verband daarmee aangegaan is, waarborg.

(3) Ondanks die bepalings van die Seëlwet, 1962 (Wet No. 59 van 1962), is geen seëlregte ten opsigte van die uitreiking van enige handelseffekte deur die raad of die registrasie van oordrag daarvan, betaalbaar nie.

30. Die boeke en rekeningstate van die raad word deur die Kontroleur en Ouditeur-generaal geouditeer.

Ouditering van rekenings.

31. (1) Die raad moet, binne ses maande na die einde van elke boekjaar, aan die Minister 'n verslag aangaande die bedrywighede van die raad gedurende daardie boekjaar, tesame met 'n balansstaat en 'n volledige opgaaf van inkomste en uitgawe vir daardie jaar, voorlê, en moet in die aldus voorgelegde verslag besonderhede verstrek aangaande—

Verslae aan die Minister.

- (a) die omvang en waarde van alle soorte eiendom wat die raad besit;
- (b) die bestuurs- en administrasiekoste en alle ander uitgawes van die raad;
- (c) die oprigting en bou, herstel, verbetering of verandering van enige gebou of toerusting en die koste daarvan;
- (d) die koopprys of huurgeld van grond of enige ander onroerende goed wat verkry of gehuur is; en
- (e) enige ander aangeleentheid wat die Minister verlang dat die raad moet behandel.

(2) Elke verslag wat ingevolge sub-artikel (1) aan die Minister voorgelê word, word so spoedig moontlik na ontvangs daarvan, deur hom in die Senaat en in die Volksraad ter Tafel gelê.

32. Enigiemand wat 'n hotel verlaat sonder om sy rekening te vereffen vir huisvesting en etes voorsien, is, tensy hy met die persoon wat die hotelbesigheid dryf of die hotelier of die persoon wat toesig of beheer oor sodanige hotel gehad het toe hy vertrek het, reëlins getref het vir die latere betaling van sodanige rekening, aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens vierhonderd rand of met gevangenisstraf vir 'n tydperk van hoogstens twaalf maande of met sowel sodanige boete as sodanige gevangenisstraf.

Ontduiking van betaling.

33. (1) Enigiemand wat op enige wyse hoegenaamd inligting wat vals of misleidend is, aangaande die aard van 'n hotel, sy graad of sy ligging, of die geriewe wat by sodanige hotel aangebied of voorsien word, publiseer of laat publiseer of toelaat dat dit gepubliseer word, is, tensy hy tot die oortuiging van die hof bewys dat hy te goeder trou bedoelde inligting gepubliseer of laat publiseer het of die publikasie daarvan toegelaat het en geen rede gehad het om te glo dat dit vals of misleidend was nie, aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens tweehonderd rand of met gevangenisstraf vir 'n tydperk van hoogstens ses maande of met sowel sodanige boete as sodanige gevangenisstraf.

Publikasie van valse inligting en verbod op gebruik van benaming „hotel”; „motel”; ens.

- (2) (a) As from a prescribed date, which shall not be before the thirty-first day of December, 1968, no person shall use or cause or allow to be used in respect of or in relation to any accommodation establishment conducted or managed by him and not registered as an hotel under this Act, the designation or term "hotel", "motel", "botel" or any other designation or term which the Minister may, on the recommendation of the board, specify by notice in the *Gazette*, in regard to its name or style or general description in any context or in any medium whatsoever.
- (b) Any person who contravenes the provisions of paragraph (a) shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred rand or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

Regulations.

34. (1) The Minister may make regulations—

- (a) with regard to the conduct of and procedure at meetings of the board and of any committee appointed under section *eleven* (including the quorum in the case of committees) and the manner in which meetings of any such committee shall be called;
- (b) prescribing disqualifications for registration as an hotelier;
- (c) prescribing insignia for the various groups and grades of hotels and the circumstances under which and the manner in which they may be used or displayed, and prohibiting the use or display thereof otherwise than in accordance with the regulations;
- (d) with regard to the duty of hoteliers to provide lodging and meals and the power of hoteliers to refuse admission to or to eject persons;
- (e) prescribing the manner in which particulars in regard to the nature, grade, name or style of an hotel shall be published or displayed;
- (f) prescribing the manner in which and the time within which an appeal under section *twenty-two* shall be noted and prosecuted;
- (g) with regard to any matter which by this Act is required or permitted to be prescribed;
- (h) prescribing generally, all matters which he considers it necessary or expedient to prescribe in order that the objects of this Act may be achieved, the generality of this provision not being limited by the provisions of the preceding paragraphs.

(2) Different regulations may be made in respect of hotels belonging to different groups and hotels of different grades.

(3) Any regulations made under this section may prescribe penalties for any contravention thereof or failure to comply therewith, not exceeding a fine of two hundred rand or imprisonment for a period of six months.

Amendment of section 71*bis* of Act 30 of 1928, as inserted by section 53 of Act 88 of 1963 and amended by section 8 of Act 85 of 1964.

35. Section *seventy-one bis* of the Liquor Act is hereby amended—

- (a) by the substitution for sub-section (1) of the following sub-section:

"(1) The Minister may, upon application made by the proprietor or lessee of any premises providing residential accommodation for guests (hereinafter referred to as an accommodation establishment) in respect of which an on-consumption licence (other than a club liquor licence) has been issued under this Act, and upon a recommendation made by the National Liquor Board after such enquiry and investigation as the Minister may deem necessary including consultation with any board or body which may be established by any Minister in connection with hotel affairs, classify such establishment in such manner as he may deem fit, according to the nature of the accommodation and service provided therein and its situation."; and

- (b) by the substitution for sub-sections (3), (4) and (5) of the following sub-sections:

"(3) The Minister shall from time to time make known in the *Gazette* the classes into which accommodation establishments may be classified and may in similar manner prescribe the minimum requirements

- (2) (a) Vanaf 'n voorgeskrewe datum, wat nie vroeër is nie as die een-en-dertigste dag van Desember 1968, mag niemand ten opsigte van of in verband met enige huisvestingsinrigting wat deur hom gedryf of bestuur word en wat nie ingevolge hierdie Wet as 'n hotel geregistreer is nie, die benaming of uitdrukking „hotel”, „motel”, „botel” of enige ander benaming of uitdrukking wat die Minister, op aanbeveling van die raad, by kennisgewing in die *Staatskoerant* aandui, gebruik of laat gebruik of toelaat dat dit gebruik word met betrekking tot sy naam of betiteling of algemene beskrywing in enige sinsverband of in enige medium hoegenaamd nie.
- (b) Enigiemand wat die bepalinge van paragraaf (a) oortree is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens tweehonderd rand of met gevangenisstraf vir 'n tydperk van hoogstens ses maande of met sowel sodanige boete as sodanige gevangenisstraf.

34. (1) Die Minister kan regulasies uitvaardig—

Regulasies.

- (a) met betrekking tot die hou van en die prosedure by vergaderings van die raad en van enige kragtens artikel elf aangestelde komitee (met inbegrip van die kworum in die geval van komitees) en die wyse waarop vergaderings van enige sodanige komitee belê moet word;
- (b) wat diskwalifikasies vir registrasie as 'n hotelier voorskryf;
- (c) wat onderskeidingsstekens vir die verskillende groepe en grade hotelle en die omstandighede waarin en die wyse waarop hulle gebruik of vertoon mag word, voorskryf en wat die gebruik of vertoning daarvan anders as ooreenkomstig die regulasies, verbied;
- (d) met betrekking tot die plig van hoteliers om huisvesting en etes te voorsien en die bevoegdheid van hoteliers om toegang aan persone te weier en om persone uit te sit;
- (e) wat die wyse waarop besonderhede met betrekking tot die aard, graad, naam of betiteling van 'n hotel gepubliseer of vertoon moet word, voorskryf;
- (f) wat die wyse waarop en die tydperk waarin 'n appèl ingevolge artikel twee-en-twintig aangeteken en voortgesit moet word, voorskryf;
- (g) met betrekking tot enige aangeleentheid wat ingevolge hierdie Wet voorgeskryf moet of kan word;
- (h) wat, in die algemeen, alle aangeleenthede voorskryf wat hy nodig of raadsaam ag om voor te skryf ten einde die oogmerke van hierdie Wet te bereik, en die algemeenheid van hierdie bepaling word nie beperk deur die bepalinge van die voorafgaande paragrawe nie.
- (2) Verskillende regulasies kan uitgevaardig word ten opsigte van hotelle wat tot verskillende groepe behoort en hotelle van verskillende grade.
- (3) Regulasies wat kragtens hierdie artikel uitgevaardig word, kan vir oortreding daarvan of versuim om daaraan te voldoen, strawwe voorskryf wat nie 'n boete van tweehonderd rand of gevangenisstraf vir 'n tydperk van ses maande, te bowe gaan nie.

35. Artikel een-en-sewentig bis van die Drankwet word hierby gewysig—

Wysiging van artikel 71bis van Wet 30 van 1928, soos ingevoeg deur artikel 53 van Wet 88 van 1963 en gewysig deur artikel 8 van Wet 85 van 1964.

- (a) deur sub-artikel (1) deur die volgende sub-artikel te vervang:

„(1) Die Minister mag op aanvraag van die eienaar of huurder van 'n gebou wat woonakkommodasie vir gaste voorsien (hieronder 'n akkommodasie-inrigting genoem) in verband waarmee 'n binneverbruik-lisensie (behalwe 'n klub-dranklisensie) kragtens hierdie Wet uitgereik is, en op 'n aanbeveling gedoen deur die Nasionale Drankraad na sodanige navraag en ondersoek as wat die Minister nodig ag, met inbegrip van oorlegpleging met 'n raad of liggaam wat deur 'n Minister in verband met hotelaangeleenthede ingestel word, daardie inrigting op die wyse wat hy goedvind, klassifiseer volgens die aard van die akkommodasie en diens wat daarin voorsien word en sy ligging.”; en

- (b) deur sub-artikels (3), (4) en (5) deur die volgende sub-artikels te vervang:

„(3) Die Minister maak van tyd tot tyd die klasse waarin akkommodasie-inrigtings geklassifiseer kan word, in die *Staatskoerant* bekend en mag op soortgelyke wyse die minimum vereistes voorskryf waaraan

with which different categories of such establishments shall comply before an application may be made under sub-section (1).

(4) The Minister or any person acting under his authority shall issue to the proprietor or lessee of an accommodation establishment which has been classified in terms of sub-section (1), a certificate of classification in the prescribed form.

(5) The Minister may at any time, upon a recommendation made by the National Liquor Board after such enquiry and investigation as the Minister may deem necessary, withdraw any certificate issued under sub-section (4): Provided that such certificate shall not be withdrawn, except at the instance of the proprietor or lessee of the establishment concerned, unless such proprietor or lessee has been given a reasonable opportunity to submit representations to the Minister in regard to the proposed withdrawal."

Amendment of section 166 of Act 30 of 1928, as amended by section 33 of Act 41 of 1934, section 42 of Act 61 of 1956, section 10 of Act 58 of 1957, section 17 of Act 72 of 1961, section 20 of Act 63 of 1962, section 10 of Act 89 of 1962, section 106 of Act 88 of 1963 and section 18 of Act 85 of 1964.

36. Section *one hundred and sixty-six* of the Liquor Act is hereby amended by the insertion in paragraph (u) after the word "premises" of the words "(other than licensed premises registered as an hotel in terms of the Hotels Act 1965)".

Amendment of section 173 of Act 30 of 1928, as amended by section 44 of Act 61 of 1956, section 19 of Act 72 of 1961, section 13 of Act 89 of 1962 and section 111 of Act 88 of 1963.

37. Section *one hundred and seventy-three* of the Liquor Act is hereby amended by the substitution for paragraph (b) *quat* of the following paragraph:

"(b) *quat* applications and publication of applications for the classification of accommodation establishments in terms of section *seventy-one bis*, the submission of documents, information, objections, reports and representations in regard thereto and, after consultation with the Minister of Finance, the fee payable in respect of an application under the said section;"

Amendment of section 9 of Act 54 of 1947, as amended by section 2 of Act 40 of 1960, section 9 of Act 93 of 1963 and section 1 of Act 39 of 1964.

38. Section *nine* of the South African Tourist Corporation Act, 1947, is hereby amended by the substitution for paragraph (l) of sub-section (1) of the following paragraph:

"(l) in accordance with the provisions of the regulations, register, grade and classify accommodation establishments (other than accommodation establishments which are registered as hotels under the Hotels Act, 1965) or any class of such establishments in the Republic; issue certificates of registration in respect of such establishments, and publish lists of such establishments appropriately graded or classified;"

Short title and commencement.

39. This Act shall be called the Hotels Act, 1965, and shall come into operation on a date to be fixed by the State President by proclamation in the *Gazette*.

verskillende kategorieë van sodanige inrigtings moet voldoen alvorens aanvraag ingevolge sub-artikel (1) gedoen kan word.

(4) Die Minister of iemand wat op sy gesag handel, reik aan die eienaar of huurder van 'n akkommodasie-inrigting wat ingevolge sub-artikel (1) geklassifiseer is, 'n klassifikasiesertifikaat in die voorgeskrewe vorm uit.

(5) Die Minister mag te eniger tyd op 'n aanbeveling gedoen deur die Nasionale Drankraad na sodanige navraag en ondersoek wat die Minister nodig ag, 'n sertifikaat wat kragtens sub-artikel (4) uitgereik is, intrek: Met dien verstande dat sodanige sertifikaat nie ingetrek mag word nie behalwe op versoek van die eienaar of huurder van die betrokke inrigting, tensy aan die eienaar of huurder 'n redelike geleentheid gegee is om verhoër tot die Minister te rig in verband met die voorgename intrekking."

36. Artikel *honderd ses-en-sestig* van die Drankwet word hierby gewysig deur in paragraaf (u), na die woord „gebou” die woorde „(behalwe 'n gelisensieerde gebou wat ingevolge die Wet op Hotelle, 1965, as 'n hotel geregistreer is)” in te voeg.

Wysiging van artikel 166 van Wet 30 van 1928, soos gewysig deur artikel 33 van Wet 41 van 1934, artikel 42 van Wet 61 van 1956, artikel 10 van Wet 58 van 1957, artikel 17 van Wet 72 van 1961, artikel 20 van Wet 63 van 1962, artikel 10 van Wet 89 van 1962, artikel 106 van Wet 88 van 1963 en artikel 18 van Wet 85 van 1964.

37. Artikel *honderd drie-en-sewentig* van die Drankwet word hierby gewysig deur paragraaf (b) *quat* deur die volgende paragraaf te vervang:

„(b) *quat* aanvrage en bekendmaking van aanvrage om die klassifikasie van akkommodasie-inrigtings ingevolge artikel *een-en-sewentig bis*, die voorlegging van dokumente, inligting, besware, rapporte en verhoër met betrekking daartoe en, na oorlegpleging met die Minister van Finansies, die fooi betaalbaar ten opsigte van 'n aanvraag kragtens genoemde artikel;”.

Wysiging van artikel 173 van Wet 30 van 1928, soos gewysig deur artikel 44 van Wet 61 van 1956, artikel 19 van Wet 72 van 1961, artikel 13 van Wet 89 van 1962 en artikel 111 van Wet 88 van 1963.

38. Artikel *nege* van die Wet op die Suid-Afrikaanse Toeristekorporasie, 1947, word hierby gewysig deur paragraaf (l) van sub-artikel (1) deur die volgende paragraaf te vervang:

„(l) ooreenkomstig die bepalings van die regulasies, losies-inrigtings (behalwe huisvestingsinrigtings wat ingevolge die Wet op Hotelle, 1965, as hotelle geregistreer is) of enige kategorie van sodanige inrigtings in die Republiek registreer, rangskik en indeel, registrasiesertifikate ten opsigte van sulke inrigtings uitreik, en lyste van sulke inrigtings, paslik gerangskik of ingedeel, publiseer;”.

Wysiging van artikel 9 van Wet 54 van 1947, soos gewysig deur artikel 2 van Wet 40 van 1960, artikel 9 van Wet 93 van 1963 en artikel 1 van Wet 39 van 1964.

39. Hierdie Wet heet die Wet op Hotelle, 1965, en tree in werking op 'n datum wat die Staatspresident by proklamasie in die *Staatskoerant* bepaal.

Kort titel en inwerking-treding.

No. 71, 1965.]

ACT

To amend the Water Act, 1956.

(Afrikaans text signed by the State President.)

(Assented to 2nd June, 1965.)

BE IT ENACTED by the State President, the Senate and the House of Assembly of the Republic of South Africa, as follows:—

Amendment
of section 60 of
Act 54 of 1956,
as amended by
section 1 of
Act 75 of 1957
and section 10 of
Act 56 of 1961.

1. Section *sixty* of the Water Act, 1956 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the addition to paragraph (a) of sub-section (2) of the following sub-paragraph, the existing paragraph becoming sub-paragraph (i):

“(ii) If the Minister so gives or causes to be given notice in respect of any land or any right in respect of land or any existing right, he shall at the same time cause to be published, in three consecutive ordinary issues of the *Gazette*, and once a week during three consecutive weeks in a newspaper circulating in the district in which such land is situated or in which such right is exercisable, a notice setting forth clearly and fully the land or right to which the notice in terms of sub-paragraph (i) relates, and stating his intention so to expropriate such land or right, as the case may be.”.

(b) by the substitution for paragraph (c) of sub-section (3) of the following paragraph:

“(c) Any enhancement in the value of land referred to in paragraph (a) or (b) which may be caused by the construction, operation or extension of a Government water work, or by any work or act which the Minister may carry out or perform in connection with any of the matters referred to in paragraph (b) of sub-section (1) or sub-section (2) of section *fifty-nine*, shall not be taken into account in determining the amount of compensation referred to in the said paragraphs.”;

(c) by the substitution for paragraph (a) of sub-section (4) of the following paragraph:

“(a) If an owner of land or a person who holds a right in respect of land or an existing right refuses to accept the compensation offered by the Minister, either party shall, subject to the provisions of paragraph (b), have the right to have the amount thereof determined by a water court, and in that event the provisions of sub-section (3) shall *mutatis mutandis* apply.”;

(d) by the substitution for paragraph (a) of sub-section (4)*bis* of the following paragraph:

“(a) Interest at a rate determined from time to time by the Minister in consultation with the Minister of Finance shall, as from the date on which any relevant act may be performed by the department in terms of sub-paragraph (i) of paragraph (a) of sub-section (6), and subject to the provisions of paragraph (b) of this sub-section be paid on any outstanding amount payable by way of compensation in terms of this section.”; and

No. 71, 1965.]

WET

Tot wysiging van die Waterwet, 1956.

(Afrikaanse teks deur die Staatspresident geteken.)
(Goedgekeur op 2 Junie 1965.)

DAAR WORD BEPAAL deur die Staatspresident, die Senaat en die Volksraad van die Republiek van Suid-Afrika, soos volg:—

1. Artikel *sestig* van die Waterwet, 1956 (hieronder die Hoof-wet genoem), word hierby gewysig—
 - (a) deur die volgende sub-paragraaf by paragraaf (a) van sub-artikel (2) te voeg, terwyl die bestaande paragraaf sub-paragraaf (i) word:
 - „(ii) Indien die Minister aldus kennis ten opsigte van grond of 'n reg ten opsigte van grond of 'n bestaande reg gee of laat gee, moet hy terselfdertyd in drie agtereenvolgende gewone uitgawes van die *Staatskoerant* en een maal per week gedurende drie agtereenvolgende weke in 'n nuusblad in omloop in die distrik waarin sodanige grond geleë is of waarin sodanige reg uitoefenbaar is, 'n kennisgewing laat publiseer waarin die grond of reg waarop die kennisgewing ingevolge sub-paragraaf (i) betrekking het, duidelik en volledig uiteengesit word en sy voorneme bekend gemaak word om die grond of reg, na gelang van die geval, aldus te onteien.”
 - (b) deur paragraaf (c) van sub-artikel (3) deur die volgende paragraaf te vervang:
 - „(c) Enige verhoging in die waarde van in paragraaf (a) of (b) bedoelde grond wat ontstaan deur die bou, werking of uitbreiding van 'n Staatswaterwerk, of deur enige werk of handeling wat die Minister in verband met die een of ander van die in paragraaf (b) van sub-artikel (1) of sub-artikel (2) van artikel *nege-en-vyftig* bedoelde aangeleenthede uitvoer of verrig, word nie by die vaststelling van die in daardie paragrawe bedoelde bedrag van vergoeding in aanmerking geneem nie.”;
 - (c) deur paragraaf (a) van sub-artikel (4) deur die volgende paragraaf te vervang:
 - „(a) Indien 'n eienaar van grond of 'n persoon wat 'n reg ten opsigte van grond of 'n bestaande reg besit, weier om die deur die Minister aangebode vergoeding te aanvaar, het enige party onderworpe aan die bepalings van paragraaf (b), die reg om die bedrag daarvan deur 'n waterhof te laat vasstel, en in so 'n geval is die bepalings van sub-artikel (3) *mutatis mutandis* van toepassing.”;
 - (d) deur paragraaf (a) van sub-artikel (4)*bis* deur die volgende paragraaf te vervang:
 - „(a) Rente teen 'n koers wat van tyd tot tyd deur die Minister in oorleg met die Minister van Finansies bepaal word, word, vanaf die datum waarop die departement enige betrokke handeling ingevolge sub-paragraaf (i) van paragraaf (a) van sub-artikel (6) kan verrig, en behoudens die bepalings van paragraaf (b) van hierdie sub-artikel, betaal op enige uitstaande bedrag wat ingevolge hierdie artikel by wyse van vergoeding betaalbaar is.”; en

Wysiging van artikel 60 van Wet 54 van 1956, soos gewysig deur artikel 1 van Wet 75 van 1957 en artikel 10 van Wet 56 van 1961.

(e) by the substitution for paragraph (a) of sub-section (6) of the following paragraph:

“(a) (i) Upon the expiration of a period of three months from the date on which the notice referred to in sub-paragraph (i) of paragraph (a) of sub-section (2) was given, or at any time prior to such expiration if agreed to by all interested parties, the department may forthwith enter upon and take possession of or use the land, water work, substance or material or exercise the right, to which such notice refers, as it may deem fit, irrespective of whether or not the amount to be paid in compensation has been agreed upon or settled as hereinbefore provided.

(ii) If any such notice has been given in respect of the expropriation of any land, all rights in respect of such land not registered against the title deed thereof or in any office referred to in sub-paragraph (i) of paragraph (a) of sub-section (2), shall terminate on the date on which any relevant act may be performed by the department in terms of sub-paragraph (i) of this paragraph, and the State shall not be obliged to pay any compensation for such rights.”.

Amendment of
section 68 of
Act 54 of 1956.

2. Section *sixty-eight* of the principal Act is hereby amended by the substitution for sub-section (1) of the following sub-section:

“(1) The Minister may in respect of any Government water work or any area which has under section *twenty-eight* or *fifty-nine* been declared to be a subterranean water control area, a Government water control area or a catchment control area, or any catchment area or areas, appoint an advisory committee consisting of such number of members as the Minister may in each case from time to time determine, to advise him on matters connected with the preservation, conservation, utilization, control, supply or distribution of water resources and water, or any other matter which he may from time to time refer to such committee.”.

Amendment of
section 84 of
Act 54 of 1956.

3. Section *eighty-four* of the principal Act is hereby amended by the substitution for paragraph (c) of sub-section (1) of the following paragraph:

“(c) In respect of a nomination of any candidate or any election of members other than the first nomination or election, the chairman of the irrigation board in respect of which such nomination or election is held or a member of the said board nominated by him shall act as returning officer, unless the Minister or the Secretary has designated an officer of the Department to act as such: Provided that the chairman or a member shall not so act if he is a candidate for nomination or election.”.

Amendment of
section 86 of
Act 54 of 1956.

4. Section *eighty-six* of the principal Act is hereby amended by the addition of the following paragraph to sub-section (1):

“(d) The election of a chairman or a vice-chairman in terms of paragraph (a) or (c) shall take place in the manner prescribed by regulation.”.

Amendment of
section 88 of
Act 54 of 1956,
as amended by
section 14 of
Act 56 of 1961.

5. Section *eighty-eight* of the principal Act is hereby amended by the substitution in sub-section (8) for the words preceding paragraph (a) of the following words:

“The provisions of sub-sections (8), (9) and (10) of section *sixty-three* shall *mutatis mutandis* apply, in so far as they can be applied, in relation to—”.

Amendment of
section 162 of
Act 54 of 1956,
as amended by
section 18 of
Act 56 of 1961.

6. Section *one hundred and sixty-two* of the principal Act is hereby amended—

(a) by the substitution in paragraph (a) of sub-section (2) for the words “thirty thousand pounds” of the words “sixty thousand rand”; and

(b) by the substitution in paragraph (c) of the said sub-section for the words “three hundred pounds”, wherever they occur, of the words “one thousand rand”.

Insertion of
CHAPTER
IXbis
and sections
164bis and 164ter
in Act 54 of 1956.

7. The principal Act is hereby amended—

(a) by the insertion after section *one hundred and sixty-four* of the following superscriptions:

(e) deur paragraaf (a) van sub-artikel (6) deur die volgende paragraaf te vervang:

„(a) (i) By verstryking van 'n tydperk van drie maande vanaf die datum waarop die kennisgewing bedoel in sub-paragraaf (i) van paragraaf (a) van sub-artikel (2) gegee is, of te eniger tyd voor sodanige verstryking indien alle belanghebbende partye daartoe instem, kan die departement na goeddunke onverwyld die grond, waterwerk, stof of materiaal waarop die kennisgewing betrekking het, betree en in besit neem of gebruik, of die reg uitoefen, ongeag of oor die bedrag by wyse van vergoeding betaal te word, poreengekom is, en of dit vasgestel is soos hierbo bepaal, of nie.

(ii) Indien so 'n kennisgewing gegee is ten opsigte van die onteiening van grond, word alle regte ten opsigte van daardie grond wat nie teen die titelbewys daarvan of in 'n kantoor bedoel in sub-paragraaf (i) van paragraaf (a) van sub-artikel (2) geregistreer is nie, beëindig op die datum waarop die departement enige betrokke handeling ingevolge sub-paragraaf (i) van hierdie paragraaf kan verrig, en die Staat is nie verplig om enige vergoeding vir sodanige regte te betaal nie.”

2. Artikel *agt-en-sestig* van die Hoofwet word hierby gewysig deur sub-artikel (1) deur die volgende sub-artikel te vervang: Wysiging van artikel 68 van Wet 54 van 1956.

„(1) Die Minister kan ten opsigte van enige Staatswaterwerk of enige gebied wat ingevolge artikel *agt-en-twintig* of *nege-en-vyftig* tot 'n ondergrondse waterbeheergebied, 'n Staatswaterbeheergebied of 'n opvangbeheergebied verklaar is, of enige opvanggebied of -gebiede, 'n adviserende komitee aanstel wat bestaan uit soveel lede as wat die Minister in elke geval van tyd tot tyd mag vasstel, om hom van advies te dien oor sake in verband met die bewaring, opgaring, gebruik, beheer, voorsiening of distribusie van watervoorrade en water, of enige ander saak wat hy van tyd tot tyd na bedoelde komitee verwys.”

3. Artikel *vier-en-tagtig* van die Hoofwet word hierby gewysig deur paragraaf (c) van sub-artikel (1) deur die volgende paragraaf te vervang: Wysiging van artikel 84 van Wet 54 van 1956.

„(c) Ten opsigte van 'n nominasie van 'n kandidaat of 'n verkiesing van lede, uitgesonderd die eerste nominasie of verkiesing, tree die voorsitter van die besproeiingsraad ten opsigte waarvan die nominasie of verkiesing geskied, of 'n deur hom genomineerde lid van daardie raad, as kiesbeampte op, tensy die Minister of die Sekretaris 'n beampte van die departement aangewys het om as sodanig op te tree: Met dien verstande dat die voorsitter of 'n lid nie aldus optree indien hy 'n kandidaat vir nominasie of verkiesing is nie.”

4. Artikel *ses-en-tagtig* van die Hoofwet word hierby gewysig deur die volgende paragraaf by sub-artikel (1) te voeg: Wysiging van artikel 86 van Wet 54 van 1956.

„(d) Die verkiesing van 'n voorsitter of 'n visevoorsitter ingevolge paragraaf (a) of (c) geskied op die wyse by regulasie voorgeskryf.”

5. Artikel *agt-en-tagtig* van die Hoofwet word hierby gewysig deur in sub-artikel (8) die woorde wat paragraaf (a) voorafgaan, deur die volgende woorde te vervang: Wysiging van artikel 88 van Wet 54 van 1956, soos gewysig deur artikel 14 van Wet 56 van 1961.

„Die bepalings van sub-artikels (8), (9) en (10) van artikel *drie-en-sestig* is *mutatis mutandis* van toepassing, vir sover hulle toegepas kan word, met betrekking tot—”.

6. Artikel *honderd twee-en-sestig* van die Hoofwet word hierby gewysig— Wysiging van artikel 162 van Wet 54 van 1956, soos gewysig deur artikel 18 van Wet 56 van 1961.

(a) deur in paragraaf (a) van sub-artikel (2) die woorde „dertigduisend pond” deur die woorde „sestigduisend rand” te vervang; en

(b) deur in paragraaf (c) van genoemde sub-artikel die woorde „driehonderd pond”, oral waar hulle voorkom, deur die woorde „duisend rand” te vervang.

7. Die Hoofwet word hierby gewysig—

(a) deur na artikel *honderd vier-en-sestig* die volgende opskrifte in te voeg:

Invoeging van HOOFSTUK IXbis en artikels 164bis en 164ter in Wet 54 van 1956.

"CHAPTER IXbis.

WATER SPORT CONTROL AREAS."; and

(b) by the insertion after the said superscriptions of the following sections:

"Establishment of water sport control areas.

164bis. (1) The State President may by proclamation in the *Gazette* declare any area defined in the proclamation in question to be a water sport control area if, in his opinion, such area or any portion thereof is or is from time to time or is likely to become submerged, whether naturally or artificially, by water of any kind whatever, and such water is or would be navigable or suitable for the practice of any water sport.

(2) Notwithstanding the provisions of this Act or any other law, and notwithstanding any existing right or other right in respect of water or land in any such water sport control area, the rights to and the control of the use of such water or land for the purposes of navigation or any sport which is practised in or upon water, or any activities arising therefrom or incidental thereto, shall vest in the Minister.

(3) The provisions of paragraph (a) of sub-section (1) of section *sixty-nine* shall *mutatis mutandis* apply in respect of the powers conferred upon the Minister by sub-section (2).

(4) For the purposes of sub-section (1) 'area' includes any portion of the sea-shore as defined in section *one* of the Sea-shore Act, 1935 (Act No. 21 of 1935).

Making of regulations in respect of water sport control areas by Minister.

164ter. (1) The Minister may in respect of any area which in terms of section *one hundred and sixty-four bis* has been declared a water sport control area, make regulations as to—

- (a) the control over, and the use of such area for, navigation or any sport which is practised upon or in water;
- (b) the control over and the use of craft and appliances of whatever nature, upon or in water in such area;
- (c) the control in such area of any activity arising from or incidental to the use of such area for navigation or any sport contemplated in paragraph (a);
- (d) the use of the land in such area between the surface of the water therein and the boundary thereof, for any activity contemplated in paragraph (c);
- (e) the fees payable in respect of the use of such area for any activity referred to in paragraph (a) or (c), or in respect of the use therein of craft or appliances as contemplated in paragraph (b); and
- (f) generally, any other matter in respect of which he considers it necessary or expedient to make regulations in order that the objects of section *one hundred and sixty-four bis* may be achieved.

(2) If the provisions of any regulation so made conflict with the provisions of any law, the provisions of such regulation shall apply.

(3) Regulations in terms of paragraph (e) of sub-section (1) shall only be made after consultation with the Minister of Finance."

Amendment of long title of Act 54 of 1956.

8. The long title of the principal Act is hereby amended by the addition at the end thereof of the words "and to make provision for the control of certain activities on or in water in certain areas."

Short title.

9. This Act shall be called the Water Amendment Act, 1965.

„HOOFSTUK IXbis.

WATERSPORTBEHEERGEBIEDE.”; en

- (b) deur na genoemde opskrifte die volgende artikels in te voeg:

„Instelling van watersportbeheergebiede.

164bis. (1) Die Staatspresident kan by proklamasie in die *Staatkoerant* 'n gebied in die betrokke proklamasie omskryf, tot 'n watersportbeheergebied verklaar indien, volgens sy oordeel, dié gebied of 'n gedeelte daarvan oorstrom is of van tyd tot tyd oorstrom word of waarskynlik oorstrom sal word, hetsy op natuurlike of kunsmatige wyse, deur enige water, van watter aard ook al, en dié water bevaarbaar of vir die beoefening van enige watersport geskik is of sal wees.

(2) Ondanks die bepalings van hierdie Wet of enige ander Wet, en ondanks enige bestaande reg of ander reg ten opsigte van water of grond in so 'n watersportbeheergebied, berus die regte op en die beheer oor die gebruik van sodanige water of grond vir die doeleindes van skeepvaart of enige sport wat op of in water beoefen word, of enige bedrywigheede wat daaruit voortvloei of daarmee in verband staan, by die Minister.

(3) Die bepalings van paragraaf (a) van sub-artikel (1) van artikel *nege-en-sestig* is *mutatis mutandis* van toepassing ten opsigte van die bevoegdhede wat by sub-artikel (2) aan die Minister verleen is.

(4) By die toepassing van sub-artikel (1) beteken „gebied” ook enige gedeelte van die strand soos omskryf in artikel *een* van die Strandwet, 1935 (Wet No. 21 van 1935).

Uitvaardiging van regulasies deur Minister ten opsigte van watersportbeheergebiede.

164ter. (1) Die Minister kan ten opsigte van 'n gebied wat ingevolge artikel *honderd vier-en-sestig bis* tot 'n watersportbeheergebied verklaar is, regulasies uitvaardig met betrekking tot—

- (a) die beheer oor, en die gebruik van sodanige gebied vir, skeepvaart of enige sport wat op of in water beoefen word;
- (b) die beheer oor en die gebruik van vaartuie en toestelle, van watter aard ook al, op of in water in sodanige gebied;
- (c) die beheer in sodanige gebied van enige bedrywigheid wat voortvloei uit of in verband staan met die gebruik van sodanige gebied vir skeepvaart of enige sport in paragraaf (a) beoog;
- (d) die gebruik van die grond in sodanige gebied tussen die oppervlakte van die water daarin en die grens daarvan vir 'n bedrywigheid in paragraaf (c) beoog;
- (e) die gelde wat betaalbaar is ten opsigte van die gebruik van sodanige gebied vir 'n bedrywigheid in paragraaf (a) of (c) bedoel, of ten opsigte van die gebruik daarin van vaartuie of toestelle soos in paragraaf (b) beoog; en
- (f) in die algemeen, enige ander aangeleentheid ten opsigte waarvan hy dit nodig of dienstig ag om regulasies uit te vaardig sodat die oogmerke van artikel *honderd vier-en-sestig bis* verwesenlik kan word.

(2) Indien die bepalings van 'n regulasie aldus uitgevaardig, in stryd is met die bepalings van enige wet, geld die bepalings van dié regulasie.

(3) Regulasies ingevolge paragraaf (e) van sub-artikel (1) word slegs na oorlegpleging met die Minister van Finansies uitgevaardig.”.

8. Die lang titel van die Hoofwet word hierby gewysig deur aan die end daarvan by te voeg „en om voorsiening te maak vir die beheer van sekere bedrywigheede op of in water in sekere gebiede.”. Wysiging van lang titel van Wet 54 van 1956.

9. Hierdie Wet heet die Water-wysigingswet, 1965.

Kort titel.