



GOVERNMENT GAZETTE

OF THE REPUBLIC OF SOUTH AFRICA

REPUBLIEK VAN SUID-AFRIKA

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STATE PRESIDENT'S OFFICE

KANTOOR VAN DIE STAATSPRESIDENT

No. 657.

27 March 1985

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

No. 12 of 1985: Maintenance and Promotion of Competition Amendment Act, 1985.

No. 657.

27 Maart 1985

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

No. 12 van 1985: Wysigingswet op die Handhawing en Bevordering van Mededinging, 1985.

Act No. 12, 1985

MAINTENANCE AND PROMOTION OF COMPETITION
AMENDMENT ACT, 1985

GENERAL EXPLANATORY NOTE:

- []** Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with solid line indicate insertions in existing enactments.

ACT

To amend the Maintenance and Promotion of Competition Act, 1979, so as to further define the expressions "controlling interest" and "acquisition"; to make other provision for the application of the provisions of the said Act to co-operatives and financial institutions; to increase the number of members of the Competition Board and to regulate the designation of a vice-chairman; to render in wider terms a function of the said board and a power of the Minister of Trade and Industry; and to effect certain textual alterations; and to provide for matters connected therewith.

(English text signed by the State President.)
(Assented to 12 March 1985.)

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

Amendment of
section 1 of
Act 96 of 1979,
as amended by
section 1 of
Act 62 of 1983.

1. Section 1 of the Maintenance and Promotion of Competition Act, 1979 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the substitution for the definition of "acquisition" of the following definition:

"'acquisition' means the acquisition by the holder of a controlling interest in any business or undertaking involved in the production, manufacture, supply or distribution of any commodity, of such an interest—

(a) in any other business or undertaking so involved; or

(b) in any asset which is or may be utilized for or in connection with the production, manufacture, supply or distribution of any such commodity,

provided such acquisition **[restricts]** has or is likely to have the effect of restricting competition directly or indirectly, and 'acquire' has a corresponding meaning;"

(b) by the substitution for the definition of "controlling interest" of the following definition:

"'controlling interest', in relation to—

(a) any business or undertaking, means any interest of whatever nature enabling the holder thereof to exercise, directly or indirectly, any control whatsoever over the activities or assets of the business or undertaking; and

(b) any asset, means any interest of whatever nature enabling the holder thereof to exercise, directly or indirectly, any control whatsoever over the asset;"; and

WYSIGINGSWET OP DIE HANDHAWING EN BEVORDERING VAN
MEDEDINGING, 1985

Wet No. 12, 1985

ALGEMENE VERDUIDELIKENDE NOTA:

[] Woorde in vet druk tussen vierkantige hake dui skappings uit bestaande verordeninge aan.

_____ Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordeninge aan.

WET

Tot wysiging van die Wet op die Handhawing en Bevordering van Mededinging, 1979, ten einde die uitdrukkings "beherende belang" en "verkryging" nader te omskryf; ander voorsiening te maak vir die toepassing van die bepalings van genoemde Wet op koöperasies en finansiële instellings; die lede van die Raad op Mededinging te vermeerder en die aanwysing van 'n ondervoorsitter te reël; 'n werksaamheid van genoemde raad en 'n bevoegdheid van die Minister van Handel en Nywerheid wyer te stel; en sekere teksveranderinge in die Engelse teks aan te bring; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

(Engelse teks deur die Staatspresident geteken.)
(Goedgekeur op 12 Maart 1985.)

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

1. Artikel 1 van die Wet op die Handhawing en Bevordering van Mededinging, 1979 (hieronder die Hoofwet genoem), word hierby gewysig—
 - (a) deur die omskrywing van "beherende belang" deur die volgende omskrywing te vervang:

"beherende belang", met betrekking tot—

 - (a) 'n besigheid of onderneming, enige belang van watter aard ook al wat die houer daarvan in staat stel om regstreeks of onregstreeks enige beheer van watter aard ook al oor die bedrywighede of bates van die besigheid of onderneming uit te oefen; en
 - (b) 'n bate, enige belang van watter aard ook al wat die houer daarvan in staat stel om regstreeks of onregstreeks enige beheer van watter aard ook al oor die bate uit te oefen;"
 - (b) deur die omskrywings van "finansiële instelling" en "koöperatiewe vereniging" te skrap; en
 - (c) deur die omskrywing van "verkryging" deur die volgende omskrywing te vervang:

"verkryging" die verkryging deur die houer van 'n beherende belang in 'n besigheid of onderneming betrokke by die produksie, vervaardiging, verskaffing of distribusie van enige handelsartikel, van sodanige belang—

 - (a) in 'n ander besigheid of onderneming aldus betrokke; of
 - (b) in 'n bate wat aangewend word of kan word vir of in verband met die produksie, vervaardiging, verskaffing of distribusie van so 'n handelsartikel.

Wysiging van
artikel 1 van
Wet 96 van 1979,
soos gewysig deur
artikel 1 van
Wet 62 van 1983.

Act No. 12, 1985

MAINTENANCE AND PROMOTION OF COMPETITION
AMENDMENT ACT, 1985

- (c) by the deletion of the definitions of "co-operative society" and "financial institution".

Amendment of
section 2 of
Act 96 of 1979.

2. Section 2 of the principal Act is hereby amended—
- (a) by the addition at the end of paragraph (a) of subsection (1) of the word "or";
 - (b) by the deletion in the said subsection (1) of the word "or" at the end of paragraph (b); and
 - (c) by the deletion of paragraph (c) of the said subsection (1).

Amendment of
section 3 of
Act 96 of 1979,
as amended by
section 2 of
Act 62 of 1983.

3. Section 3 of the principal Act is hereby amended—
- (a) by the substitution for subsection (2) of the following subsection:

"(2) The board shall consist of—

 - (a) the chairman of the Board of Trade and Industries established in terms of section 2 of the Board of Trade and Industries Act, 1944 (Act No. 19 of 1944) **[and]**;
 - (b) the Registrar of Financial Institutions mentioned in section 1 of the Limitation and Disclosure of Finance Charges Act, 1968 (Act No. 73 of 1968) **[ex officio, and]**;
 - (c) the Governor of the South African Reserve Bank referred to in section 3 (1) of the South African Reserve Bank Act, 1944 (Act No. 29 of 1944), or any person designated by him;
 - (d) the chairman of the National Marketing Council referred to in section 2 (1) of the Marketing Act, 1968 (Act No. 59 of 1968);
 - (e) one member nominated by the Minister of Finance;
 - (f) one member nominated by the Minister of Agricultural Economics and of Water Affairs;
 - (g) not fewer than two and not more than seven other members appointed by the State President on the grounds of having special knowledge of consumer affairs or knowledge of or experience in economics, industry, commerce, law or the conduct of public affairs. **[and]**

of whom **[one shall be designated]** the Minister shall designate one as chairman **[by the Minister]** and may designate one as vice-chairman.";
 - (b) by the substitution for subsection (4) of the following subsection:

"(4) When for any reason the chairman is not able to perform his functions, or when there is a vacancy in the office of the chairman, the vice-chairman or, if he is not so able or if no vice-chairman has been designated, any member of the board designated by the Minister shall act as chairman."

Amendment of
section 5 of
Act 96 of 1979.

4. Section 5 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:

"(1) A member of the board who is not in the full-time service of the State shall be appointed at such remuneration as the Minister may, with the concurrence of the Minister of Finance, determine.";
 - (b) by the substitution for subsection (2) of the following subsection:

"(2) A member of the board appointed under section 3 (7) and a member of any committee of the board shall, if he is not in the full-time service of the State, be paid such allowances as the Minister may, with the concurrence of the Minister of Finance, determine."

WYSIGINGSWET OP DIE HANDHAWING EN BEVORDERING VAN MEDEDINGING, 1985

Wet No. 12, 1985

mits sodanige verkryging die uitwerking het of waarskynlik sal hê om mededinging regstreeks of onregstreeks te beperk, en het 'verkry' 'n ooreenstemmende betekenis.”.

5 2. Artikel 2 van die Hoofwet word hierby gewysig—

- (a) deur aan die einde van paragraaf (a) van subartikel (1) die woord “of” by te voeg;
- (b) deur in genoemde subartikel (1) die woord “of” aan die einde van paragraaf (b) te skrap; en
- 10 (c) deur paragraaf (c) van genoemde subartikel (1) te skrap.

Wysiging van
artikel 2 van
Wet 96 van 1979.

3. Artikel 3 van die Hoofwet word hierby gewysig—

- (a) deur subartikel (2) deur die volgende subartikel te vervang:
- 15 “(2) Die raad bestaan uit—
- (a) die voorsitter van die Raad van Handel en Nywerheid ingestel ingevolge artikel 2 van die Wet op die Raad van Handel en Nywerheid, 1944 (Wet No. 19 van 1944) [en];
- 20 (b) die Registrateur van Finansiële Instellings vermeld in artikel 1 van die Wet op Beperking en Bekendmaking van Finansieringskoste, 1968 (Wet No. 73 van 1968) [ampshalwe, en];
- (c) die President van die Suid-Afrikaanse Reserwebank bedoel in artikel 3 (1) van die Wet op die Suid-Afrikaanse Reserwebank, 1944 (Wet No. 29 van 1944), of 'n persoon deur hom aangewys;
- 25 (d) die voorsitter van die Nasionale Bemarkingsraad bedoel in artikel 2 (1) van die Bemarkingswet, 1968 (Wet No. 59 van 1968);
- 30 (e) een lid deur die Minister van Finansies benoem;
- (f) een lid deur die Minister van Landbou-ekonomie en van Waterwese benoem;
- 35 (g) minstens twee en hoogstens sewe ander lede deur die Staatspresident aangestel op grond van hul besondere kennis van verbruikersake of kennis van of ondervinding in die ekonomie, die nywerheid, die handel, die regte of die bestuur van openbare sake, [en]
- 40 van wie die Minister een as voorsitter [deur die Minister aangewys word] aanwys en een as ondervoorsitter kan aanwys.”; en
- (b) deur subartikel (4) deur die volgende subartikel te vervang:
- 45 “(4) Wanneer die voorsitter om die een of ander rede nie in staat is om sy werksaamhede te verrig nie, of wanneer die amp van voorsitter vakant is, neem die ondervoorsitter of, indien hy nie aldus in staat is nie of indien 'n ondervoorsitter nie aangewys is nie, 'n lid van die raad deur die Minister aangewys, as voorsitter waar.”.
- 50

Wysiging van
artikel 3 van
Wet 96 van 1979,
soos gewysig deur
artikel 2 van
Wet 62 van 1983.

4. Artikel 5 van die Hoofwet word hierby gewysig—

- (a) deur subartikel (1) deur die volgende subartikel te vervang:
- 55 “(1) 'n Lid van die raad wat nie in die heeltidse diens van die Staat is nie, word aangestel teen die besoldiging wat die Minister, met die instemming van die Minister van Finansies, bepaal.”; en
- (b) deur subartikel (2) deur die volgende subartikel te vervang:
- 60 “(2) 'n Lid van die raad kragtens artikel 3 (7) aangestel en 'n lid van 'n komitee van die raad word, indien hy nie in die heeltidse diens van die Staat is nie, die toelaes betaal wat die Minister, met die instemming van die Minister van Finansies, bepaal.”.
- 65

Wysiging van
artikel 5 van
Wet 96 van 1979.

Act No. 12, 1985

MAINTENANCE AND PROMOTION OF COMPETITION
AMENDMENT ACT, 1985

Amendment of
section 6 of
Act 96 of 1979.

5. Section 6 of the principal Act is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:

“(b) undertake a continuous study of trends towards increased economic concentration, with a view to the investigation of acquisitions **[where there] which** appear **not to be [circumstances which do not justify such acquisitions] justified** in the public interest;”.

Amendment of
section 7 of
Act 96 of 1979.

6. Section 7 of the principal Act is hereby amended by the deletion of subsection (7).

Amendment of
section 12 of
Act 96 of 1979,
as amended by
section 5 of
Act 62 of 1983.

7. Section 12 of the principal Act is hereby amended by the substitution in paragraph (b) of subsection (2) for the word “interests” of the word “interest”.

Amendment of
section 14 of
Act 96 of 1979,
as amended by
section 6 of
Act 62 of 1983.

8. Section 14 of the principal Act is hereby amended—

(a) by the substitution in the words preceding paragraph (a) of subsection (1) for the word “interests” of the word “interest”; and

(b) by the substitution for subparagraph (ii) of paragraph (c) of the said subsection (1) of the following subparagraph:

“(ii) require any person who is or was a party to any agreement, arrangement, understanding or omission or applies or has applied any business practice or method of trading or commits or has committed any act or brings or has brought about any situation, which may be specified in the notice, to terminate or to cease to be a party to such agreement, arrangement, understanding or omission or to refrain from applying such business practice or method of trading or to cease to commit that act or to bring about that situation or to refrain from at any time becoming a party to any agreement, arrangement, understanding or omission or applying any business practice or method of trading or committing any act or bringing about any situation of a nature specified in the notice which in the opinion of the Minister is **[calculated] likely** to have the same effect.”.

Repeal of
section 16 of
Act 96 of 1979.

9. Section 16 of the principal Act is hereby repealed.

Substitution of
long title of
Act 96 of 1979.

10. The following long title is hereby substituted for the long title of the principal Act:

“To provide for the maintenance and promotion of competition in the economy, for the prevention or control of restrictive practices and the acquisition of controlling interests in certain businesses or undertakings or in certain assets, and for matters connected therewith.”.

Short title.

11. This Act shall be called the Maintenance and Promotion of Competition Amendment Act, 1985.

WYSIGINGSWET OP DIE HANDHAWING EN BEVORDERING VAN MEDEDINGING, 1985

Wet No. 12, 1985

5. Artikel 6 van die Hoofwet word hierby gewysig deur paraagraaf (b) van subartikel (1) deur die volgende paragraaf te vervang:

Wysiging van artikel 6 van Wet 96 van 1979.

- 5 “(b) deurgaans neigings tot verhoogde ekonomiese konsentrasie bestudeer met die oog op die ondersoek van verkrygings **[waar daar] wat** blykbaar **[omstandighede is wat die verkrygings]** nie in die openbare belang **[nie regverdig]** geregverdig is nie;”.

6. Artikel 7 van die Hoofwet word hierby gewysig deur subartikel (7) te skrap.

Wysiging van artikel 7 van Wet 96 van 1979.

7. Artikel 12 van die Hoofwet word hierby gewysig deur in die Engelse teks van paragraaf (b) van subartikel (2) die woord “interests” deur die woord “interest” te vervang.

Wysiging van artikel 12 van Wet 96 van 1979, soos gewysig deur artikel 5 van Wet 62 van 1983.

8. Artikel 14 van die Hoofwet word hierby gewysig—

- 15 (a) deur in die Engelse teks van die woorde wat paragraaf (a) van subartikel (1) voorafgaan die woord “interests” deur die woord “interest” te vervang; en

Wysiging van artikel 14 van Wet 96 van 1979, soos gewysig deur artikel 6 van Wet 62 van 1983.

- 20 (b) deur subparagraaf (ii) van paragraaf (c) van genoemde subartikel (1) deur die volgende subparagraaf te vervang:

25 “(ii) iemand wat ’n party by ’n in die kennisgewing vermelde ooreenkoms, reëling, verstandhouding of versuim is of was of ’n aldus vermelde besigheidspraktik of handelsmetode toepas of toegepas het of ’n aldus vermelde handeling verrig of verrig het of ’n aldus vermelde toestand teweegbring of teweegbring het, gelas om daardie ooreenkoms, reëling, verstandhouding of versuim te beëindig of om op te hou om ’n party daarby te wees of om van daardie besigheidspraktik of handelsmetode af te sien of om op te hou om daardie handeling te verrig of daardie toestand teweeg te bring of om te gener tyd ’n party by ’n ooreenkoms, reëling, verstandhouding of versuim te word nie of ’n besigheidspraktik of handelsmetode toe te pas nie of ’n handeling te verrig nie of ’n toestand teweeg te bring nie wat van ’n in die kennisgewing vermelde aard is wat volgens die oordeel van die Minister **[bereken is om]** waarskynlik dieselfde uitwerking **[te]** sal hê.”.

9. Artikel 16 van die Hoofwet word hierby herroep.

Herroeping van artikel 16 van Wet 96 van 1979.

10. Die lang titel van die Hoofwet word hierby deur die volgende lang titel vervang:

Vervanging van lang titel van Wet 96 van 1979.

- 45 “Om voorsiening te maak vir die handhawing en bevordering van ekonomiese mededinging, vir die voorkoming van of beheer oor beperkende praktyke en die verkryging van behorende belange in sekere besighede of ondernemings of in sekere bates, en vir aangeleenthede wat daarmee in verband staan.”.

50 11. Hierdie Wet heet die Wysigingswet op die Handhawing en Kort titel. Bevordering van Mededinging, 1985.

