



STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

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ALGEMENE KENNISGEWING

KENNISGEWING 168 VAN 1978

DEPARTEMENT VAN HANDEL

WET OP DIE HANDHAWING EN DIE BEVORDERING VAN MEDEDINGING, 1978

Die volgende konsepwetsontwerp om voorsiening te maak vir die daarstelling van 'n Mededingingsraad asook 'n Amalgamasietribunaal; vir die handhawing en bevordering van mededinging in die Volkshuishouding; vir die voorkoming en beheer van beperkende praktyke; vir die verbod van regulering van die verkryging deur die houer van 'n beheerende belang in 'n besigheid of onderneming van sodanige belang in 'n ander besigheid of onderneming; om die Wet op Reëling van Monopolistiese Toestande, 1955, te herroep en vir aanverwante aangeleenthede, word hierby ter algemene inligting en vir kommentaar gepubliseer.

Kommentaar moet voor 17 Maart 1978 aan die Sekretaris van Handel, Privaatsak X84, Pretoria, 0001, gestuur word.

WETSONTWERP

Om voorsiening te maak vir die daarstelling van 'n Mededingingsraad asook 'n Amalgamasietribunaal; vir die handhawing en bevordering van mededinging in die Volkshuishouding; vir die voorkoming en beheer van beperkende praktyke; vir die verbod van regulering van die verkryging deur die houer van 'n beheerende belang in 'n besigheid of onderneming van sodanige belang in 'n ander besigheid of onderneming; om die Wet op Reëling van Monopolistiese Toestande, 1955, te herroep en vir aanverwante aangeleenthede.

Ingedien te word deur die Minister van Ekonomiese Sake

Daar word bepaal deur die Staatspresident, die Senaat en die Volksraad van die Republiek van Suid-Afrika soos volg:

Woordomsrywings

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

(i) "beheerende belang" met verwysing na enige besigheid of onderneming, enige belang van watter aard ookal wat die houer daarvan in staat stel om regstreeks of onregstreeks enige beheer uit te oefen oor die optrede of die sake van 'n besigheid of onderneming;

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GENERAL NOTICE

NOTICE 168 OF 1978

DEPARTMENT OF COMMERCE

MAINTENANCE AND PROMOTION OF COMPETITION ACT, 1978

The following Draft Bill to provide for the establishment of a Competition Board and Merger Tribunal; for the maintenance and promotion of competition in the national economy; for the prevention or control of restrictive practices; for the prohibition or regulation of the acquisition by the holder of a controlling interest in a business or undertaking of such an interest in another business or undertaking; to repeal the Regulation of Monopolistic Conditions Act, 1955, and for incidental matters, is hereby published for general information and comment.

Any comment should be forwarded to the Secretary for Commerce, Private Bag X84, Pretoria, 0001, before 17 March 1978.

BILL

To provide for the establishment of a Competition Board and Merger Tribunal; for the maintenance and promotion of competition in the national economy; for the prevention or control of restrictive practices; for the prohibition or regulation of the acquisition by the holder of a controlling interest in a business or undertaking of such an interest in another business or undertaking; to repeal the Regulation of Monopolistic Conditions Act, 1955, and for incidental matters.

To be introduced by the Minister of Economic Affairs

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) "acquisition" means the acquisition by the holder of a controlling interest in a business or undertaking involved in the production, manufacture, supply or distribution of any commodity of such an interest in another business or undertaking so involved and "acquire" has a corresponding meaning;

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(ii) "beperkende praktyk"

(a) enige ooreenkoms, reëling of verstandhouding hetsy wetlik afdwingbaar of nie tussen twee of meer persone;

(b) enige besigheidspraktyk of handelsmetode met inbegrip van enige metode om pryse vas te stel;

(c) enige handling of versuim deur enigiemand, hetsy hy onafhanklik dan wel tesame met iemand anders optree; en

(d) enige toestand wat uit die bedrywighede van enige persoon of klas of groep persone ontstaan;

wat, deurdat dit mededinging regstreeks of onregstreeks beperk, die uitwerking het of daarop bereken is om enige van die volgende gevolge te hê:

(i) Die beperking van die produksie of die distribusie van enige handelsware;

(ii) die fasiliteite beskikbaar vir die produksie of distribusie van handelsware in te kort;

(iii) pryse te verhoog of te handhaaf;

(iv) die produksie of distribusie van handelsware op die mees doeltreffende en ekonomiese manier te verhoed;

(v) die ontwikkeling of invoering van tegniese verbeterings of die uitbreiding van bestaande of skepping van nuwe markte te verhoed of te vertraag;

(vi) die toetreding van nuwe produsente of distribueerders tot enige tak van die handel of nywerheid te verhoed of te beperk; of

(vii) die aanpassing van enige tak van die handel of nywerheid by veranderde toestande te verhoed of te vertraag;

(iii) "distribusie" ook die verskaffing van 'n diens, ongeag daarvan of die verskaffing van sodanige diens gepaard gaan met die lewering van handelsware, opberging, vervoer, versekering, bankiersdienste, aankoop en verkoop en distribueerder het 'n ooreenstemmende betekenis;

(iv) "handelsware" fabrikaat of merk van enige handelsware en enige gebou of struktuur van enige diens, hetsy persoonlik of andersins met inbegrip van enige opbergings-, vervoer-, versekerings- of bankdiens;

(v) "Koöperasie" 'n koöperatiewe landbouvereniging of 'n koöperatiewe landboumaatskappy of 'n spesiale koöperatiewe boeremaatskappy wat ingevolge die Wet op Koöperatiewe Verenigings, 1939 (Wet 29 van 1939), geregistreer is of geag word te wees;

(vi) "Minister" die Minister van Ekonomiese Sake;

(vii) "President" die president van die Tribunaal;

(viii) "raad" die Mededingingsraad ingevolge artikel 3 (1) ingestel en met verwysing na 'n ondersoek onderneem na aanleiding van die bepalings van artikel 9, die persoon deur die Raad gemagtig kragtens die gemelde artikel om 'n besondere ondersoek te onderneem;

(ix) "Tribunaal" die amalgamasietribunaal ingestel kragtens artikel 14 (1);

(x) "verkryging" die verkryging deur die houër van 'n behorende belang in 'n besigheid of onderneming betrokke by die produksie, vervaardiging, verskaffing of distribusie van enige handelsware, van sodanige belang in 'n ander besigheid of onderneming aldus betrokke, en het "verkry" 'n ooreenstemmende betekenis.

Toepassing van die Wet

2. (1) Niks in hierdie Wet vervat word so vertolk dat dit—

(a) onderhewig aan die bepalings van artikels (1) en (2) van Bylae I, enige reg voortspruitende uit enige van die volgende Wette, beperk nie, naamlik:

(i) Die Wet op Patente, 1952 (Wet 37 van 1953);

(ii) die Wet op Handelsmerke, 1963 (Wet 62 van 1963);

(ii) "board" means the competition board established under section 3 (1) and, in relation to an investigation undertaken by virtue of the provisions of section 9, the person authorised by the board under the said section to undertake a particular investigation;

(iii) "commodity" includes any make or brand of commodity and any building structure and any service, whether personal or otherwise, including any storage, transportation, insurance or banking service;

(iv) "controlling interest" in relation to any business or undertaking, means any interest of whatever nature enabling the holder thereof to exercise directly or indirectly any control in respect of the conduct of the affairs of the business or undertaking;

(v) "co-operative society" means a co-operative agricultural society or a co-operative agricultural company or a farmers' co-operative company registered or deemed to be registered under the Co-operative Societies Act, 1939 (Act 29 of 1939);

(vi) "distribution" includes the rendering of a service, irrespective of whether or not the rendering of such service is attended by the supply of a commodity, and storage, transportation, insurance, banking, purchase and sale, and distributor has a corresponding meaning;

(vii) "Minister" means the Minister of Economic Affairs;

(viii) "President" means the president of the tribunal;

(ix) "restrictive practice" means—

(a) any agreement, arrangement or understanding, whether legally enforceable or not, between two or more persons; or

(b) any business practice or method of trading, including any method of fixing prices; or

(c) any act or omission on the part of any person, whether acting independently or in concert with any other person; or

(d) any situation arising out of the activities of any person or class or group of persons;

which by directly or indirectly restricting competition has or is calculated to have any of the following effects:

(i) Restricting the production or distribution of any commodity;

(ii) limiting the facilities available for the production or distribution of any commodity;

(iii) enhancing or maintaining prices;

(iv) preventing the production or distribution of any commodity by the most efficient and economical means;

(v) preventing or retarding the development or introduction of technical improvements or the expansion of existing markets or the opening up of new markets;

(vi) preventing or restricting the entry of new producers or distributors into any branch of trade or industry; or

(vii) preventing or retarding the adjustment of any branch of trade or industry to changing circumstances;

(x) "this Act" includes any regulation or notice published or issued thereunder or in terms of any regulation, as the case may be.

(xi) "tribunal" means the merger tribunal established under section 14 (1).

Application of the Act

2. (1) Nothing in this Act contained shall be construed in such a manner as to—

(a) subject to the provisions of sections (1) and (2) of Schedule I limit any right derived under any of the following Acts, namely:

(i) The Patents Act, 1952 (Act 37 of 1952);

(ii) the Trade Marks Act, 1963 (Act 62 of 1963);

- (iii) die Wet op Outeursreg, 1965 (Wet 63 van 1965);
- (iv) die Wet op Modelle, 1967 (Wet 57 van 1967);
- (v) die Wet op Plantelersregte, 1964 (Wet 22 van 1964);

(b) enige organisasie van werkliede belet om deur die aangaan van ooreenkomste of reëlins met werkgewers of verenigings van werkgewers met betrekking tot enige aangeleentheid wat die onderwerp van 'n ooreenkoms onder die Nywerheid-versoeningswet, 1937 (Wet 36 van 1937), kan uitmaak, die belange van hul lede te beskerm nie; of

(c) belet dat—

(i) 'n koöperasie of ander liggaam van produsente van landbouprodukte die produksie of distribusie van landbouprodukte wat nie 'n vervaardigingsproses ondergaan het nie reël nie; of

(ii) 'n beheerende raad ingestel kragtens die Bemerkingswet, 1937 (Wet 26 van 1937), of 'n raad ingestel kragtens 'n Wet in die Bylae van daardie Wet genoem, die produksie of distribusie van landbouprodukte wat nie 'n vervaardigingsproses ondergaan het nie ten opsigte waarvan hy ingestel is, ooreenkomstig die uit hoofde van die betrokke Wet aan hom verleende bevoegdhede reël nie.

(2) Hierdie Wet bind die Staat.

Instelling van 'n Mededingingsraad

3. (1) Daar is 'n Mededingingsraad met sodanige magte, funksies en verpligtinge soos deur hierdie Wet voorgeskrif.

(2) Onderhewig aan die bepalinge van subartikel (3) sal die raad bestaan uit 'n voltydse voorsitter, die Voorsitter van die Raad van Handel en Nywerheid, soos omskryf in artikel 2 van die Wet op die Raad van Handel en Nywerheid, 1944 (Wet 19 van 1944), as 'n *ex officio*-lid, en nie minder as een ander lid en nie meer as vier ander lede nie, almal waarvan, met die uitsondering van die *ex officio*-lid deur die Staatspresident of op 'n voltydse of op 'n deeltydse basis aangestel word.

(3) Niemand sal as lid van die Raad aangestel word nie, tensy hy na die mening van die Staatspresident bevoeg is vir aanstelling uit hoofde van sy kennis, of ervaring in ekonomie, nywerheidswese, handel, die regte of publieke administrasie.

(4) 'n Lid van die raad sal aangestel word vir 'n tydperk wat nie vyf jaar te bowe gaan nie, welke periode deur die Staatspresident ten tyde van sy aanstelling vasgestel word, en kan, by verstryking van sy ampstermyn, weer as lid van die raad aangestel word.

(5) Die Minister kan 'n waarnemende voorsitter van die raad aanstel indien die voorsittersamp vakant is, of indien die voorsitter afwesig is of nie in staat is om sy pligte na te kom nie.

Funksies van die raad

4. (1) Die raad sal, onderhewig aan die opdragte van die Minister, ondersoek doen en die regering adviseer ten opsigte van—

(a) alle aspekte van ekonomiese mededingingsbeleid, insluitende die regering se hoof ekonomiese-beleidsdoelstellings, asook die entrepreneursbedrywighede van staats- en semi-staatsinstellings en ondernemings;

(b) die koördinasie van amptelike ekonomiese doelstellings op 'n wyse in ooreenstemming met amptelike mededingingsbeleid;

(c) die uitvoering en administrasie van mededingingsbeleid, asook nuwe ontwikkelings en tendense ten opsigte van hierdie aangeleenthede.

- (iii) the Copyright Act, 1965 (Act 63 of 1965);
- (iv) the Designs Act, 1967 (Act 57 of 1967); or
- (v) Plant Breeders' Rights Act, 1964 (Act 22 of 1964);

(b) prevent any organisation of employees from protecting the interests of its members by entering into any agreement or arrangement with employers or any association of employers in regard to any matter which may form the subject of any agreement under the Industrial Conciliation Act, 1937 (Act 36 of 1937); or

(c) prevent—

(i) any co-operative society or any other body of producers of agricultural products from regulating the production or distribution of any agricultural commodity which has not undergone a process of manufacture; or

(ii) any regulatory board established under the Marketing Act, 1937 (Act 26 of 1937), or any board established under an Act specified in the Schedule to that Act, from regulating in accordance with the powers vested in it by virtue of the relevant Act the production or distribution of any agricultural commodity which has not undergone a process of manufacture in respect of which it has been established.

(2) This Act shall bind the State.

Establishment of competition board

3. (1) There shall be a competition board with such powers, functions and duties as are prescribed by this Act.

(2) Subject to the provisions of subsection (3), the board shall consist of a full-time chairman, the Chairman of the Board of Trade and Industries, referred to in section 2 of the Board of Trade and Industries Act, 1944 (Act 19 of 1944), as an *ex officio* member, and not fewer than one other member and not more than four other members, all of whom except the *ex officio* member shall be appointed by the State President on either a full-time or a part-time basis.

(3) No person shall be appointed as a member of the board unless in the opinion of the State President he is competent for appointment by virtue of his knowledge of, or experience in, economics, industry, commerce, law or public administration.

(4) A member of the board shall be appointed for a period not exceeding five years, which shall be fixed by the State President at the time of his appointment and shall be eligible for reappointment upon the expiration of the period of his office.

(5) The Minister may appoint an acting chairman of the board when the office of chairman is vacant or the chairman is absent or unable to perform his functions.

Functions of the board

4. (1) The board shall, subject to the directions of the Minister, enquire into and advise the Government in regard to—

(a) all aspects of economic competition policy, including the Government's main economic policy objectives and the entrepreneurial activities of state and semi-state bodies and enterprises;

(b) the co-ordination of official economic objectives in a manner consistent with official competition policy;

(c) the implementation and administration of competition policy and new developments and trends in regard to these matters.

(2) Die raad sal deurgaans neigings tot verhoogde ekonomiese konsentrasie wat plaasvind deur middel van samesmeltings, oornames, of ander vorme van verkryging bestudeer en dophou met die oog op die ondersoek van verkrygings wat moontlik skadelike uitwerking op die openbare belang mag hê.

(3) Die raad sal soveel beamptes en werknemers aan die Tribunaal toewys as wat van tyd tot tyd nodig mag wees ten einde die Tribunaal in staat te stel om sy werksaamhede doeltreffend uit te voer, en om aan die Tribunaal voorleggings te maak soos wat dit ookal mag nodig ag.

(4) Die raad moet in elke kalenderjaar 'n verslag oor sy funksies en werksaamhede aan die Minister voorlê.

Aanstelling van tydelike lede van die raad

5. Die Minister kan met inagneming van die bepalings van artikel 3 (3) sodanige persone op sodanige voorwaardes as wat hy mag goedvind as tydelike addisionele lede van die raad aanstel.

Daarstelling van komitees

6. (1) Die raad kan, onderhewig aan die toestemming van die Minister, komitees uit sy lede en uit ander bevoegde persone aanstel, en kan onderhewig aan sodanige voorwaardes wat hy noodsaaklik en raadsaam ag, sodanige van sy bevoegdheid, funksies en verpligtinge aan enige sodanige komitee deleger.

(2) Enige sodanige komitee sal bestaan uit nie minder nie as twee lede van die raad, waarvan een deur die raad as voorsitter van die komitee aangewys sal word, en soveel ander persone as wat die raad met die toestemming van die Minister mag bepaal.

(3) Geen lid van sodanige komitee wat nie 'n lid van die raad is nie, sal enige toegang hê tot die rekords van die raad, sonder die toestemming van die voorsitter van die raad nie.

Voorwaardes van aanstelling en besoldiging van lede van raad en komitees

7. (1) Die lede van die raad vermeld in artikel 3, word aangestel teen die besoldiging en op die voorwaardes wat bepaal word deur die Staatspresident.

(2) Die besoldiging en toelaes betaalbaar aan tydelike lede van die raad, ingevolge artikel 5 aangestel, of lede van enige komitee aangestel kragtens artikel 6, wat nie voltydse beamptes of werknemers in die Staatsdiens is nie, sal deur die Minister, in oorleg met die Minister van Finansies, bepaal word.

(3) Geen voltydse lid van die raad, vermeld in artikel 3, mag, sonder die toestemming van die Staatspresident, enige ander betrekking vir wins beklee of, ten opsigte van enige dienste, enige fooie, emolumente of ander besoldiging ontvang nie, behalwe die besoldiging en toelaes wat aan hom betaalbaar mag wees uit hoofde van sy hoedanigheid as sodanige lid.

Besluite van die raad geskied by meerderheidstemming

8. (1) Alle besluite van die raad geskied by meerderheidstemming van sy lede, maar die verrigtings van die raad is nie ongeldig bloot op grond daarvan dat daar 'n vakature op die raad bestaan het, of dat 'n lid of tydelike lid nie gedurende die verrigtings of 'n deel daarvan aanwesig was nie.

(2) 'n Tydelike lid is nie bevoeg om oor aangeleenthede wat deur die raad behandel word, te stem nie.

(2) The board shall undertake a continuous study and surveillance of trends towards increased economic concentrations through mergers, take-overs and other forms of acquisition with a view to investigation of acquisitions with possible harmful effects on the public interest.

(3) The board shall designate to the tribunal so many officials and employees as may from time to time be necessary to enable the tribunal effectually to carry out its duties and to present to the tribunal such representations as it may deem necessary.

(4) The board shall in every calendar year submit to the Minister a report on its functions and activities.

Appointment of temporary members of board

5. The Minister may, with due regard to the provisions of section 3 (3), appoint such persons, on such conditions as he may deem fit, as temporary additional members of the board.

Establishment of committees

6. (1) The board may, subject to the approval of the Minister, appoint committees from its members and other competent persons, and delegate to any such committee, subject to such conditions as it may deem necessary or expedient, such of its powers, functions and duties as it may deem fit.

(2) Any such committee shall consist of not fewer than two members of the board, one of whom shall be designated by the board to be chairman of the committee, and so many other persons as the board, with the approval of the Minister, may determine.

(3) No member of any such committee who is not a member of the board shall have access to the records of the board without the approval of the chairman of the board.

Conditions of appointment and remuneration of members of board and committees

7. (1) The members of the board referred to in section 3 shall be appointed at such remuneration and on such conditions as may be determined by the State President.

(2) The remuneration and allowances payable to temporary members of the board appointed under section 5 or members of any committee appointed under section 6 who are not full time officials or employees in the public service shall be fixed by the Minister in consultation with the Minister of Finance.

(3) No full-time member of the board referred to in section 3 shall without the consent of the State President accept or hold any other office of profit or receive in respect of any service any fees, emoluments or other remuneration apart from the remuneration and allowances which may be payable to him in his capacity as such a member.

Decisions of board by majority vote

8. (1) All decisions of the board shall be by majority vote of its members, but no proceedings of the board shall be invalid by reason only of the fact that a vacancy existed in its membership or that any member or temporary member was not present during such proceedings or any part thereof.

(2) No temporary member of the board shall have the right to vote on any matter dealt with by the board.

Ondersoeke namens die raad

9. Die raad kan enige lid of enige beampte in sy diens magtig om enige ondersoek te onderneem wat die raad ingevolge hierdie Wet gemagtig is om te onderneem, en vir die doeleindes van so 'n ondersoek, oefen 'n aldus gemagtigde lid of persoon al die bevoegdhede uit en verig hy al die pligte wat aan die raad verleen of opgelê word, ten opsigte van so 'n ondersoek wat die raad onderneem.

Bevoegdheid om getuiens te dagvaar en getuienis te neem

10. (1) Die raad kan vir die doeleindes van 'n ondersoek wat hy onderneem—

(a) enigiemand wat vermoed word in staat te wees om inligting aangaande die onderwerp van daardie ondersoek te verstrek, of 'n boek, stuk of dokument wat op daardie onderwerp betrekking het, in sy besit of onder sy beheer te hê, dagvaar om 'n in die dagvaarding aangegewe tyd en plek voor die raad te verskyn om ondervra te word of om daardie boek, stuk of dokument oor te lê; en

(b) so iemand ondervra onder eed of bevestiging opgelê deur die persoon wat as voorsitter van die raad optree, en so 'n boek, stuk of dokument insien of vir insae hou.

(2) 'n Dagvaarding vir die verskyning van enigiemand voor die raad of vir die oorlegging van 'n boek, stuk of dokument aan die raad moet in die vorm, soos by regulasie voorgeskryf, wees en moet gedien word op 'n wyse sodanig voorgeskryf.

(3) Iemand wat behoorlik ooreenkomstig hierdie artikel gedagvaar is, mag nie sonder genoegsame rede weier of in gebreke bly—

(a) om op die in die dagvaarding aangegewe tyd en plek te verskyn en aldaar aanwesig te bly totdat die persoon wat tydens die ondervraging voorsit, hom van verdere bywoning vrystel; of

(b) om as getuie beëdig te word, of te bevestig of om alle wettig aan hom hom gestelde vrae betreffende die onderwerp van die ondersoek deur die raad volledig en op bevredigende wyse na sy beste wete te beantwoord; of

(c) om 'n boek, stuk of dokument in sy besit of onder sy beheer oor te lê, wat hy gelas is om oor te lê.

(4) Geen persoon wat ingevolge hierdie artikel gedagvaar word, mag, nadat hy behoorlik beëdig of bevestig is, getuienis aflê, wat ten opsigte van enige saak, wat betrekking het op die onderwerp van 'n ondersoek van die raad, in enige wesentlike opsig verkeerd of vals is nie.

Skriftelike opgawes deur die raad vereis, en inspeksie

11. (1) Die raad kan vir die doeleindes van hierdie Wet, by skriftelike kennisgewing, enige persoon wat in besigheid betrokke is vereis, om, binne die tydperk in die kennisgewing vermeld, of van tyd tot tyd op die tye of binne die tydperke aldus vermeld, 'n skriftelike opgawe voor te lê, waarin, deur middel van die toepaslike besonderhede, al die inligting aldus versoek aangetoon word met betrekking tot—

(a) die besigheid of onderneming of bedrywighede van die betrokke persoon; of

(b) enige ooreenkoms wat te enige tyd aangegaan is deur of ten behoeve van, of enige besluit wat te enige tyd ten opsigte van enige besigheid of onderneming geneem is, waarin hy betrokke is of was; of

(c) enige reëling of verstandhouding waarvan hy of enige besigheid of onderneming waarin hy betrokke is of was, 'n party mag wees, of te enige tyd mag gewees het.

Investigations on behalf of the board

9. The board may authorise any member thereof or any official in its employ to undertake any investigation which the board is under this Act empowered to undertake and any member or official so authorised shall for purposes of such investigation, exercise all the powers conferred, and perform all duties imposed, upon the board in respect of any such investigation undertaken by it.

Power of board to summon witnesses and take evidence

10. (1) The board may, for the purpose of any investigation undertaken by it—

(a) summon any person who is believed to be able to furnish any information on the subject of the investigation, or to have in his possession or under his control any book, record or document which has a bearing upon that subject, to appear before it at a time and place specified in the summons, to be interrogated or to produce such book, record or document; and

(b) interrogate any such person under oath or affirmation administered by the person presiding at the interrogation, and examine or retain for examination any such book, record or document.

(2) The summons for attendance before the board of any person or for production to it of any book, record or document shall be in a form prescribed by regulation, and shall be served in a manner so prescribed.

(3) Any person having been duly summoned in terms of this section shall not, without sufficient cause, fail or refuse—

(a) to attend at the time and place specified in the summons or to remain in attendance until excused from further attendance by the person presiding at the interrogation; or

(b) to be sworn or to affirm as a witness or to answer fully and satisfactorily to the best of his knowledge and belief all questions lawfully put to him concerning the subject of the investigation by the board; or

(c) to produce any book, record or document in his possession or under his control which he was required to produce.

(4) No person having been summoned in terms of this section and having been sworn or having duly made an affirmation, shall give evidence on any matter relevant to the subject of the investigation by the board, which in any material respect is incorrect or false.

Written returns required by board and inspection

11. (1) The board may, for purposes of this Act, by notice in writing, require any person engaged in business to submit to it, within the time specified in the notice, or from time to time at such times or within such periods so specified, a written return showing in the appropriate detail all the information so requested in relation to—

(a) the business or undertaking or activities of the person concerned; or

(b) any agreement at any time entered into by or on behalf of, or any decision at any time taken in connection with any business or undertaking in which he is or was engaged; or

(c) any arrangement or understanding to which he or any business or undertaking in which he is or was engaged, may be, or may at any time have been, a party.

(2) Niemand mag in 'n kennisgewing ingevolge subartikel (1) aangesê word om 'n in daardie kennisgewing vermelde opgawe, binne 'n tydperk van minder as 10 dae na ontvangs deur die betrokke persoon van sodanige kennisgewing, aan die raad voor te lê nie.

(3) Ten einde vas te stel of enige bepaling van hierdie Wet nagekom is of word, deur enige persoon op wie dit van toepassing is, of vir doeleindes van die verkryging van enige inligting deur die raad vereis, kan enige persoon ingevolge artikel 9 daartoe gemagtig, te alle redelike tye, sonder vooraf kennisgewing, enige perseel betree om sodanige ondersoek te maak of navraag daarin of daarop te doen, as wat hy goedvind.

(4) Enige persoon in verband met wie se besigheid of onderneming enige perseel beset of gebruik word vir doeleindes van produksie, vervaardiging, verskaffing of distribusie van enige handelware en elke persoon in sy diens, sal te alle redelike tye, enige persoon ingevolge artikel 9 daartoe gemagtig, sodanig behulpsaam wees as wat deur hom vereis word vir toegang tot daardie perseel en vir die uitoefening van sy bevoegdhede ingevolge subartikel (3) ten opsigte daarvan.

(5) Geen persoon mag—

(a) na aanleiding van enige kennisgewing ingevolge subartikel (1), versuim of weier om 'n opgawe voor te lê nie, of opsetlik 'n opgawe indien wat in enige wesentlike opsig vals of verkeerd is nie;

(b) enige ingevolge artikel 9 gemagtigde persoon by die uitoefening van sy bevoegdhede kragtens subartikel (3) hinder of dwarsboom nie; of

(c) valslik voorgee dat hy 'n ingevolge artikel 9 gemagtigde persoon is nie.

(6) Enige ingevolge artikel 9 gemagtigde persoon wat enige bevoegdheid uitoefen ingevolge subartikel (3) moet op versoek van enige persoon wat deur sodanige uitoefening geraak word, sy magtiging aan daardie persoon toon.

(7) 'n Dokument, in die vorm deur die raad bepaal, waarvolgens gesertifiseer word dat 'n persoon kragtens artikel 9 gemagtig is, en wat voorgee geteken te wees deur iemand deur die raad aangewys, sal prima facie bewys wees van sodanige magtiging.

Verbod op ongemagtigde bekendmaking van inligting

12. Niemand mag ten opsigte van 'n besigheid of onderneming inligting wat hy by die uitvoering van sy pligte ingevolge hierdie Wet te wete gekom het, bekend maak nie, behalwe—

(a) vir die uitvoering van sy pligte ingevolge hierdie Wet; of

(b) wanneer dit van hom vereis word deur enige gereghof in enige vervolging ingevolge die Wet.

Personeel van die raad

13. Die Minister kan, onderhewig aan die Wette wat die Staatsdiens beheer, soveel beamptes en werknemers aanstel as wat van tyd tot tyd nodig mag wees ten einde te verseker dat die raad sy werksaamhede op 'n doeltreffende wyse uitvoer.

Instelling van 'n tribunaal

14. (1) Daar sal van tyd tot tyd 'n amalgamasietribunaal wees, bestaande uit 'n president en nie meer as twee ander lede nie.

(2) Die Regter-president van 'n Provinsiale Afdeling van die Hooggereghof van Suid-Afrika sal van tyd tot tyd, op versoek van die Minister, 'n regter of waarnemende regter van daardie afdeling aanwys as president van die tribunaal, ten einde, met behulp van die ander lede, die bevoegdhede uit te oefen en die funksies te vervul, wat deur hierdie Wet aan die tribunaal opgedra word.

(2) No person shall in any notice under subsection (1) be required to submit to the board any return specified in that notice within a period of less than 10 days of the receipt by the person concerned of such notice.

(3) In order to establish whether any provision of this Act has been or is being observed by any person to whom it applies or for the purpose of obtaining any information required by the board, any person authorised under section 9 may at all reasonable times, without prior notice, enter any premises to make such examination or enquiry therein or thereon as he deems necessary.

(4) Any person in connection with whose business or undertaking any premises are occupied or used for the purpose of the production, manufacture, supply or distribution of any commodity and every person employed by him, shall at all reasonable times furnish to any person authorised under section 9 such facilities as are required by him for entry into those premises and for the exercising of his powers under subsection (3) in respect thereof.

(5) No person shall—

(a) in response to any notice under subsection (1), fail or refuse to submit a return or wilfully furnish a return which is false or incorrect in any material respect; or

(b) hinder or obstruct any person authorised under section 9 in the exercise of his powers under subsection (3); or

(c) falsely hold himself out to be a person authorised under section 9.

(6) Any person authorised under section 9 who exercises any power in terms of subsection (3), shall, at the request of any person affected by such exercising, produce such authority to the person affected.

(7) A document in the form determined by the board, certifying that any person has been authorised under section 9 and purporting to have been signed by a person designated by the board, shall be prima facie proof of such authorisation.

Prohibition on unauthorised disclosure of information

12. No person shall in respect of any business or undertaking disclose any information acquired by him in the performance of his duties in terms of this Act, save—

(a) for the performance of his duties in terms of the Act; or

(b) when it is required of him by any court or any law in any prosecution under the Act.

Staff of the board

13. The Minister may, subject to the laws governing the public service, appoint so many officials and employees as may from time to time be necessary to enable the board effectually to carry out its duties.

Establishment of tribunal

14. (1) There shall from time to time be a merger tribunal consisting of a president and not more than two other members.

(2) The Judge President of a Provincial Division of the Supreme Court of South Africa shall from time to time at the request of the Minister designate a judge or acting judge of that division as president of the tribunal to exercise, with the assistance of its other members, the powers and perform the functions assigned to the tribunal by this act.

(3) Die Minister sal van tyd tot tyd sodanige persone wat hy bevoeg ag, as lede van die tribunaal aanstel, ten einde die president by te staan in verband met enige ondersoek wat die tribunaal mag onderneem.

(4) 'n Lid van die tribunaal vermeld in subartikel (3), wie nie voltyds in diens van die Staat is nie, sal aangestel word teen sodanige besoldiging en op sodanige voorwaardes as wat die Minister in oorleg met die Minister van Finansies mag bepaal.

(5) Die Minister kan reëls maak vir die regulering van die verrigtinge van die tribunaal: Met dien verstande dat die sittings van die tribunaal *in camera* gehou sal word, tensy die president anders bepaal.

Funksies van die tribunaal

15. (1) Die tribunaal moet in opdrag van die Minister ondersoek doen ten einde te bepaal—

(a) of 'n verkryging plaasgevind het, tans plaasvind of in die vooruitsig is;

(b) wat die aard en omvang is van die beheerende belang wat gehou en verkry is, tans verkry word, of verkry staan te word;

(c) of daar omstandighede bestaan al dan nie wat die voltooië verkryging, tans bestaande of toekomstige verkryging, in die openbare belang, regverdig:

Met dien verstande dat geen opdrag deur die Minister kragtens hierdie subartikel gegee sal word nie, tensy hy rede het om te vermoed dat 'n verkryging plaasgevind het, plaasvind of in die vooruitsig is om plaas te vind en dat geen beperking op mededinging betrokke is nie.

(2) Die tribunaal moet binne drie maande nadat hy opdrag ontvang het om 'n ondersoek te onderneem, sy bevindinge en aanbevelings ten opsigte van die uitslag van enige ondersoek wat ingevolge subartikel (1) onderneem is, aan die Minister voorlê en indien hy nie tevrede is dat daar omstandighede bestaan wat die verkryging wat reeds plaasgevind het, wat tans plaasvind of in die vooruitsig is, in die openbare belang regverdig nie, by die Minister aanbeveel dat sodanige stappe onder artikel 19 (1) geneem word, as wat die tribunaal onder die omstandighede nodig mag ag.

Ondersoek na beperkende praktyke of verkryging deur die raad

16. (1) Die raad kan op eie inisiatief, en moet in opdrag van die Minister sodanige ondersoeke doen as wat hy nodig mag ag—

(a) na enige beperkende praktyk wat die raad of die Minister na gelang van die geval, rede het om te glo, bestaan of mag ontstaan;

(b) ten einde te bepaal—

(i) of 'n verkryging plaasgevind het, tans plaasvind of in die vooruitsig is om plaas te vind;

(ii) wat die aard en omvang is van die beheerende belang wat gehou en verkry is, verkry word, of wat verkry staan te word;

(c) na enige spesifieke soort besigheidsooreenkoms, reëling, verstandhouding, besigheidspraktyk, of handelsmetode in die algemeen of met verwysing na 'n besondere handelsware of enige klas of enige soort handelsware of enige besondere besigheid of onderneming of enige klas of soort besigheid of onderneming of in enige besondere gebied, wat na die mening van die raad of die Minister, na gelang van die geval, in die algemeen aanvaar is vir doeleindes van, of in verband met, die skepping van, of die handhawing van beperkende praktyke.

(3) The Minister shall from time to time appoint such persons as he may deem fit as members of the tribunal to assist the president in connection with any investigation which the tribunal may undertake.

(4) A member of the tribunal referred to in subsection (3) not in the full-time employ of the State shall be appointed at such remuneration and on such conditions as the Minister in consultation with the Minister of Finance may determine.

(5) The Minister may make rules for regulating the conduct of the proceedings of the tribunal: Provided that the sittings of the tribunal shall be held *in camera*, unless the president otherwise directs.

Functions of tribunal

15. (1) The tribunal shall, on instruction of the Minister, make an investigation in order to determine—

(a) whether or not an acquisition has been, is being or is proposed to be made;

(b) the nature and extent of the controlling interest held and acquired, being acquired or to be acquired;

(c) the existence or absence of circumstances which justify the acquisition which has been, is being or is proposed to be made, in the public interest:

Provided that no instruction shall be given by the Minister under this subsection except where he has reason to suspect that an acquisition has been, is being or is proposed to be made and that no restriction of competition is involved.

(2) The tribunal shall within three months from the date upon which it was instructed to undertake an investigation report its findings and recommendations to the Minister as to the result of any investigation undertaken by it in terms of subsection (1) and, if it is not satisfied that there are circumstances which justify the acquisition which has been, is being or is proposed to be made, in the public interest, recommend to the Minister that such action be taken under section 19 (1) as it may consider necessary in the circumstances.

Investigation of restrictive practice or acquisition by board

16. (1) The board may on its own initiative and shall by direction of the Minister, make such investigations as it may consider necessary—

(a) into any restrictive practice which the board or the Minister, as the case may be, has reason to believe exists or may come into existence;

(b) in order to determine—

(i) whether or not an acquisition has been, is being or is proposed to be made;

(ii) the nature and extent of the controlling interest held and acquired, being acquired or to be acquired;

(c) into any particular type of business agreement, arrangement, understanding, business practice or method of trading in general or in relation to a particular commodity or any class or kind of commodity or any particular business or undertaking or any class or type of business or undertaking or any particular area, which in the opinion of the board or the Minister, as the case may be, is commonly adopted for the purpose of or in connection with the creation or maintenance of restrictive practices.

(2) Die raad sal nie 'n ondersoek kragtens subartikel (1) (a) of (b) op eie inisiatief onderneem as sodanige ondersoek enige aangeleentheid, firma of organisasie insluit waarin die Staat, volgens die mening van die Minister, 'n belang het nie.

(3) Die raad moet by kennisgewing in die *Staatskoerant* besonderhede in verband met enige ondersoek wat hy van voorneme is om ingevolge subartikel (1) te onderneem, of die opdrag wat ingevolge artikel 15 (1) aan die tribunaal gegee is, bekend maak, asook dat enige persoon binne 'n tydperk in die kennisgewing bepaal, wat, in die geval van 'n ondersoek ingevolge artikel 15 (1) nie minder as 30 dae sal wees nie, skriftelike vertoë tot die raad of die tribunaal, na gelang van die geval, kan rig.

(4) Wanneer 'n kennisgewing vermeld in subartikel (3) gepubliseer is, kan die Minister, op aanbeveling van die raad, en in afwagting van die uitslag van die betrokke ondersoek, 'n kennisgewing in die *Staatskoerant* publiseer in verband met die onderwerp van die ondersoek, wat na die mening van die Minister nodig is om enige verkrygings wat besig is om plaas te vind, of in die vooruitsig is om plaas te vind, te stop of te voorkom, vir 'n periode in sodanige kennisgewing bepaal, maar wat ses maande nie te bowe gaan nie.

(5) Enige kennisgewing ingevolge subartikel (4)—

(a) sal op 'n datum daarin bepaal in werking tree;

(b) kan op aanbeveling van die raad, ten enige tyd deur die Minister gewysig of ingetrek word;

(c) kan op aanbeveling van die raad vir 'n verdere periode van ses maande hernu word;

(d) is nie onderhewig aan hersiening deur, of appél na enige geregshof nie.

Verslag deur die raad ten opsigte van 'n ondersoek

17. (1) Die raad moet aan die Minister verslag doen oor die uitslag van enige ondersoek wat deur hom onderneem is ingevolge artikel 16 (1) asook oor enige ooreenkoms wat bereik is ingevolge artikel 18 (1) (a) of (b) (i).

(2) Indien die raad as gevolg van enige ondersoek ingevolge artikel 16 (1) (a) of (b)—

(a) van mening is dat 'n beperkende praktyk te enige tyd na die datum van die kennisgewing, wat ingevolge artikel 16 (5), gepubliseer is bestaan het, of mag ontstaan, of dat 'n verkryging plaasgevind het, besig is om plaas te vind of in die vooruitsig is om plaas te vind; en

(b) nie tevrede is dat daar omstandighede aanwesig is wat sodanige praktyk of verkryging wat plaasgevind het, besig is om plaas te vind of in die vooruitsig is om plaas te vind in die openbare belang regverdig nie;

moet hy by die Minister aanbeveel dat sodanige stappe ingevolge artikel 19 (1) geneem word, as wat hy onder die omstandighede nodig mag ag.

(3) Die raad mag nie in enige verslag deur hom gedoen ooreenkomstig 'n ondersoek wat hy ingevolge artikel 16 (1) onderneem het, die naam of besonderhede van die besigheidsonderneming van 'n persoon wie se besigheid ondersoek is, vermeld nie, behalwe waar, na sy mening, so 'n persoon 'n party was of is tot 'n beperkende praktyk of tot 'n verkryging.

(4) Elke verslag wat die raad ooreenkomstig 'n ondersoek ingevolge artikel 16 (1) lewer, moet so spoedig moontlik in die Senaat of die Volksraad ter tafel gelê word, behalwe waar dit na die mening van die Minister nie sonder nadeel vir die openbare belang, bekendgemaak kan word nie.

(2) The board shall not undertake an investigation under subsection (1) (a) or (b) on its own initiative if such investigation involves any matter, firm or organisation in which, in the opinion of the Minister, the State has an interest.

(3) The board shall make known by notice in the *Gazette* particulars in regard to any investigation it proposes to undertake in terms of subsection (1) or the tribunal has been instructed under section 15 (1) to make and that any person may within a period specified in the notice, which, in the case of an investigation under section 15 (1) shall not be less than 30 days, make written representations to the board or the tribunal as the case may be.

(4) Whenever a notice referred to in subsection (3) has been published, the Minister may upon the recommendation of the board and pending the outcome of the relevant investigation, publish a notice in the *Gazette* in regard to the subject of the investigation as may in the opinion of the Minister be necessary to halt or prevent any acquisition, which is being or is proposed to be made, for a period specified in such notice not exceeding six months.

(5) Any notice under subsection (4)—

(a) shall come into operation on a date specified therein;

(b) may, upon the recommendation of the board, at any time be modified or withdrawn by the Minister;

(c) may, upon the recommendation of the board, be renewed for a further period of six months;

(d) shall not be subject to review by or appeal to any court of law.

Report by board on any investigation

17. (1) The board shall report to the Minister as to the result of any investigation undertaken by it under section 16 (1) and as to any arrangement which may have been arrived at under section 18 (1) (a) or (b) (i).

(2) When the board is, as a result of any investigation under section 16 (1) (a) or (b)—

(a) of the opinion that a restrictive practice did exist at any time after the date of the notice under section 16 (5) or may come into existence, or that an acquisition has been, is being or is proposed to be made; and

(b) not satisfied that there are circumstances which justify such practice, or acquisition which has been, is being or is proposed to be made, as the case may be, in the public interest;

it shall recommend to the Minister that such action be taken under section 19 (1) as it may consider necessary in the circumstances.

(3) The board shall not in any report made by it in pursuance of any investigation under section 16 (1) mention the name or particulars of the business of any person whose business was investigated, except where in its opinion such person was or is a party to a restrictive practice or to an acquisition.

(4) Every report made by the board in pursuance of any investigation under section 16 (1) shall, be laid as soon as possible upon the Table of the Senate and of the House of Assembly except where, in the opinion of the Minister, it cannot be made known without detriment to the public interest.

Onderhandelinge deur die raad in verband met beperkende praktyk en verkryging

18. (1) (a) Wanneer die raad 'n kennisgewing ingevolge artikel 16 (3) gepubliseer het, kan hy te enige tyd na datum van sodanige publikasie met enige persoon of liggaam, hetsy met regs persoonlikheid aldan nie, onderhandel ten einde tot 'n ooreenkoms te probeer kom wat die opskorting van die beperkende praktyk wat bestaan of wat mag ontstaan sal verseker, of om enige verkryging wat plaasgevind het, of wat besig is om plaas te vind of in die vooruitsig is om plaas te vind, te ontbind, te staak of te voorkom, na gelang van die geval, en wat die onderwerp is van 'n ondersoek ingevolge artikel 16 (1), hetsy in sy geheel of tot die mate wat, volgens die mening van die raad, die beperkende praktyk of die verkryging wat plaasgevind het, of besig is om plaas te vind of in die vooruitsig is om plaas te vind, nie in die openbare belang geregverdig is nie, en indien die raad tot so 'n ooreenkoms gekom het, sal hy daaromtrent aan die Minister verslag doen.

(b) Die Minister kan na oorweging van enige aanbeveling ingevolge artikel 15 (2) of 17 (2)—

(i) aan die raad opdrag gee om sodanige onderhandelinge soos vermeld in subartikel (a) te onderneem;

(ii) indien die raad hom meedeel dat hy dit onprakties gevind het om met so 'n persoon of liggaam te onderhandel of dat hy nie binne die tydperk deur hom voorgeskryf, en wat hy van tyd tot tyd na sy oordeel mag verleng, daarin geslaag het om met enige persoon of liggaam 'n ooreenkoms te bereik nie, sodanige stappe ingevolge subartikel (3) neem as wat die raad mag aanbeveel.

(2) Die Minister kan na oorweging van 'n verslag deur die raad ingevolge artikel 17 (1) ten opsigte van 'n ooreenkoms vermeld in subartikel (1) (a) of (b) (i), indien hy dit in die openbare belang ag—

(a) enige sodanige ooreenkoms bekragtig met of sonder sodanige wysiging, indien enige, as die waartoe die betrokke persoon mag instem, en onvoorwaardelik of onderhewig aan sodanige voorwaardes waartoe so 'n persoon mag instem, en wat die Minister op aanbeveling van die raad mag goedvind; of

(b) enige sodanige ooreenkoms ter syde stel en sodanige opdrag gee of sodanige vereistes ingevolge subartikel (3) voorskryf as wat hy op aanbeveling van die raad onder die omstandighede nodig mag ag;

en enige sodanige reëlins of gewysigde reëlins, tesame met die voorwaardes, indien enige, waaronder dit bekragtig is, moet deur die Minister by kennisgewing in die *Staatskoerant* gepubliseer word.

Wyse waarop met beperkende praktyk en verkryging gehandel moet word

19. (1) Wanneer die Minister na oorweging van 'n verslag deur die raad kragtens artikel 17 (1) na aanleiding van 'n ondersoek deur hom onderneem ingevolge artikel 16 (1) (a) of (b) of van 'n verslag deur die tribunaal kragtens artikel 15 (2) na aanleiding van 'n ondersoek deur hom onderneem ingevolge artikel 15 (1), nie 'n ooreenkoms vermeld in artikel 18 (1) (a) of (b) (i) bekragtig het nie, en van mening is dat dit in die openbare belang is—

(a) kan die Minister van Finansies op versoek van die Minister by kennisgewing in die *Staatskoerant* enige reg wat betaal moet word op ingevoerde goedere van soortgelyke aard as enige goedere wat deur die werking van die beperkende praktyk of die verkryging wat plaasgevind het, besig is om plaas te vind of in die vooruitsig is om plaas te vind, geraak word, opskort tot die mate en vir sodanige tydperk as wat hy mag goedvind;

Negotiations by board in connection with restrictive practice and acquisition

18. (1) (a) When the board has published a notice under section 16 (3), it may negotiate at any time after such publication with any person or body corporate or unincorporate, with a view to arriving at an arrangement which will ensure the discontinuance of the restrictive practice which exists, or may come into existence or to dissolve halt or prevent any acquisition which has been, is being or is proposed to be made, as the case may be, and is the subject of an investigation under section 16 (1), either completely or to the extent that, in the opinion of the board, the restrictive practice or the acquisition which has been, is being or is proposed to be made is not justified in the public interest and, if the board has come to such an arrangement, it shall report thereon to the Minister.

(b) The Minister may after consideration of any recommendation under section 15 (2) or 17 (2)—

(i) direct the board to undertake such negotiations as are referred to in paragraph (a);

(ii) if the board advises him that it has found it impracticable to negotiate with any such person or body or has not within a period determined by him and which he may from time to time in his discretion extend, succeeded in arriving at any arrangement with any such person or body, take such steps under subsection (3) as the board may recommend.

(2) The Minister may after consideration of a report by the board under section 17 (1) as to any arrangement contemplated in subsection (1) (a) or (b) (i) if he deems it to be in the public interest—

(a) confirm any such arrangement, either without modification or with such modification, if any, as may be agreed to by the person concerned, and either unconditionally or subject to such conditions as may be agreed to by such person and as the Minister may upon recommendation of the board deem fit; or

(b) set aside any such arrangement and give such direction or prescribe such requirements under subsection (3) as he may upon the recommendation of the board, consider necessary under the circumstances;

and any such arrangement or modified arrangement, together with the conditions, if any, subject to which it has been confirmed, shall be published by the Minister by notice in the *Gazette*.

Manner of dealing with restrictive practice and acquisition

19. (1) Whenever the Minister, after consideration of a report by the board under section 17 (1) in connection with an investigation undertaken by it under section 16 (1) (a) or (b) or of a report by the tribunal under section 15 (2) in connection with an investigation undertaken by it under section 15 (1), has not confirmed any arrangement contemplated in section 18 (1) (a) or (b) (i) and deems it to be in the public interest—

(a) the Minister of Finance may, at the request of the Minister, by notice in the *Gazette* suspend, as from the date of the publication of such notice, any duty to be paid upon imported goods of like nature to any commodity affected by the operation of that restrictive practice or the relevant acquisition which has been, is being or is proposed to be made to the extent and for such period as he may deem fit.

(b) kan die Pryscontroleur op versoek van die Minister 'n prys vasstel ingevolge die Wet op Prysbeheer, 1964 (Wet 25 van 1964), van enige handelsware wat geraak word deur daardie beperkende praktyk of die betrokke verkryging wat plaasgevind het, besig is om plaas te vind of in die vooruitsig is om plaas te vind;

(c) kan die Minister, onderhewig aan die bepalings van artikel 18 (i) by kennisgewing in die *Staatskoerant* die beperkende praktyk of die verkryging wat die onderwerp van die ondersoek was in die algemeen, of onderhewig aan die voorwaardes uiteengesit in die kennisgewing verbied en van enige persoon wat, volgens die ter sake verslag betrokke is by die bestaan van sodanige beperkende praktyk of verkryging, vereis—

(i) om op te hou, of hom daarvan te weerhou om te enige tyd 'n party te word tot—

(aa) enige ooreenkoms, reëling of verstandhouding hetsy dit regtens afdwingbaar is of nie, tussen twee of meer persone;

(bb) die toepassing van enige besigheidspraktyk of handelsmetode insluitende enige metode van prysbinding;

(cc) enige handeling of versuim aan die kant van enige persoon, hetsy hy onafhanklik optree of in samewerking met enige ander persoon;

(dd) die totstandkoming van enige situasie wat uit die bedrywighede van enige persoon of klas of groep persone voortvloei;

in die kennisgewing bepaal, of van 'n aard so bepaal wat na die mening van die Minister daarop gemik is om dieselfde uitwerking te hê;

(ii) om sodanige stappe te neem, insluitend stappe vir die ontbinding van enige liggaam met regspersoonlikheid al dan nie, of die gedwonge ontbinding van die resultaat van enige verkryging, of die verbreking van enige verbinding of enige vorm van verbinding tussen twee of meer persone, insluitend enige sodanige liggame as die Minister nodig mag ag ten einde die staking van sodanige beperkende praktyk te verseker, of die tot nietmaak van enige sodanige verkryging of om enige ongewenste eienskap daarvan uit te skakel.

(2) Die Minister van Finansies kan, met die instemming van die Minister, te enige tyd na verdere ondersoek deur die Raad, enige kennisgewing ingevolge artikel 19 (1) (a) terugtrek of wysig op sodanige wyse as hy mag goedvind.

(3) Enige kennisgewing kragtens artikel 18 (2) of 19 (1) (c)—

(a) sal nie gepubliseer word, voordat die betrokke verslag deur die Minister in die *Staatskoerant* gepubliseer is nie, en vir daardie doel mag enige verslag gepubliseer word voordat dit in enige van die twee Huise van die Parlement ter tafel gelê is;

(b) sal in werking tree op 'n datum deur die Minister vasgestel en in sodanige kennisgewing bepaal, welke datum nie vroeër sal wees nie as 30 dae na datum van publikasie daarvan;

(c) mag sodanige vereistes voorskryf as wat die Minister nodig mag ag ten einde die doelstellings van die kennisgewing te bereik, en die persone bepaal deur wie die voorwaardes van so 'n kennisgewing of enige ander sodanige vereiste nagekom moet word, asook die tye waarin en die voorwaardes waaronder daardie voorwaardes of daardie vereistes deur enige sodanige persoon nagekom moet word;

(d) kan te enige tyd na verdere ondersoek deur die Raad, deur die Minister teruggetrek of gewysig word op so 'n wyse as wat hy mag goedvind.

(b) the Price Controller may, at the request of the Minister, fix a price in terms of the Price Control Act, 1964 (Act 25 of 1964), of any commodity affected by the operation of that restrictive practice or the relevant acquisition which has been, is being or is proposed to be made;

(c) the Minister may, subject to the provisions of section 18 (i), by notice in the *Gazette* prohibit the restrictive practice or acquisition which was the subject of the investigation, either generally or subject to the conditions specified in the notice and require any person who, according to the relevant report is concerned with the existence of such restrictive practice or acquisition—

(i) to cease to be or to refrain from being or at any time becoming a party to—

(aa) any agreement, arrangement or understanding, whether legally enforceable or not, between two or more persons;

(bb) the application of any business practice or method of trading, including any method of fixing prices;

(cc) any act or omission on the part of any person, whether acting independently or in concert with any other person;

(dd) the bringing about of any situation arising out of the activities of any person or class or group of persons, specified in the notice or of a nature so specified, which in the opinion of the Minister, is calculated to have the same effect;

(ii) to take such steps, including steps for the dissolution of any body corporate or unincorporate or the compulsory break-up of the results of an acquisition or the severance of any connection or any form of association between two or more persons, including any such bodies, as the Minister may consider necessary to ensure the discontinuance of such restrictive practice or the undoing of such acquisition or to eliminate any undesirable feature thereof.

(2) The Minister of Finance may, with the concurrence of the Minister, at any time after further investigation by the board, withdraw any notice under section 19 (1) (a) or amend such notice in such manner as he may deem fit.

(3) Any notice under section 18 (2) or 19 (1) (c)—

(a) shall not be published until after the relevant report has been published by the Minister in the *Gazette* and, for that purpose any such report may be published before it has been laid upon the Table of either House of Parliament;

(b) shall come into operation upon a date fixed by the Minister and specified in such notice, not being less than 30 days after the date of publication thereof;

(c) may prescribe such requirements as the Minister may consider necessary to achieve the objects of that notice, and specify the persons by whom the terms of such notice or any such requirement shall be complied with, and the times within which and the conditions subject to which those terms or that requirement shall be complied with by any such person;

(d) may at any time after further investigation by the board be withdrawn by the Minister or amended by him in such manner as he may deem fit.

*Wyse waarop 'n besondere soort ooreenkoms,
reëling ens. hanteer word*

20. (1) Wanneer die Minister, na oorweging van 'n verslag deur die raad kragtens artikel 17 (1) na aanleiding van 'n ondersoek onderneem ingevolge artikel 16 (1) (c), van oordeel is dat dit in die openbare belang is, kan die Staatspresident by proklamasie in die *Staatskoerant*, Bylae I tot die Wet van tyd tot tyd wysig of daartoe byvoeg ten einde—

(a) die volgende te verbied:

(i) Enige besondere soort ooreenkoms, reëling, verstandhouding, besigheidspraktyk of handelsmetode wat in die verslag behandel is, of wat na die mening van die Minister daarop bereken is om dieselfde effek te hê; en

(ii) enige persoon, onderhewig aan sodanige uitsonderings wat bepaal mag word, om 'n party te wees of te word tot enige sodanige ooreenkoms, reëling of verstandhouding of tot die toepassing van enige sodanige besigheidspraktyk of handelsmetode; of

(b) ten opsigte daarvan sulke voorwaardes opleë, as wat hy mag goedvind mits die Minister, minstens een maand voor die datum waarop die proklamasie deur die Staatspresident gepubliseer is, die bepalings van die betrokke proklamasie in die *Staatskoerant* gepubliseer het, tesame met 'n verklaring dat sodanige proklamasie aan die Staatspresident vir oorweging voorgelê sal word.

(2) Enige proklamasie kragtens subartikel (1) mag, in die algemeen, of ten opsigte van 'n bepaalde gebied, van toepassing wees, afhangende daarvan of die ondersoek van algemene aard was en of dit met betrekking tot 'n bepaalde gebied onderneem was.

Appel teen beslissings van Minister

21. (1) Daar is 'n reg van appel deur enige persoon wat deur 'n kennisgewing ingevolge artikel 19 (1) (c), uitgesonderd 'n kennisgewing gepubliseer kragtens daardie artikel na aanleiding van 'n verslag deur die tribunaal kragtens artikel 15 (2), geraak word, na 'n spesiale hof wat volgens voorskrif van hierdie artikel ingestel word.

(2) 'n Spesiale hof kan deur die Staatspresident by proklamasie in die *Staatskoerant* ingestel word, met regsbevoegdheid in die hele Republiek van Suid-Afrika of in een of meer vermelde gebiede vir die verhoor van alle of een of meer appelle kragtens subartikel (5) by die Minister ingedien, na gelang die Staatspresident nodig ag.

(3) So 'n hof bestaan uit 'n regter van die Hooggeregshof van Suid-Afrika wat die president van die hof is, en twee ander lede, van wie—

(a) een iemand moet wees wat 'n universiteitsgraad in die ekonomie besit, en volgens die Staatspresident se oordeel deeglike kennis van ekonomie het; en

(b) een iemand wat volgens die Staatspresident se oordeel breë ondervinding van nywerheids-, handels-, of finansiële aangeleenthede of van die werking van koöperatiewe verenigings het, of waar die Staatspresident na goedgevoel op aansoek deur 'n appellant aldus gelas, 'n bevoegde ingenieur moet wees.

(4) Daar kan aan die lede van 'n spesiale hof wat nie in die voltijdse diens van die Staat is nie, die besoldiging en toelae betaal word, wat in elke geval deur die Minister met goedkeuring van die Minister van Finansies en na oorlegpleging met die Minister van Justisie bepaal word.

(5) 'n Appel na 'n spesiale hof ingevolge hierdie artikel moet skriftelik by die Minister ingedien word binne ses weke na die datum van publikasie van die kennisgewing waarop die appel betrekking het, en moet die gronde waarop die appel berus, uiteensit.

*Manner of dealing with particular kind of agreement,
arrangement, etc.*

20. (1) Whenever the Minister, after consideration of a report by the board under section 17 (1) in connection with an investigation undertaken by it under section 16 (1) (c), deems it to be in the public interest, the State President may by proclamation in the *Gazette* from time to time amend or add to the provisions of Schedule I to the Act in order to—

(a) prohibit—

(i) any particular kind of agreement, arrangement, understanding, business practice or method of trading which was dealt with in the report or which in the opinion of the Minister is calculated to have the same effect; and

(ii) any person, subject to such exceptions as may so be specified, from being or becoming a party to any such agreement, arrangement or understanding or to the application of any such business practice or method of trading; or

(b) impose in respect thereof such conditions as he may deem fit, provided the Minister has not less than one month before the publication of the proclamation by the State President, published the terms of the relevant proclamation in the *Gazette*, together with a statement that such proclamation will be submitted to the State President for consideration.

(2) Any proclamation under subsection (1) may apply generally or in respect of any particular area, according as to whether the investigation was of a general nature or was undertaken in relation to a particular area.

Appeals from Minister's decisions

21. (1) There shall be a right of appeal by any person affected by a notice published under section 19 (1) (c), save a notice published under that section in consequence of a report by the tribunal under section 15 (2), to a special court which shall be constituted as provided in this section.

(2) A special court may be constituted by the State President by proclamation in the *Gazette*, with jurisdiction throughout the Republic or in one or more specified areas, for the hearing of all or any one or more appeals lodged with the Minister under subsection (5), as the State President may consider necessary.

(3) Any such court shall consist of a judge of the Supreme Court of South Africa, who shall be the president of the court, and two other members, of whom—

(a) one shall be the holder of a university degree in economics, who in the opinion of the State President has a thorough knowledge of economics; and

(b) one shall be a person who in the opinion of the State President has wide experience of industrial, commercial or financial matters or of the operation of co-operative societies, or where the State President in his discretion upon application by an appellant so directs, is a qualified engineer.

(4) The members of a special court who are not in the full-time employment of the State may be paid such remuneration and allowances as may in each case be determined by the Minister with the approval of the Minister of Finance and after consultation with the Minister of Justice.

(5) An appeal to a special court under this section shall be lodged with the Minister in writing within six weeks after the date of publication of the notice to which the appeal relates, and shall set forth the grounds on which the appeal is based.

(6) Die datum, tyd en plek van die verhoor van so 'n appèl moet deur die president van die betrokke spesiale hof bepaal word en moet minstens 30 dae voor die aldus bepaalde datum skriftelik deur die Minister aan die appellant bekend gemaak word.

(7) Die Minister kan by die verhoor van so 'n appèl verteenwoordig word deur iemand wat hy aanwys, en die appellant kan by daardie verhoor persoonlik verskyn of deur sy advokaat, prokureur of agent verteenwoordig word.

(8) So 'n verhoor kan van tyd tot tyd deur die president van die betrokke spesiale hof verdaag word tot 'n datum, tyd en plek wat hy goedvind.

(9) Die sittings van 'n spesiale hof word in die openbaar gehou, maar die president van die hof kan enigiemand wie se aanwesigheid nie nodig is nie, van aanwesigheid aldaar uitsluit of hom gelas om hom daarvan te onttrek.

(10) 'n Spesiale hof kan na oorweging van 'n appèl, die kennisgewing waarop die appèl betrekking het, bekragtig, of ter syde stel of wysig op die wyse wat hy billik ag en kan bevele wat hy regverdig ag met betrekking tot koste verleen.

(11) 'n Beslissing van 'n meerderheid van die lede van 'n spesiale hof is die beslissing van die hof: Met dien verstande dat enige regspunt wat vir beslissing deur so 'n hof opkom, en enige vraag of 'n punt vir beslissing 'n feitepunt of regspunt is, deur die president van die hof beslis word, en geen ander lid het by die beslissing seggenskap nie.

(12) 'n Bevel met betrekking tot koste deur 'n spesiale hof verleen het die uitwerking en word ten uitvoer gelê asof dit gegee was in die loop van 'n geding voor 'n afdeling van die Hooggeregshof van Suid-Afrika wat regsbevoeg is in die plek waar die sitting waar daardie bevel verleen was, plaasgevind het.

(13) Die beslissing van 'n spesiale hof is nie aan appèl na of hersiening deur 'n gereghof onderhewig nie.

(14) 'n Bevel van 'n spesiale hof wat die kennisgewing waarop die bevel betrekking het, bekragtig, ter syde stel of wysig, moet deur die Minister by kennisgewing in die *Staatskoerant* bekendgemaak word, en 'n wysiging wat deur so 'n bevel aan 'n kennisgewing aangebring word, geld asof dit 'n wysiging was wat kragtens artikel 19 (3) (d) deur die Minister aangebring is.

(15) Die bepalinge van artikel 84 en 85 van die Inkomstebelastingwet, 1962 (Wet 58 van 1962), is *mutatis mutandis* van toepassing met betrekking tot 'n spesiale hof kragtens hierdie artikel ingestel.

Beskerming van getuies

22. (1) Geen verskaffer van enige handelsware mag op enige wyse, hetsy regstreeks of onregstreeks 'n party wees tot diskriminerende optrede teen enigiemand wat inligting aan die raad of tribunaal verstrek het, of wie as getuie geroep is of geroep staan te word, of teen die besigheid of onderneming van sodanige persoon vir enige vervolging vir 'n oortreding ingevolge hierdie Wet.

(2) Indien dit in enige vervolging vir 'n beweerde oortreding van subartikel (1) bewys word—

(a) dat enige persoon wat die raad van inligting voorsien het of wat as getuie geroep is of geroep staan te word in enige vervolging ingevolge hierdie Wet;

(b) dat enige handelsware verskaf was deur 'n verskaffer aan so 'n persoon, aan sy besigheid of onderneming, te enige tyd gedurende een jaar voordat die beweerde diskriminerende optrede plaasgevind het;

(c) dat ten tyde van die aanwesigheid van die beweerde diskriminerende optrede, so 'n persoon, sy besigheid of onderneming 'n bestelling geplaas het by die betrokke verskaffer vir die tersaaklike handelsware;

(6) The date, time and place for the hearing of any such appeal shall be fixed by the president of the special court concerned and shall be communicated in writing to the appellant through the Minister not less than 30 days before the date so fixed.

(7) The Minister may be represented at the hearing of any such appeal by any person nominated by him, and the appellant may appear at such hearing in person or be represented there at by his counsel, attorney or agent.

(8) Any such hearing may from time to time be adjourned by the president of the special court concerned to such date, time and place as he may deem fit.

(9) The sittings of a special court shall be held in public, but the president of the court may exclude from being present thereat or require to withdraw therefrom any person whose attendance is not necessary.

(10) A special court may after consideration of any appeal, confirm or set aside the notice to which the appeal relates or amend it in such manner as it may deem equitable, and may make such orders as to costs as it may consider just.

(11) The decision of a majority of the members of a special court shall be the decision of the court: Provided that any matter of law arising for decision by that court and any question as to whether a matter for decision is a matter of fact or a matter of law, shall be decided by the president of the court and no other member shall have any voice in the decision.

(12) An order as to costs made by a special court shall have effect and may be enforced as if it had been given in the course of proceedings before a division of the Supreme Court of South Africa having jurisdiction in the place where the sitting at which that order was made took place.

(13) No decision of a special court, shall be subject to appeal to or review by any court of law.

(14) An order of a special court confirming, setting aside or amending the notice to which the order relates, shall be made known by the Minister by notice in the *Gazette*, and any amendment made to a notice by such an order shall have effect as if it were an amendment made under section 19 (3) (d) by the Minister.

(15) The provisions of sections 84 and 85 of the Income Tax Act, 1962 (Act 58 of 1962), shall *mutatis mutandis* apply with reference to a special court constituted under this section.

Protection of witnesses

22. (1) No supplier of any commodity shall in any way directly or indirectly be a party to discriminatory conduct against any person who has furnished the board or the tribunal with information or who was, or is to be, called as a witness in any prosecution for an offence under this Act or the business or undertaking of such person.

(2) If it is proved in any prosecution for an alleged contravention of subsection (1)—

(a) that any person who has furnished the board with information, or was, or is to be, called as a witness in any prosecution under this Act;

(b) that any commodity was supplied by a supplier to such person or his business or undertaking, at any time during one year before the alleged occurrence of the discriminatory conduct;

(c) that at the time of the alleged occurrence of the discriminatory conduct, such person or his business or undertaking had placed an order for the relevant commodity with the supplier concerned;

(d) dat sodanige bestelling nie binne een maand vanaf datum van plasing daarvan uitgevoer is nie, of indien sodanige bestelling uitgevoer was, die voorwaardes van verskaffing, met betrekking tot betaling of aflewering, of albei van sodanige handelsware aan sodanige persoon sy besigheid of onderneming, meer verswarend is, as sodanige voorwaardes in die geval van vorige bestellings deur die betrokke verskaffer uitgevoer of as sodanige voorwaardes in die geval van enige mededinger van so 'n persoon; en

(e) dat sodanige persoon aangebied het om kontant by aflewering te betaal vir die betrokke handelsware of dat hy finansiële in goeie stand is;

sal dit vermoed word dat die betrokke verskaffer 'n party is tot diskriminerende optrede teen so 'n persoon, of sy besigheid of onderneming, tensy die teendeel bewys word.

Regulasies

23. Die Staatspresident kan regulasies uitvaardig wat nie met hierdie Wet onbestaanbaar is nie, met betrekking tot enige aangeleentheid wat hy nodig ag om voor te skryf ten einde aan die oogmerke van hierdie Wet gevolg te gee.

Strawwe

24. Iemand wat die bepalings van hierdie Wet oortree of wat versuim of daaraan te voldoen, sal skuldig wees aan 'n misdryf en by skuldigbevinding strafbaar—

(a) in die geval van 'n oortreding ingevolge artikel 19 (1) (c) of 20 (1) of Bylae I met 'n boete van hoogstens R100 000, of met gevangenisstraf vir 'n tydperk van hoogstens vyf jaar, of met daardie boete sowel as daardie gevangenisstraf; en

(b) in die geval van enige ander oortreding ingevolge hierdie Wet, met 'n boete van hoogstens R10 000, of met gevangenisstraf vir 'n tydperk van hoogstens drie jaar of met daardie boete sowel as daardie gevangenisstraf.

Herroeping van Wette

25. (1) Onderhewig aan die bepalings van subartikel (2) word die Wette in Bylae II gemeld, hiermee herroep.

(2) Enige kennisgewing (uitgesonderd Goewermementskennisgewing R. 1038 van 25 Junie 1969) gepubliseer kragtens enige bepaling van 'n Wet deur hierdie Wet herroep, sal geag word, gepubliseer te wees kragtens die ooreenstemmende bepaling van hierdie Wet:

(3) Goewermementskennisgewing R. 1038 van 25 Junie 1969 word hiermee herroep: Met dien verstande dat die herroeping van hierdie kennisgewing op geen wyse hoegenaamd, enige beweerde oortreding van die bepalings daarvan wat plaasgevind het, voor hierdie kennisgewing herroep is, raak nie.

Kort titel en inwerkingtreding

26. Hierdie Wet heet die Wet op die Handhawing en Bevordering van Mededinging, 1978, en sal in werking tree op 'n datum wat deur die Staatspresident by proklamasie in die *Staatskoerant* bepaal word.

BYLAE I

1. In terme van artikel 20 (1) van hierdie Wet word die volgende besigheidspraktik verbied:

Behoudens die bepalings van artikel 2 word enige ooreenkoms, verstandhouding, besigheidspraktik of handelsmetode, wat die uitwerking het, of daarop bereken is om 'n herverkoper regstreeks of onregstreeks te verplig of te beweeg om hom aan 'n sekere aangeduide herverkoopprys te hou as onwettig beskou, en word enige persoon verbied om so 'n ooreenkoms of verstandhouding aan te gaan of 'n party daarby te wees, of te bly of om so 'n besigheidspraktik of handelsmetode toe te pas.

(d) that such order was not executed within one month of the date upon which it was placed or, if such order was executed, the conditions of supply relating to payment or delivery or both to such person or his business or undertaking for the relevant commodity are more onerous than such conditions in the case of previous orders executed by the supplier concerned or than such conditions in the case of any competitor of such person; and

(e) that such person had offered to pay cash on delivery for the relevant commodity or is in good financial standing;

it shall be presumed that the supplier concerned is a party to discriminatory conduct against such person or his business or undertaking, unless the contrary is proved.

Regulations

23. The State President may make regulations not inconsistent with this Act in regard to any matter which he considers it necessary to prescribe for purpose of giving effect to the objects of this Act.

Penalties

24. Any person who contravenes or fails to comply with any provision of this Act, shall be guilty of an offence and shall be liable upon conviction—

(a) in the case of an offence under section 19 (1) (c) or 20 (1) or Schedule I, to a fine not exceeding R100 000 or to imprisonment for a period not exceeding five years or to both such fine and imprisonment; and

(b) in the case of any other offence under this Act, to a fine not exceeding R10 000 or to imprisonment for a period not exceeding three years or to both such fine and imprisonment.

Repeal of laws

25. (1) Subject to the provisions of subsection (2), the laws mentioned in Schedule II are hereby repealed.

(2) Any notice (other than Government Notice R. 1038 of 25 June 1969) published under any provision of a law repealed by subsection (1), shall be deemed to have been published under the corresponding provision of this Act.

(3) Government Notice R. 1038 of 25 June 1969 is hereby repealed: Provided that the repeal of this notice will in no way whatsoever affect any alleged contravention of the provisions thereof which took place before this notice was repealed.

Short title and commencement

26. This Act shall be called the Maintenance and Promotion of Competition Act, 1978 and shall come into operation on a date to be fixed by the State President by proclamation in the *Gazette*.

SCHEDULE I

1. The following business practice contemplated in section 20 (1) of the Act is prohibited:

Subject to the provisions of section 2 any agreement, understanding, business practice or method of trading which has, or is calculated to have the effect of directly or indirectly compelling or inducing a reseller to observe a certain specified resale price shall be unlawful, and it is prohibited for any person, to enter into such an agreement or understanding or to be or continuing to be a party thereto or to apply such business practice or method of trading.

2. Die bepalings van subartikel (1) is nie van toepassing nie ten opsigte van—

(a) handelware ten opsigte waarvan die aanbevole aangeduide of gesuggereerde prys slegs in die aard van 'n gidsprys vir die gerief van die herverkoper is, wat sodanige prys na goeddunke mag verminder;

(b) die volgende klasse of soorte handelware:

(i) Petrol;

(ii) buite- en binnebande;

(iii) tydskrifte insluitende nuusblaaie.

BYLAE II WETTE HERROEP

Nommer en jaar van Wet	Titel
Wet No. 24 van 1955	Wet op Reëling van Monopolistiese Toestande, 1955.
Wet No. 14 van 1958	Wysigingswet op Reëling van Monopolistiese Toestande, 1958.
Wet No. 48 van 1975	Wysigingswet op Reëling van Monopolistiese Toestande, 1975.
Wet No. 23 van 1976	Wysigingswet op Reëling van Monopolistiese Toestande, 1976.

2. The provisions of subsection (1) is not applicable to—

(a) the commodities in respect of which the resale price recommended, indicated or suggested is only in the nature of a guide price for the convenience of a reseller who may reduce such price at his discretion;

(b) the following classes or kinds of commodities:

(i) Petrol;

(ii) tyres and tubes;

(iii) magazines, including newspapers.

SCHEDULE II LAWS REPEALED

Number and year of Act	Title
Act No. 24 of 1955...	Regulation of Monopolistic Conditions Act, 1955.
Act No. 14 of 1958...	Regulation of Monopolistic Conditions Amendment Act, 1958.
Act No. 48 of 1975...	Regulation of Monopolistic Conditions Amendment Act, 1975.
Act No. 23 of 1976...	Regulation of Monopolistic Conditions Amendment Act, 1976.

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