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STAATSKOERANT

GOVERNMENT GAZETTE

OF THE REPUBLIC OF SOUTH AFRICA

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KANTOOR VAN DIE STAATSPRESIDENT

STATE PRESIDENT'S OFFICE

No. 1463.

4 Julie 1990

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

No. 88 van 1990: Wysigingswet op die Handhawing en Bevordering van Mededinging, 1990.

No. 1463.

4 July 1990

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

No. 88 of 1990: Maintenance and Promotion of Competition Amendment Act, 1990.

Wet No. 88, 1990

WYSIGINGSWET OP DIE HANDHAWING EN BEVORDERING VAN
MEDEDINGING, 1990

ALGEMENE VERDUIDELIKENDE NOTA:

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

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

WET

Tot wysiging van die Wet op die Handhawing en Bevordering van Mededinging, 1979, ten einde 'n beperkende praktyk nader te omskryf; 'n verouderde benaming en uitdrukking te verander; die werksaamhede van die Raad op Mededinging verder te reël; verdere voorsiening te maak in verband met die bevoegdheid van genoemde Raad om opgawes te vereis en om ondersoeke in te stel; ander voorsiening ten opsigte van verkrygings te maak; en sekere gevolglike wysigings voortspruitende uit die reëling van monopoliesituasies aan te bring; en om vir bykomstige aangeleenthede voorsiening te maak.

(Engelse teks deur die Staatspresident geteken.)
(Goedgekeur op 21 Junie 1990.)

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

Wysiging van artikel 1 van Wet 96 van 1979, soos gewysig deur artikel 1 van Wet 62 van 1983, artikel 1 van Wet 12 van 1985, artikel 1 van Wet 5 van 1986 en artikel 1 van Wet 96 van 1987

1. Artikel 1 van die Wet op die Handhawing en Bevordering van Mededinging, 1979 (hieronder die Hoofwet genoem), word hierby gewysig—

(a) deur in die omskrywing van "beperkende praktyk" die woorde wat op paragraaf (d) volg en paragraaf (i) voorafgaan deur die volgende woorde te vervang:

"wat **[deurdat dit mededinging]** regstreeks of onregstreeks mededinging beperk deurdat dit die uitwerking het of waarskynlik sal hê om—"; en

(b) deur die omskrywing van "Minister" deur die volgende omskrywing te vervang:

"'Minister' die Minister **[van Ekonomiese Sake en Tegnologie]** vir Administrasie en Ekonomiese Koördinering;"

Wysiging van artikel 6 van Wet 96 van 1979, soos gewysig deur artikel 5 van Wet 12 van 1985

2. Artikel 6 van die Hoofwet word hierby gewysig—

(a) deur subartikel (1) deur die volgende subartikel te vervang:

"(1) Die raad **[moet]**—

(a) **[behoudens die opdrag]** moet, onderworpe aan die voorskrifte van die Minister, die **[ondersoek]** ondersoeke instel wat die raad nodig ag na, en die Minister adviseer met betrekking tot—

(i) alle aspekte van ekonomiese mededingingsbeleid, met inbegrip van die entrepreneursbedrywighede ten opsigte van inrigtings wat regstreeks of onregstreeks deur die Staat beheer word;

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GENERAL EXPLANATORY NOTE:

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

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

ACT

To amend the Maintenance and Promotion of Competition Act, 1979, so as to further define a restrictive practice; to alter an obsolete designation and expression; to further regulate the functions of the Competition Board; to make further provision in connection with the power of the said Board to require returns and to make investigations; to make other provision in respect of acquisitions; and to effect certain consequential amendments arising from the regulation of monopoly situations; and to provide for incidental matters.

(English text signed by the State President.)
(Assented to 21 June 1990.)

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, section 1 of Act 12 of 1985, section 1 of Act 5 of 1986 and section 1 of Act 96 of 1987

5 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 “Minister” of the following definition:

10 “‘Minister’ means the Minister **[of Economic Affairs and Technology]** for Administration and Economic Co-ordination;” and

(b) by the substitution in the definition of “restrictive practice” for the words following upon paragraph (d) and preceding paragraph (i) of the following words:

15 “which **[by directly or indirectly restricting]** restricts competition **[has or is]** directly or indirectly by having or being likely to have the effect of—”.

Amendment of section 6 of Act 96 of 1979, as amended by section 5 of Act 12 of 1985

2. Section 6 of the principal Act is hereby amended—

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

20 “(1) The board **[shall]**—

(a) shall, subject to the directions of the Minister, make such investigations as it may consider necessary into, and advise the Minister in regard to—

25 (i) all aspects of economic competition policy, including the entrepreneurial activities in respect of institutions directly or indirectly controlled by the State;

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- (ii) die koördinasie van die amptelike mededingingsbeleid op 'n wyse wat met **[die]** amptelike ekonomiese doelstellings ooreenstem;
- (iii) die uitvoering en toepassing van bedoelde mededingingsbeleid;
- (iv) nuwe ontwikkelings en neigings in verband met die aangeleenthede in subparagrafe (i), (ii) en (iii) vermeld; 5
- (b) moet deurgaans neigings tot verhoogde ekonomiese konsentrasie bestudeer met die oog op die ondersoek van **[verkrygings]** monopoliesituasies wat blykbaar nie in die openbare belang geregverdig is nie;
- (c) kan van tyd tot tyd inligting omtrent gangbare beleid met betrekking tot beperkende praktyke, verkrygings en monopoliesituasies versprei, om te dien as algemene **[leidrade]** riglyne ten bate van persone wat daarby betrokke **[by voorgename verkrygings]** is; 10
- (d) kan met **[enige]** 'n belanghebbende party **[by 'n voorgename verkryging op sy versoek]** oorleg pleeg **[met die doel om hom te adviseer aangaande die waarskynlike aanwesigheid van omstandighede wat sodanige verkryging in die openbare belang nie regverdig nie]** in verband met 'n beperkende praktyk of monopoliesituasie wat bestaan of mag ontstaan, of 'n verkryging wat plaasgevind het, aan die plaasvind is of voorgestel word; 15 20
- (e) kan verhoë met betrekking tot **[enige]** 'n aangeleentheid waarmee **[die raad]** hy ingevolge hierdie Wet kan handel, ontvang en afhandel; en
- (f) moet of kan, na gelang van die geval, enige ander werksaamheid wat **[hom]** by hierdie Wet aan hom opgedra is, verrig.”;
- (b) deur paragraaf (a) van subartikel (2) deur die volgende paragraaf te 25 vervang:
 - “(a) Op die skriftelike versoek van iemand wat voornemens is om 'n transaksie aan te gaan wat sal uitloop of bereken is om uit te loop op 'n verkryging, kan die raad, met die toestemming van die Minister en behoudens die voorwaardes wat die raad goedvind, 'n beslissing 30 verstrek ten effekte dat, op die feite en inligting in bedoelde aansoek vervat of op versoek van die raad deur die aansoeker of iemand anders verstrek, volgens die oordeel van die raad daar **[geen]** omstandighede aanwesig is **[nie]** wat sodanige verkryging in die openbare belang **[nie]** regverdig **[nie]**.”; 35
- (c) deur subartikel (3) te skrap.

Wysiging van artikel 8 van Wet 96 van 1979, soos gewysig deur artikel 3 van Wet 62 van 1983

3. Artikel 8 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang: 40

- “(1) Ten einde die raad in staat te stel om sy werksaamhede behoorlik te verrig, kan hy enigiemand wat sake doen of enige bedryf uitoefen, by skriftelike kennisgewing aansê om binne die tydperk in die kennisgewing vermeld, of van tyd tot tyd **[op die tye]** voor die datums of binne die tydperke aldus vermeld, aan die raad 'n skriftelike opgawe te verstrek waarin in besonderhede die inligting 45 met betrekking tot die besigheid of onderneming of bedrywighede van so iemand aangegee word wat in die kennisgewing vermeld staan, met inbegrip van inligting aangaande—
- (a) enige besigheidsooreenkoms wat so iemand te eniger tyd met enigiemand anders aangegaan het of voornemens is om aan te gaan, of waarby hy te 50 eniger tyd betrokke was **[of aangaande]**;
- (b) enige reëling of verstandhouding waarby so iemand, of enige besigheid of onderneming waarby hy betrokke is of was, 'n party is, gaan word of te eniger tyd was; of
- (c) enige belang wat so iemand, of enige besigheid of onderneming waarby hy 55 betrokke is of was, in enige ander besigheid of onderneming of in enige bate besig is om te verkry, voornemens is om te verkry of te eniger tyd verkry het.”.

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- (ii) the co-ordination of the official competition policy in a manner consistent with **[the]** official economic objectives;
- (iii) the implementation and administration of such competition policy;
- 5 (iv) new developments and trends in regard to the matters mentioned in subparagraphs (i), (ii) and (iii);
- (b) shall undertake a continuous study of trends towards increased economic concentration, with a view to the investigation of **[acquisitions]** monopoly situations which appear not to be justified in the public interest;
- 10 (c) may from time to time issue information on current policy in regard to restrictive practices, acquisitions and monopoly situations, to serve as general guidelines for the benefit of persons concerned **[in proposed acquisitions]** therein;
- 15 (d) may consult **[at his request]** with any interested party **[to a proposed acquisition, with a view to advising him on the likelihood of the existence of circumstances which do not justify such acquisition in the public interest]** in connection with any restrictive practice or monopoly situation which exists or may come into existence, or any acquisition which has been or is being made or is proposed;
- 20 (e) may receive and dispose of representations relating to any matter with which it may deal in terms of this Act; and
- (f) shall or may, as the case may be, perform any other function assigned to it by this Act.”;
- 25 (b) by the substitution for paragraph (a) of subsection (2) of the following paragraph:
- “*(a)* On the written application of any person who proposes to enter into any transaction which will or is calculated to result in an acquisition, the board may, with the consent of the Minister, issue, subject to such conditions as the board may deem fit, a ruling to the effect that, on the facts and information included in such application or furnished by the applicant or any other person at the request of the board, in the opinion of the board **[no]** circumstances exist which **[do not]** justify such acquisition in the public interest.”; and
- 30 (c) by the deletion of subsection (3).
- 35

Amendment of section 8 of Act 96 of 1979, as amended by section 3 of Act 62 of 1983

3. Section 8 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- 40 “(1) To enable the board properly to perform its functions, it may by notice in writing require any person engaged in business or in any industry to furnish the board, within a **[time]** period specified in the notice, or from time to time **[at]** before such **[times]** dates or within such periods as may be so specified, with a written return showing in detail such information with respect to the business or undertaking or activities of such person as may be specified in the notice, including information as to—
- 45 (a) any business agreement which such person may at any time have entered into or intend to enter into with any other person, or in which he may at any time have been concerned **[or as to]**;
- 50 (b) any arrangement or understanding to which such person, or any business or undertaking in which he is or was concerned, may be, may become or may at any time have been a party; or
- (c) any interest which such person, or any business or undertaking in which he is or was concerned, may be engaged in acquiring, may intend to acquire or may at any time have acquired in any other business or undertaking or in any asset.”.
- 55

Wet No. 88, 1990 WYSIGINGSWET OP DIE HANDHAWING EN BEVORDERING VAN MEDEDINGING, 1990

Wysiging van artikel 9 van Wet 96 van 1979

4. Artikel 9 van die Hoofwet word hierby gewysig—

- (a) deur in subartikel (2) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:

“Ten einde vas te stel of enige bepaling van hierdie Wet of ’n kennisgewing daarkragtens uitgereik, nagekom word deur iemand op wie dit van toepassing is, of ter verkryging van enige inligting deur die raad verlang met betrekking tot ’n ondersoek deur hom aangaande beperkende praktyke **[of]**, verkrygings of monopoliesituasies, kan so ’n ondersoekbeampte te alle redelike tye ’n perseel betree waarop of waarin daar wel of vermoedelik enige handelsartikel, boek, staat of ander stuk is wat in verband staan met bedoelde nakoming of inligting, en kan hy—”; en

- (b) deur subartikel (3) deur die volgende subartikel te vervang:

“(3) Iemand wat kragtens subartikel (1) aangewys is, moet voorsien word van ’n magtigingsbrief wat deur of namens die voorsitter van die raad onderteken is en waarin verklaar word dat so iemand as ’n ondersoekbeampte ingevolge hierdie Wet aangewys is met betrekking tot **[’n]** die een of ander besondere beweerde beperkende praktyk **[of ’n]**, verkryging of monopoliesituasie.”

Vervanging van artikel 10 van Wet 96 van 1979, soos gewysig deur artikel 4 van Wet 62 van 1983 en artikel 3 van Wet 5 van 1986

5. Artikel 10 van die Hoofwet word hierby deur die volgende artikel vervang:

“Ondersoek deur raad ten opsigte van beperkende praktyke, verkrygings en monopoliesituasies

10. (1) Behoudens die bepalings van subartikel (2), kan die raad op eie inisiatief, en moet die raad **[in opdrag]** op versoek van die Minister, die ondersoek instel wat die raad nodig ag—

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

- (b) ten einde te bepaal—

(i) of ’n verkryging plaasgevind het, aan die plaasvind is of voorgestel word;

(ii) wat die aard en omvang is van die beherende belang wat gehou en verkry is, verkry word of waarvan die verkryging voorgestel word;

- (c) na enige besondere tipe besigheidsooreenkom, reëling, verstandhouding, besigheidspraktyk of handelsmetode, in die algemeen of met betrekking tot ’n bepaalde handelsartikel of ’n klas of soort handelsartikel of ’n bepaalde besigheid of onderneming of ’n klas of tipe besigheid of onderneming of ’n bepaalde gebied wat volgens die oordeel van die raad of die Minister, na gelang van die geval, gewoonlik vir die doeleindes van of in verband met die skepping of handhawing van beperkende praktyke aangewend word;

- (d) na enige monopoliesituasie wat die raad of die Minister, na gelang van die geval, rede het om te vermoed bestaan of mag ontstaan.

(2) ’n Ondersoek in subartikel (1) (a), (b), (c) of (d) bedoel, word nie deur die raad op eie inisiatief ingestel of voortgesit nie, indien sodanige ondersoek volgens die oordeel van die Minister nie in die openbare belang is nie.

(3) Waar ’n ondersoek ingevolge subartikel (1) (a), (b) of (d) **[van hierdie artikel]** ingestel word, moet die raad binne drie maande vanaf die datum van die kennisgewing in subartikel (4) **[van hierdie artikel vermeld]** bedoel, of binne die verdere tydperk wat die Minister op versoek van die raad bepaal, aan die Minister ingevolge artikel 12 (1) verslag doen aangaande die uitslag van die ondersoek, of aangaande enige reëling wat kragtens artikel 11 getref is.

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Amendment of section 9 of Act 96 of 1979

4. Section 9 of the principal Act is hereby amended—

- (a) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

5 “In order to ascertain whether any provision of this Act or any notice issued thereunder is being observed by any person to whom it applies, or to obtain any information required by the board in relation to any investigation by it as to restrictive practices **[or]**, acquisitions or monopoly situations, any such investigating officer may at all reason-
10 able times enter any premises on or in which any commodity, book, statement or other document connected with that observation or information is or is suspected to be, and may—”; and

- (b) by the substitution for subsection (3) of the following subsection:

15 “(3) Any person designated under subsection (1) shall be provided with a letter of authority signed by or on behalf of the chairman of the board and certifying that such person has been designated as an investigating officer in terms of this Act in relation to **[a]** any specific alleged restrictive practice **[or an]**, acquisition or monopoly situation.”.

20 Substitution of section 10 of Act 96 of 1979, as amended by section 4 of Act 62 of 1983 and section 3 of Act 5 of 1986

5. The following section is hereby substituted for section 10 of the principal Act:

“Investigation by board in respect of restrictive practices, acquisitions and monopoly situations

25 **10.** (1) Subject to the provisions of subsection (2), the board may on its own initiative, and shall **[on the directions]** at the request of the Minister, make such **[investigations]** investigation 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;

30 (b) in order to ascertain—

(i) whether any 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 proposed to be acquired;

35 (c) into any particular type of business agreement, arrangement, understanding, business practice or method of trading in general or in relation to any 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
40 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;

(d) into any monopoly situation which the board or the Minister, as the case may be, has reason to believe exists or may come into existence.

45 (2) An investigation referred to in subsection (1)(a), (b), (c) or (d) shall not be made or proceeded with by the board on its own initiative, if in the opinion of the Minister such investigation is not in the public interest.

50 (3) Where an investigation is made in terms of subsection (1)(a), (b) or (d) **[of this section]**, the board shall within three months from the date of the notice **[mentioned]** referred to in subsection (4) **[of this section]**, or within such further period as the Minister may at the request of the board determine, report to the Minister in terms of section 12(1) as to the result of the investigation, or as to any arrangement which may have been made
55 under section 11.

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(4) Die raad moet by kennisgewing in die *Staatskoerant* kennis gee en besonderhede verstrek van enige ondersoek wat hy voornemens is om ingevolge subartikel (1) in te stel, en voorts kennis gee dat enigiemand binne 30 dae vanaf die datum van die kennisgewing die skriftelike vertoë aangaande sodanige ondersoek wat so iemand nodig ag tot die raad kan rig. 5

(5) Nadat so 'n kennisgewing wat betrekking het op 'n ondersoek ingevolge subartikel (1) (a) of (b) gepubliseer is en voordat die tersaaklike verslag aan hom voorgelê word, kan die Minister, op aanbeveling van die raad, by kennisgewing in die *Staatskoerant* vir 'n tydperk in die kennisgewing vermeld maar hoogstens die tydperk **[van drie maande]** of verdere tydperk in subartikel (3) **[bedoel]** beoog, die stappe voorskryf wat volgens die oordeel van die Minister gedoen moet word om enige beperkende praktyk wat bestaan of mag ontstaan of om enige verkryging wat plaasvind of voorgestel word, na gelang van die geval, op te skort of te voorkom. 10

(6) 'n Kennisgewing kragtens subartikel (5) kan op aanbeveling van die raad te eniger tyd deur die Minister gewysig of ingetrek word, en is nie aan hersiening deur of appèl na 'n geregshof onderworpe nie.

(7) Iemand wat 'n kennisgewing kragtens subartikel (5) oortree of versuim om daaraan te voldoen, is aan 'n misdryf skuldig. 20

Wysiging van artikel 12 van Wet 96 van 1979, soos gewysig deur artikel 5 van Wet 62 van 1983, artikel 7 van Wet 12 van 1985 en artikel 5 van Wet 5 van 1986

6. Artikel 12 van die Hoofwet word hierby gewysig—

(a) deur paragraaf (b) van subartikel (2) deur die volgende paragraaf te vervang: 25

“(b) nie oortuig is dat bedoelde beperkende praktyk of verkryging in die openbare belang geregverdig is nie of oortuig is dat bedoelde **[verkryging of]** monopoliesituasie nie in die openbare belang geregverdig is nie; en” 30

(b) deur subartikel (4) deur die volgende subartikel te vervang:

“(4) Elke sodanige verslag wat volgens die oordeel van die Minister sonder benadeling van die openbare belang bekend gemaak kan word—

(a) moet so gou doenlik in die **[Volksraad]** Parlement ter Tafel gelê word; 35
(b) kan te eniger tyd, hetsy voordat of nadat dit ingevolge paragraaf (a) in die **[Volksraad]** Parlement ter Tafel gelê word of is, deur die Minister in die *Staatskoerant* gepubliseer word of op 'n ander wyse wat die Minister dienstig ag, bekend gemaak word.”

Vervanging van artikel 14 van Wet 96 van 1979, soos gewysig deur artikel 6 van Wet 62 van 1983, artikel 8 van Wet 12 van 1985 en artikel 6 van Wet 5 van 1986 40

7. Artikel 14 van die Hoofwet word hierby deur die volgende artikel vervang:

“Wyse waarop in verband met beperkende praktyke, verkrygings en monopoliesituasies gehandel kan word

14. (1) Wanneer die Minister na oorweging van 'n verslag deur die raad ingevolge artikel 12 (1) aangaande die uitslag van 'n ondersoek deur die raad ingevolge artikel 10 (1) (a), (b) of (d) ingestel, van mening is dat 'n beperkende praktyk bestaan of mag ontstaan of dat 'n verkryging plaasgevind het, aan die plaasvind is of voorgestel word en nie oortuig is dat die beperkende praktyk of verkryging in die openbare belang geregverdig is nie, of van mening is dat **[’n verkryging plaasgevind het, aan die plaasvind is of voorgestel word of dat]** 'n monopoliesituasie bestaan of mag ontstaan en oortuig is dat die **[verkryging of]** monopoliesituasie nie in die openbare belang geregverdig is nie, en nie 'n reëling vermeld in artikel 11 (1) of 13 (1) (a) ten opsigte van bedoelde beperkende praktyk, verkryging of monopoliesituasie getref, bekragtig het nie— 55

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(4) The board shall by notice in the *Gazette* make known, and furnish particulars of, any investigation which it proposes to make in terms of subsection (1), and further make known that any person may within 30 days from the date of the notice make such representations in writing regarding such investigation to the board as such person may consider necessary.

(5) After any such notice relating to any investigation in terms of subsection (1) (a) or (b) has been published and before the relevant report is submitted to him, the Minister may, on the recommendation of the board, prescribe by notice in the *Gazette*, for such period as may be specified in the notice, but not exceeding the period **[of three months referred to]** or further period contemplated in subsection (3), such action as in the opinion of the Minister shall be taken to stay or prevent any restrictive practice which exists or may come into existence or any acquisition being made or proposed, as the case may be.

(6) Any notice under subsection (5) may upon the recommendation of the board be amended or withdrawn by the Minister at any time, and shall not be subject to review by or appeal to any court of law.

(7) Any person who contravenes or fails to comply with a notice under subsection (5) shall be guilty of an offence.”

Amendment of section 12 of Act 96 of 1979, as amended by section 5 of Act 62 of 1983, section 7 of Act 12 of 1985 and section 5 of Act 5 of 1986

6. Section 12 of the principal Act is hereby amended—

(a) by the substitution for paragraph (b) of subsection (2) of the following paragraph:

“(b) is not satisfied that such restrictive practice or acquisition is justified in the public interest or is satisfied that such **[acquisition or]** monopoly situation is not justified in the public interest; and”;

(b) by the substitution for subsection (4) of the following subsection:

“(4) Every such report which in the opinion of the Minister may be made known without detriment to the public interest—

(a) shall as soon as practicable be laid upon the **[Table of the House of Assembly]** Tables of Parliament;

(b) may at any time, either before or after it is or was laid upon the **[Table of the House of Assembly]** Tables of Parliament in terms of paragraph (a), be published by the Minister in the *Gazette* or be made known by the Minister in any other manner that the Minister may deem expedient.”

Substitution of section 14 of Act 96 of 1979, as amended by section 6 of Act 62 of 1983, section 8 of Act 12 of 1985 and section 6 of Act 5 of 1986

7. The following section is hereby substituted for section 14 of the principal Act:

“Manner of dealing with restrictive practices, acquisitions and monopoly situations

14. (1) Whenever after consideration of a report by the board in terms of section 12 (1) as to the result of any investigation made by it in terms of section 10 (1) (a), (b) or (d), the Minister is of opinion that a restrictive practice exists or may come into existence or that an acquisition has been or is being made or is proposed and is not satisfied that such restrictive practice or acquisition is justified in the public interest, or is of opinion that **[an acquisition has been or is being made or is proposed or that]** a monopoly situation exists or may come into existence and is satisfied that such **[acquisition or]** monopoly situation is not justified in the public interest, and has not confirmed any arrangement which may have been made in terms of section 11 (1) or 13 (1) (a) in respect of such restrictive practice, acquisition or monopoly situation—

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- (a) kan die Minister van Finansies op versoek van die Minister, ingevolge die Doeane- en Aksynswet, 1964 (Wet No. 91 van 1964), 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 daardie beperkende praktyk, verkryging of monopoliesituasie geraak word, vanaf die datum van publikasie van bedoelde kennisgewing opskort in die mate en vir die tydperk wat hy goedvind; 5
- (b) kan die Pryscontroleur op versoek van die Minister die maksimumprys kragtens die Wet op Prysbeheer, 1964 (Wet No. 25 van 1964), vasstel waarteen enige handelsartikel, uitgesonderd 'n versekerings- of bankdiens, wat deur die werking van genoemde beperkende praktyk, verkryging of monopoliesituasie geraak word, deur 'n persoon aan 'n ander persoon verkoop mag word of waarteen 'n persoon sodanige handelsartikel van 'n ander persoon mag koop; 15
- (c) kan die Minister by kennisgewing in die *Staatskoerant*—
- (i) genoemde beperkende praktyk, verkryging of monopoliesituasie onwettig verklaar, en enigiemand wat volgens die Minister se oordeel by genoemde beperkende praktyk of monopoliesituasie betrokke is of wat volgens sy oordeel 'n party by genoemde verkryging is of was, gelas om die stappe te doen, met inbegrip van stappe vir die ontbinding van enige liggaam met of sonder regspersoonlikheid, die verbreking van enige verband of vorm van assosiasie tussen twee of meer persone, met inbegrip van enige sodanige liggame, die beëindiging van die lidmaatskap van 'n lid van enige liggaam met regspersoonlikheid of die toepassing van 'n verbod deur die Minister op die uitoefening van die reg om te stem verbonde aan die hou van 'n aandeel in so 'n liggaam, wat die Minister nodig ag om die beëindiging of voorkoming van daardie beperkende praktyk of monopoliesituasie of die opheffing of voorkoming van daardie verkryging te verseker of enige ongewenste kenmerke daarvan uit te skakel; 20 25 30
- (ii) iemand wat 'n party by 'n in die kennisgewing vermelde ooreenkoms, reëling, verstandhouding of versuim is of was of aldus vermelde besigheidspraktyk of handelsmetode toepas of toegepas het of 'n aldus vermelde handeling verrig of verrig het of 'n aldus vermelde toestand teweegbring of teweeggebring 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 besigheidspraktyk 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 besigheidspraktyk 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 waarskynlik dieselfde uitwerking sal hê. 35 40 45
- (2) Na verdere ondersoek deur die raad en op versoek van die Minister kan— 50
- (a) die Minister van Finansies 'n kennisgewing kragtens subartikel (1) (a) intrek of wysig op die wyse wat hy goedvind;
- (b) die Pryscontroleur 'n maksimumprys soos in subartikel (1) (b) beoog, vasgestel, kragtens die Wet op Prysbeheer, 1964, intrek of wysig. 55
- (3) 'n Kennisgewing kragtens subartikel (1) (c)—
- (a) word nie gepubliseer nie totdat die tersaaklike verslag van die raad deur die Minister kragtens artikel 12 (4) (b) in die *Staatskoerant* gepubliseer of op 'n ander wyse bekend gemaak is; 60
- (b) tree, behoudens die bepalings van subartikel (4), in werking op 'n datum deur die Minister bepaal en in die kennisgewing vermeld, wat nie minder as ses weke na die datum van publikasie daarvan is nie;

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- 5 (a) the Minister of Finance may, at the request of the Minister, in terms of the Customs and Excise Act, 1964 (Act No. 91 of 1964), 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 goods affected by the operation of that restrictive practice, acquisition or monopoly situation, to the extent and for such period as he may deem fit;
- 10 (b) the Price Controller may at the request of the Minister fix, under the Price Control Act, 1964 (Act No. 25 of 1964), the maximum price at which any commodity, other than any insurance or banking service, affected by the operation of the said restrictive practice, acquisition or monopoly situation, may be sold by any person to any other person or at which any person may purchase such commodity from any other person;
- 15 (c) the Minister may by notice in the *Gazette*—
- 20 (i) declare the said restrictive practice, acquisition or monopoly situation to be unlawful, and require any person who in the opinion of the Minister is concerned in the said restrictive practice or monopoly situation or who in his opinion is or was a party to the said acquisition, to take such action, including steps for the dissolution of any body corporate or unincorporate, the severance of any connection or of any form of association between two or more persons, including any such bodies, the termination of the membership of a member of any body corporate or the application of any prohibition by the Minister on the exercise of any right to vote attached to the holding of any share in any such body, as the Minister may consider necessary to ensure the discontinuance or prevention of that restrictive practice or monopoly situation or the abolition or prevention of that acquisition or to eliminate any undesirable features thereof;
- 25 (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 likely to have the same effect.
- 30 (2) After further investigation by the board and at the request of the Minister—
- 35 (a) the Minister of Finance may withdraw any notice under subsection (1) (a) or amend it in such manner as he may deem fit;
- 40 (b) the Price Controller may under the Price Control Act, 1964, withdraw or amend any maximum price fixed as contemplated in subsection (1) (b).
- 45 (3) Any notice under subsection (1) (c)—
- 50 (a) shall not be published until after the relevant report of the board has in terms of section 12 (4) (b) been published by the Minister in the *Gazette* or made known by the Minister in any other manner;
- 55 (b) shall, subject to the provisions of subsection (4), come into operation upon a date fixed by the Minister and specified in such notice, not being less than six weeks after the date of publication thereof;
- 60

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- (c) kan die vereistes voorskryf wat die Minister nodig ag om die oogmerke van daardie kennisgewing te verwesenlik, en die persone vermeld wat aan die bepalings van daardie kennisgewing of so 'n vereiste moet voldoen, asook die tydperke waarin en die voorwaardes waarop enige sodanige persoon aan daardie bepalings of vereiste moet voldoen; 5
- (d) kan te eniger tyd, na verdere ondersoek deur die raad, deur die Minister ingetrek of op die wyse wat hy goedvind, gewysig word.
- (4) (a) Indien ten opsigte van 'n kennisgewing kragtens subartikel (1) (c) van hierdie artikel 'n appèl ingevolge artikel 15 (5) by die Minister ingedien word, tree daardie kennisgewing, behoudens die bevel van die spesiale hof wat daardie appèl verhoor, in werking op 'n datum wat die Minister bepaal en by kennisgewing in die *Staatskoerant* bekend maak, maar nie vroeër nie as ses weke na die datum van die kennisgewing in artikel 15 (14) bedoel. 15
- (b) Vir die toepassing van paragraaf (a) moet die Minister so gou doenlik na die indiening van 'n appèl by hom, van daardie indiening in die *Staatskoerant* kennis gee.
- (5) (a) Wanneer die Minister na oorweging van 'n verslag deur die raad ingevolge artikel 12 (1) aangaande die uitslag van 'n ondersoek deur die raad ingevolge artikel 10 (1) (c) onderneem, van mening is dat dit in die openbare belang is, kan die Minister by kennisgewing in die *Staatskoerant* enige besondere tipe ooreenkoms, reëling, verstandhouding, besigheidspraktyk of handelsmetode wat die onderwerp van die ondersoek was, onwettig verklaar, hetsy in die algemeen of ten opsigte van 'n bepaalde gebied, na gelang die ondersoek van algemene aard was of met betrekking tot 'n bepaalde gebied geskied het, en enigiemand verbied om so 'n ooreenkoms, reëling of verstandhouding aan te gaan of 'n party daarby te wees of te bly of om so 'n besigheidspraktyk of handelsmetode toe te pas; hetsy geheel en al of in die mate of onderworpe aan enige vrystelling bedoel in paragraaf (b), mits die Minister minstens een maand voor die datum van publikasie van die kennisgewing die teks van die voorgename kennisgewing in die *Staatskoerant* gepubliseer het, tesame met 'n verklaring van sy voorneme om so 'n kennisgewing in die *Staatskoerant* te publiseer. 35
- (b) Die Minister kan, op aanbeveling van die raad, in 'n bepaalde geval skriftelike vrystelling verleen van 'n verbod bedoel in paragraaf (a) in die mate en onderworpe aan die voorwaardes uiteengesit in die vrystelling. 40
- (6) 'n Kennisgewing kragtens subartikel (5) kan te eniger tyd na verdere ondersoek deur die raad deur die Minister by kennisgewing in die *Staatskoerant* ingetrek of op die wyse wat hy goedvind, gewysig word, mits hy, in die geval van bedoelde wysiging, minstens een maand voor die datum van publikasie van die wysigingskennisgewing die teks van die voorgename wysigingskennisgewing in die *Staatskoerant* gepubliseer het, tesame met 'n verklaring van sy voorneme om die wysigingskennisgewing in die *Staatskoerant* te publiseer. 45
- (7) Iemand wat 'n kennisgewing kragtens hierdie artikel gepubliseer, oortree of versuim om daaraan te voldoen, is aan 'n misdryf skuldig. 50

Vervanging van lang titel van Wet 96 van 1979, soos vervang deur artikel 10 van Wet 12 van 1985

8. Die lang titel van die Hoofwet word hierby deur die volgende lang titel vervang:
"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 beheerende belange in sekere besighede of ondernemings of in sekere bates], verkrygings en monopoliesituasies, en vir aangeleenthede wat daarmee in verband staan." 55

Kort titel

9. Hierdie Wet heet die Wysigingswet op die Handhawing en Bevordering van Mededinging, 1990. 60

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- (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 periods 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 be amended by him in such manner as he may deem fit.
- (4) (a) If an appeal is lodged with the Minister in terms of section 15 (5) in respect of a notice under subsection (1) (c) of this section, that notice shall, subject to the order of the special court hearing that appeal, come into operation on such date as the Minister may determine and make known by notice in the *Gazette*, but not earlier than six weeks after the date of the notice referred to in section 15 (14).
- (b) For the application of paragraph (a), the Minister shall as soon as practicable after the lodging of an appeal with him, give notice of that lodging in the *Gazette*.
- (5) (a) Whenever after consideration of a report by the board in terms of section 12 (1) as to the result of any investigation undertaken by it in terms of section 10 (1) (c), the Minister is of opinion that it is in the public interest, he may by notice in the *Gazette* declare any particular type of agreement, arrangement, understanding, business practice or method of trading which was the subject of the investigation to be unlawful, either 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, and prohibit any person from entering into or being or continuing to be a party to any such agreement, arrangement or understanding or from applying any such business practice or method of trading either wholly or to **[such]** the extent or subject to any exemption contemplated in paragraph (b), provided the Minister has not less than one month before the date of publication of the notice published the text of the proposed notice in the *Gazette*, together with a statement of his intention to publish such a notice in the *Gazette*.
- (b) The Minister may, on the recommendation of the board, in a particular case in writing grant exemption from any prohibition contemplated in paragraph (a) to such extent and subject to such conditions as may be specified in the exemption.
- (6) A notice under subsection (5) may at any time after further investigation by the board be withdrawn by the Minister or amended in such a manner as he may deem fit, provided, in the case of such amendment, he has not less than one month before the date of publication of the amending notice published the text of the proposed amending notice in the *Gazette*, together with a statement of his intention to publish such amending notice in the *Gazette*.
- (7) Any person who contravenes or fails to comply with any notice published under this section, shall be guilty of an offence.”.

50 Substitution of long title of Act 96 of 1979, as substituted by section 10 of Act 12 of 1985

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

55 “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]**, acquisitions and monopoly situations, and for matters connected therewith.”.

Short title

9. This Act shall be called the Maintenance and Promotion of Competition
60 Amendment Act, 1990.

