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GOVERNMENT GAZETTE

STAATSKOERANT

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OFFICE OF THE PRESIDENT

KANTOOR VAN DIE PRESIDENT

No. 1392. 30 October 1998

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

No. 89 of 1998: Competition Act, 1998.

No. 1392. 30 Oktober 1998

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

No. 89 van 1998: Wet op Mededinging, 1998.

*(English text signed by the President.)
(Assented to 20 October 1998.)*

ACT

To provide for the establishment of a Competition Commission responsible for the investigation, control and evaluation of restrictive practices, abuse of dominant position, and mergers; and for the establishment of a Competition Tribunal responsible to adjudicate such matters; and for the establishment of a Competition Appeal Court; and for related matters.

PREAMBLE

The people of South Africa recognise:

That apartheid and other discriminatory laws and practices of the past resulted in excessive concentrations of ownership and control within the national economy, weak enforcement of anti-competitive trade practices, and unjust restrictions on full and free participation in the economy by all South Africans.

That the economy must be open to greater ownership by a greater number of South Africans.

That credible competition law, and effective structures to administer that law, are necessary for an efficient functioning economy.

That an efficient, competitive economic environment, balancing the interests of workers, owners and consumers and focussed on development, will benefit all South Africans.

IN ORDER TO—

provide all South Africans equal opportunity to participate fairly in the national economy;

achieve a more effective and efficient economy in South Africa;

provide for markets in which consumers have access to, and can freely select, the quality and variety of goods and services they desire;

create greater capability and an environment for South Africans to compete effectively in international markets;

restrain particular trade practices which undermine a competitive economy;

regulate the transfer of economic ownership in keeping with the public interest;

establish independent institutions to monitor economic competition; and
give effect to the international law obligations of the Republic.

*(Engelse teks deur die President geteken.)
(Goedgekeur op 20 Oktober 1998.)*

WET

Om voorsiening te maak vir die instelling van 'n Mededingingskommissie wat verantwoordelik is vir die ondersoek, beheer en beoordeling van beperkende praktyke, misbruik van dominante posisie, en samesmeltings; en vir die instelling van 'n Mededingingstribunaal verantwoordelik vir die beregting van sodanige aangeleenthede; en vir die instel van 'n Appèlhof vir Mededinging; en vir verwante aangeleenthede.

AANHEF

Die mense van Suid-Afrika erken:

Dat apartheid en diskriminerende wette en praktyke van die verlede aanleiding gegee het tot 'n buitensporige konsentrasie van eiendomsreg en beheer in die nasionale ekonomie, swak afdwinging van anti-mededingende handelspraktyke, en onregverdigde beperkings op volkome en vrye deelname aan die ekonomie deur alle Suid-Afrikaners.

Dat die ekonomie oop moet wees vir groter eiendomsreg deur 'n groter getal Suid-Afrikaners.

Dat geloofwaardige mededingingswetgewing, en doeltreffende strukture om daardie wetgewing te administreer, noodsaaklik is vir 'n ekonomie wat doeltreffend funksioneer.

Dat 'n doeltreffende, mededingende ekonomiese omgewing, wat die belange van werkers, eienaars en verbruikers balanseer en op ontwikkeling gerig is, alle Suid-Afrikaners sal bevoordeel.

TEN EINDE—

aan alle Suid-Afrikaners 'n gelyke geleentheid te gun om billik aan die nasionale ekonomie deel te neem;

'n doeltreffender en effektiewer ekonomie in Suid-Afrika te bereik;

markte te voorsien waartoe verbruikers toegang het, en vryelik die gehalte en verskeidenheid kan kies van goedere en dienste wat hulle verlang;

groter vermoë en 'n omgewing te skep waarin Suid-Afrikaners doeltreffend in internasionale markte kan meeding;

besondere handelspraktyke wat 'n mededingende ekonomie ondermyn, aan bande te lê;

die oordrag van ekonomiese eiendomsreg in ooreenstemming met die openbare belang te reël;

onafhanklike instellings in te stel ten einde ekonomiese mededinging te kontroleer; en

uitvoering te gee aan volkeregverpligtinge van die Republiek,

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

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CHAPTER 1

DEFINITIONS, INTERPRETATION, PURPOSE AND APPLICATION OF ACT

Definitions and interpretation

1. (1) In this Act—
- (i) **'agreement'** includes a contract, arrangement or understanding, whether or not legally enforceable; (xv) 5
 - (ii) **'civil court'** means a High Court or Magistrates Court, as referred to in sections 166(c) and (d) of the *Constitution*; (xxii)
 - (iii) **'confidential information'** means trade, business or industrial information that belongs to a *firm*, has a particular economic value, and is not generally available to or known by others; (xxvii) 10
 - (iv) **'concerted practice'** means co-operative or co-ordinated conduct between *firms*, achieved through direct or indirect contact, that replaces their independent action, but which does not amount to an *agreement*; (vi) 15
 - (v) **'Constitution'** means the *Constitution* of the Republic of South Africa, 1996 (Act No. 108 of 1996); (viii)
 - (vi) **'essential facility'** means an infrastructure or resource that cannot reasonably be duplicated, and without access to which competitors cannot reasonably provide goods or services to their customers; (xiv) 20
 - (vii) **'excessive price'** means a price for a good or service which—
 - (aa) bears no reasonable relation to the economic value of that good or service; and
 - (bb) is higher than the value referred to in subparagraph (aa); (iv) 25
 - (viii) **'exclusionary act'** means an act that impedes or prevents a firm from entering into, or expanding within, a market; (xxiv)
 - (ix) **'firm'** includes a person, partnership or a trust; (v)
 - (x) **'goods or services'**, when used with respect to particular *goods or services*, includes any other *goods or services* that are reasonably capable of being substituted for them, taking into account ordinary commercial practice and geographical, technical and temporal constraints; (vii) 30
 - (xi) **'horizontal relationship'** means a relationship between competitors; (x)
 - (xii) **'interest'** means a member's *interest* as defined in the Close Corporations Act, 1984 (Act No. 69 of 1984); (i) 35
 - (xiii) **'market power'** means the power of a *firm* to control prices, to exclude competition or to behave to an appreciable extent independently of its competitors, customers or suppliers; (xii)
 - (xiv) **'Minister'** means the *Minister* of Trade and Industry; (xiii)
 - (xv) **'organ of state'** has the meaning set out in section 239 of the *Constitution*; (xxiii) 40
 - (xvi) **'premises'** includes land, any building, structure, vehicle, ship, boat, vessel, aircraft or container; (xvii)
 - (xvii) **'prescribed'** means *prescribed* from time to time by *regulation* in terms of section 78; (xxviii) 45
 - (xviii) **'private dwelling'** means any part of a structure that is occupied as a residence, or any part of a structure or outdoor living area that is accessory to, and used wholly for the purposes of, a residence; (xviii)
 - (xix) **'prohibited practice'** means a practice prohibited in terms of Chapter 2; (xxv) 50
 - (xx) **'public regulation'** means any national, provincial or local government legislation or subordinate legislation, or any license, tariff, directive or similar authorisation issued by a *regulatory authority* or pursuant to any statutory authority; (xvi)
 - (xxi) **'regulation'** means a *regulation* made under *this Act*; (xix) 55
 - (xxii) **'regulatory authority'** means an entity established in terms of national, provincial or local government legislation or subordinate legislation responsible for regulating an industry, or sector of an industry; (xx)
 - (xxiii) **'respondent'** means a *firm* against whom a complaint of a *prohibited practice* has been initiated in terms of *this Act*; (xxi) 60

HOOFSTUK 1

WOORDOMSKRYWING, UITLEG, DOEL EN TOEPASSING VAN WET

Woordomsrywings en uitleg

1. In hierdie Wet beteken—

- 5 (i) **'belang'** 'n ledebelang soos omskryf in die Wet op Beslote Korporasies, 1984 (Wet No. 69 van 1984); (xii)
- (ii) **'beperkende horisontale praktyk'** 'n praktyk in artikel 4 gelys; (xxiv)
- (iii) **'beperkende vertikale praktyk'** 'n praktyk in artikel 5 gelys; (xxv)
- (iv) **'buitensporige prys'** 'n prys vir goedere of dienste wat—
10 (aa) geen redelike verband hou met die ekonomiese waarde van daardie goedere of diens nie; en
(bb) hoër is as die waarde waarna in subparagraaf (aa) verwys; (vii)
- (v) **'firma'** ook 'n persoon, vennootskap of trust; (ix)
- (vi) **'gesamentlike praktyk'** gesamentlike of gekoördineerde gedrag tussen
15 firmas, deur direkte of indirekte kontak bereik, wat hul onafhanklike optrede vervang, maar wat nie op 'n ooreenkoms neerkom nie; (iv)
- (vii) **'goedere of dienste'**, wanneer gebruik met betrekking tot besondere goedere of dienste, ook alle ander goedere of dienste wat redelikerwys eersgenoemde goedere of dienste kan vervang, met inagneming van gewone handelspraktyk en geografiese, tegniese en tydsbeperkinge; (x)
- 20 (viii) **'Grondwet'** die Grondwet van die Republiek van Suid-Afrika, 1966 (Wet No. 108 van 1966); (v)
- (ix) **'hierdie Wet'** ook die regulasies en Bylaes; (xxviii)
- (x) **'horisontale verhouding'** 'n verhouding tussen mededingers; (xi)
- 25 (xi) **'kleinsaak'** dieselfde as die betekenis wat in die Nasionale Kleinsakewet, 1996 (Wet No. 102 van 1996) uiteengesit word; (xxvi)
- (xii) **'markkrag'** die vermoë van 'n firma om pryse te beheer, om mededinging uit te sluit, of om in 'n noemenswaardige mate onafhanklik van sy mededingers, kliënte of verskaffers op te tree; (xiii)
- 30 (xiii) **'Minister'** die Minister van Handel en Nywerheid; (xiv)
- (xiv) **'noodsaaklike fasiliteit'** 'n infrastruktuur of hulpmiddel wat nie redelikerwys gedupliseer kan word nie, en sonder toegang waartoe mededingers nie redelikerwys goedere of dienste aan hul kliënte kan voorsien nie; (vi)
- (xv) **'ooreenkoms'** ook 'n kontrak, reëling of verstandhouding, hetsy regtens
35 afdwingbaar al dan nie; (i)
- (xvi) **'openbare regulasie'** enige wetgewing deur 'n nasionale, provinsiale of plaaslike regering, of ondergeskikte wetgewing, of enige lisensie, tarief, riglyn of soortgelyke magtiging uitgereik deur 'n regulerende owerheid of in navolging van enige statutêre magtiging; (xx)
- 40 (xvii) **'perseel'** ook grond, enige gebou, struktuur, voertuig, skip, boot, vaartuig, vliegtuig of houer; (xvi)
- (xviii) **'privaatwoning'** enige deel van 'n struktuur wat geokkupeer word as 'n woning of enige deel van 'n struktuur of buitenshuise leefruimte wat daarby hoort en wat in geheel vir doeleindes van 'n woning gebruik word; (xviii)
- 45 (xix) **'regulasie'** 'n regulasie kragtens hierdie Wet uitgevaardig; (xxi)
- (xx) **'regulerende owerheid'** 'n entiteit ingestel ingevolge nasionale, provinsiale of plaaslike regering wetgewing of ondergeskikte wetgewing wat vir die regulering van 'n nywerheid of nywerheidssektor verantwoordelik is; (xxii)
- (xxi) **'respondent'** 'n firma teen wie 'n klagte van verbode praktyk ingevolge
50 hierdie Wet aanhangig gemaak word; (xxiii)
- (xxii) **'siviele hof'** 'n Hoë Hof of Landdroshof, bedoel in artikels 166(c) en (d) van die Grondwet; (ii)
- (xxiii) **'staatsorgaan'** dieselfde as die betekenis wat in artikel 239 van die Grondwet uiteengesit word; (xv)
- 55 (xxiv) **'uitsluitende handeling'** 'n handeling wat 'n firma belemmer of verhinder om toegang, tot of uitbreiding binne, 'n mark te verkry; (viii)
- (xxv) **'verbode praktyk'** 'n praktyk wat ingevolge Hoofstuk 2 verbied word; (xix)
- (xxvi) **'vertikale verhouding'** die verhouding tussen 'n firma en sy verskaffers, sy kliënte of beide; (xxviii)

- (xxiv) 'restrictive horizontal practice' means any practice listed in section 4; (ii)
- (xxv) 'restrictive vertical practice' means any practice listed in section 5; (iii)
- (xxvi) 'small business' has the meaning set out in the National Small Business Act, 1996 (Act No. 102 of 1996); (xi) 5
- (xxvii) 'this Act' includes the regulations and Schedules; (ix)
- (xxviii) 'vertical relationship' means the relationship between a *firm* and its suppliers, its customers or both. (xxvi)
- (2) This Act must be interpreted—
 - (a) in a manner that is consistent with the *Constitution* and gives effect to the purposes set out in section 2; and 10
 - (b) in compliance with the international law obligations of the Republic.
- (3) Any person interpreting or applying *this Act* may consider appropriate foreign and international law.

Purpose of Act 15

2. The purpose of *this Act* is to promote and maintain competition in the Republic in order—

- (a) to promote the efficiency, adaptability and development of the economy;
- (b) to provide consumers with competitive prices and product choices;
- (c) to promote employment and advance the social and economic welfare of South Africans; 20
- (d) to expand opportunities for South African participation in world markets and recognise the role of foreign competition in the Republic;
- (e) to ensure that small and medium-sized enterprises have an equitable opportunity to participate in the economy; and 25
- (f) to promote a greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged persons.

Application of Act

3. (1) This Act applies to all economic activity within, or having an effect within, the Republic, except— 30

- (a) collective bargaining within the meaning of section 23 of the *Constitution*, and the Labour Relations Act, 1995 (Act No. 66 of 1995);
- (b) a collective agreement, as defined in section 213 of the Labour Relations Act, 1995;
- (c) the rules of a professional association to the extent that they are exempted in terms of Schedule 1; 35
- (d) acts subject to or authorised by *public regulation*; or
- (e) concerted conduct designed to achieve a non-commercial socio-economic objective or similar purpose.

(2) For all purposes of *this Act*, a person is a historically disadvantaged person if that person— 40

- (a) is one of a category of individuals who, before the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), came into operation, were disadvantageded by unfair discrimination on the basis of race;
- (b) is an association, a majority of whose members are individuals referred to in paragraph (a); 45
- (c) is a juristic person other than an association, and individuals referred to in paragraph (a) own and control a majority of its issued share capital or members' *interest* and are able to control a majority of its votes; or
- (d) is a juristic person or association, and persons referred to in paragraph (a), (b) or (c) own and control a majority of its issued share capital or members' *interest* and are able to control a majority of its votes. 50

- (xxvii) 'vertroulike inligting' handels-, besigheids- of nywerheidsinligting wat aan 'n firma behoort, 'n besondere ekonomiese waarde het, en nie normaalweg beskikbaar is vir, of bekend is aan ander nie; (iii)
- (xxviii) 'voorgeskrif' van tyd tot tyd by regulasie ingevolge artikel 78 voorgeskrif.
- 5 (xvii)
- (2) Hierdie Wet moet uitgelê word—
- (a) op 'n wyse wat bestaanbaar is met die Grondwet en wat uitvoering gee aan die oogmerke in artikel 2 uiteengesit; en
- (b) ooreenkomstig die volkeregverpligtinge van die Republiek.
- 10 (3) Elke persoon wat hierdie Wet uitlê of toepas kan gepaste buitelandse en volkereg oorweeg.

Doel van Wet

2. Die doel van hierdie Wet is om mededinging in die Republiek te bevorder en te handhaaf ten einde—
- 15 (a) die doeltreffendheid, aanpasbaarheid en ontwikkeling van die ekonomie te bevorder;
- (b) mededingende pryse en produkkeuses aan verbruikers te voorsien;
- (c) indiensneming te bevorder en die maatskaplike en ekonomiese welsyn van Suid-Afrikaners te bevorder;
- 20 (d) geleenthede vir Suid-Afrikaanse deelname in wêreldmarkte uit te brei en die rol van buitelandse mededinging in die Republiek te erken;
- (e) te verseker dat klein en middelslagondernemings 'n billike geleentheid het om deel te neem aan die ekonomie; en
- (f) 'n groter verspreiding van eiendomsreg te bevorder, in die besonder om die
- 25 eiendomsbelang van histories benadeelde persone te verhoog.

Toepassing van Wet

3. (1) Hierdie Wet is van toepassing op alle ekonomiese aktiwiteite binne, of wat 'n invloed het binne, die Republiek, behalwe—
- 30 (a) kollektiewe bedinging binne die betekenis van artikel 23 van die Grondwet, en die Wet op Arbeidsverhoudinge, 1995 (Wet No. 66 van 1995);
- (b) 'n kollektiewe ooreenkoms, soos omskryf in artikel 213 van die Wet op Arbeidsverhoudinge, 1995;
- (c) die reëls van 'n professionele vereniging in die mate waarin dit ingevolge Bylae 1 uitgesluit word;
- 35 (d) handelinge onderhewig aan of gemagtig deur openbare regulasie; of
- (e) gesamentlike optrede bestem om 'n nie-kommersiële sosio-ekonomiese oogmerk of soortgelyke doel te bereik.
- (2) Vir alle doeleindes van hierdie Wet, is 'n persoon 'n histories benadeelde persoon indien daardie persoon—
- 40 (a) een van 'n kategorie van individue is wat, voordat die Grondwet van die Republiek van Suid-Afrika, 1993 (Wet No. 200 van 1993), in werking getree het, benadeel is deur onregverdige diskriminasie op die grondslag van ras;
- (b) 'n vereniging is, waarvan die meerderheid van lede individue is na wie in paragraaf (a) verwys;
- 45 (c) 'n regspersoon is, behalwe 'n vereniging, en individue na wie in paragraaf (a) verwys, 'n meerderheid van die uitgereikte aandeelkapitaal of ledebelang daarvan besit en beheer en in staat is om 'n meerderheid van die stemme daarvan te beheer; of
- (d) 'n regspersoon of vereniging is, en persone na wie in paragraaf (a), (b) of (c),
- 50 verwys, 'n meerderheid van die uitgereikte aandeelkapitaal of ledebelang daarvan besit en beheer en in staat is om 'n meerderheid van die stemme daarvan te beheer.

CHAPTER 2

PROHIBITED PRACTICES

PART A

RESTRICTIVE PRACTICES

Restrictive horizontal practices prohibited

5

4. (1) An *agreement* between, or *concerted practice* by, *firms*, or a decision by an association of *firms*, is prohibited if—

- (a) it is between parties in a *horizontal relationship* and it has the effect of substantially preventing or lessening competition in a market, unless a party to the *agreement*, concerted practice, or decision can prove that any technological, efficiency or other pro-competitive, gain resulting from it outweighs that effect; or 10
- (b) it involves any of the following *restrictive horizontal practices*:
 - (i) directly or indirectly fixing a purchase or selling price or any other trading condition; 15
 - (ii) dividing markets by allocating customers, suppliers, territories, or specific types of *goods or services*; or
 - (iii) collusive tendering.

(2) An *agreement* to engage in a *restrictive horizontal practice* referred to in subsection (1)(b) is presumed to exist between two or more *firms* if— 20

- (a) any one of those *firms* owns a substantial shareholding, *interest* or similar right in the other, or they have at least one director or substantial shareholder in common; and
- (b) any combination of those *firms* engages in that *restrictive horizontal practice*.

(3) A presumption contemplated in subsection (2) may be rebutted if a *firm*, director or shareholder concerned establishes that a reasonable basis exists to conclude that the practice referred to in subsection (1)(b) was a normal commercial response to conditions prevailing in that market. 25

(4) For the purposes of subsection (2), “director” means—

- (a) a director of a company as defined in the Companies Act, 1973 (Act No. 61 of 1973); 30
- (b) a member of a close corporation as defined in the Close Corporations Act, 1984 (Act No. 69 of 1984);
- (c) a trustee of a trust ; or
- (d) a person holding an equivalent position in a *firm*. 35

(5) The provisions of subsection (1) do not apply to an *agreement* between, or *concerted practice* engaged in by,—

- (a) a company, its wholly owned subsidiary as contemplated in section 1(5) of the Companies Act, 1973, a wholly owned subsidiary of that subsidiary or any combination of them; or 40
- (b) the constituent firms within a single economic entity similar in structure to those referred to in paragraph (a).

Restrictive vertical practices prohibited

5. (1) An *agreement* between parties in a *vertical relationship* is prohibited if it has the effect of substantially preventing or lessening competition in a market, unless a party to the *agreement* can prove that any technological, efficiency or other pro-competitive, gain resulting from that *agreement* outweighs that effect. 45

(2) The practice of minimum resale price maintenance is prohibited.

(3) Despite subsection (2), a supplier or producer may recommend a minimum resale price to the reseller of a *good or service* provided— 50

- (a) the supplier or producer makes it clear to the reseller that the recommendation is not binding; and
- (b) if the product has its price stated on it, the words “recommended price” appear next to the stated price.

HOOFSTUK 2**VERBODE PRAKTYKE****DEEL A****BEPERKENDE PRAKTYKE****5 Verbod op beperkende horisontale praktyke**

4. (1) 'n Ooreenkoms tussen, of 'n gesamentlike praktyk deur, firmas, of 'n besluit deur 'n genootskap van firmas, is verbode indien—

- (a) dit tussen partye in 'n horisontale verhouding is en die uitwerking het van wesenlike voorkoming of vermindering van mededinging in 'n mark, tensy 'n party tot die ooreenkoms, gesamentlike praktyk, of besluit kan bewys dat enige tegnologiese, doeltreffendheids- of ander pro-medingende, voordeel wat daaruit voortspruit, swaarder weeg as daardie uitwerking; of
- (b) enige van die volgende beperkende horisontale praktyke daarby betrokke is:
 - (i) die regstreekse of onregstreekse vasstelling van 'n koop- of verkoopprys, of enige ander handelsvoorwaarde;
 - (ii) die verdeling van markte deur die toewysing van kliënte, verskaffers, gebiede of spesifieke soorte goedere of dienste; of
 - (iii) 'n samespannende tender.

(2) 'n Ooreenkoms om mee te doen aan 'n beperkende horisontale praktyk bedoel in subartikel (1)(b) word vermoed tussen twee of meer firmas te bestaan indien—

- (a) enigeen van daardie firmas 'n wesenlike aandeelhouding, belang of soortgelyke reg in die ander besit, of hulle minstens een direkteur of wesenlike aandeelhouer gemeen het; en
- (b) enige kombinasie van daardie firmas meedoen aan daardie beperkende horisontale praktyk.

(3) 'n Vermoede in subartikel (2) bedoel, kan weerlê word indien 'n betrokke firma, direkteur of aandeelhouer aantoon dat 'n redelike basis bestaan om te aanvaar dat die praktyk waarna in subartikel (1)(b) verwys, 'n normale kommersiële reaksie was op heersende omstandighede in daardie mark.

(4) Vir die doeleindes van subartikel (2) beteken “direkteur”—

- (a) 'n direkteur van 'n maatskappy soos omskryf in die Maatskappyywet, 1973 (Wet No. 61 van 1973);
- (b) 'n lid van 'n beslote korporasie soos omskryf in die Wet op Beslote Korporasies, 1984 (Wet No. 69 van 1984);
- (c) 'n trustee of 'n trust; of
- (d) 'n persoon wat 'n gelykwaardige posisie in 'n firma beklee.

(5) Die bepalings van subartikel (1) is nie van toepassing nie op 'n ooreenkoms tussen, of gesamentlike praktyk aangegaan deur,—

- (a) 'n maatskappy, sy volfiliaal soos beoog in artikel 1(5) van die Maatskappyywet, 1973, 'n volfiliaal van daardie filiaal of enige kombinasie van hulle; of
- (b) die samestellende firmas binne 'n enkel ekonomiese entiteit, soortgelyk in struktuur aan die waarna in paragraaf (a) verwys word.

Verbod op beperkende vertikale praktyke

5. (1) 'n Ooreenkoms tussen partye in 'n vertikale verhouding is verbode indien dit die uitwerking het van mededinging in 'n mark wesenlik te voorkom of te verminder, tensy 'n party tot die ooreenkoms kan bewys dat enige tegnologiese, doeltreffendheids- of ander pro-medingende, voordeel wat voortspruit uit daardie ooreenkoms, swaarder weeg as daardie uitwerking.

(2) Die praktyk van minimum kleinhandelprysbinding is verbode.

(3) Ondanks subartikel (2), kan 'n verskaffer of produsent 'n minimum kleinhandelprys aan die hverkoper van goed of 'n diens aanbeveel, met dien verstande dat—

- (a) die verskaffer of produsent aan die hverkoper duidelik maak dat die aanbeveling nie bindend is nie; en
- (b) indien die produk se prys daarop verskyn, die woorde “aanbevole prys” langs die gestelde prys verskyn.

PART B

ABUSE OF A DOMINANT POSITION

Restricted application of Part

6. (1) As soon as practicable after *this Act* comes into operation, and at intervals of not less than five years thereafter, the *Minister* must, in consultation with the Competition Commission, and by notice in the *Gazette*— 5

(a) determine a threshold of annual turnover, or assets, in the Republic, either in general or in relation to specific industries, below which this Part does not apply to a *firm*; and

(b) provide a method for the calculation of annual turnover or assets. 10

(2) A threshold determined by the *Minister* in terms of subsection (1) takes effect six months after the date of publication of that notice in the *Gazette*.

Dominant firms

7. A *firm* is dominant in a market if—

(a) it has at least 45% of that market; 15

(b) it has at least 35%, but less than 45%, of that market, unless it can show that it does not have *market power*; or

(c) it has less than 35% of that market, but has *market power*.

Abuse of dominance prohibited

8. It is prohibited for a dominant *firm* to— 20

(a) charge an *excessive price* to the detriment of consumers;

(b) refuse to give a competitor access to an *essential facility* when it is economically feasible to do so;

(c) engage in an *exclusionary act*, other than an act listed in paragraph (d), if the anti-competitive effect of that act outweighs its technological, efficiency or other pro-competitive, gain; or 25

(d) engage in any of the following *exclusionary acts*, unless the *firm* concerned can show technological, efficiency or other pro-competitive, gains which outweigh the anti-competitive effect of its act:

(i) requiring or inducing a supplier or customer to not deal with a competitor; 30

(ii) refusing to supply scarce goods to a competitor when supplying those goods is economically feasible;

(iii) selling *goods or services* on condition that the buyer purchases separate *goods or services* unrelated to the object of a contract, or forcing a buyer to accept a condition unrelated to the object of a contract; 35

(iv) selling *goods or services* below their marginal or average variable cost; or

(v) buying-up a scarce supply of intermediate goods or resources required by a competitor. 40

Price discrimination by dominant firm prohibited

9. (1) An action by a dominant *firm*, as the seller of *goods or services*, is prohibited price discrimination, if—

(a) it is likely to have the effect of substantially preventing or lessening competition; 45

(b) it relates to the sale, in equivalent transactions, of *goods or services* of like grade and quality to different purchasers; and

(c) it involves discriminating between those purchasers in terms of—

(i) the price charged for the *goods or services*;

DEEL B**MISBRUIK VAN DOMINANTE POSISIE****Beperkte toepassing van Deel**

6. (1) So gou doenlik na inwerkingtreding van hierdie Wet, en in tydperke van nie
5 minder nie as vyf jaar daarna, moet die Minister, in oorleg met die Mededingings-
kommissie, en by kennisgewing in die *Staatskoerant*,—

- (a) 'n drempel bepaal van jaarlikse omset, of bates, in die Republiek, of in die
algemeen, of in verband met besondere nywerhede, waaronder hierdie deel
nie op 'n firma van toepassing is nie; en
 - 10 (b) 'n metode bepaal vir die berekening van jaarlikse omset of bates.
- (2) 'n Drempel deur die Minister ingevolge subartikel (1) bepaal, raak van krag ses
maande na die datum van publikasie van die kennisgewing in die *Staatskoerant*.

Dominante Firmas

7. 'n Firma is dominant in 'n mark as—

- 15 (a) hy ten minste 45% van daardie mark het;
- (b) hy ten minste 35%, maar minder as 45%, van daardie mark het, tensy dit kan
aantoon dat dit nie markkrag het nie; of
- (c) hy minder as 35% van die mark het, maar dit het markkrag.

Verbod op misbruik van dominansie

20 8. Dit is verbode vir 'n dominante firma om—

- (a) 'n buitensporige prys tot nadeel van verbruikers te hef;
- (b) te weier om 'n mededinger toegang tot 'n noodsaaklike fasiliteit te bied
wanneer dit ekonomies uitvoerbaar is om dit te doen,
- 25 (c) aan 'n uitsluitende handeling mee te doen, anders dan 'n handeling in
paragraaf (d) gelys, indien die anti-mededingende uitwerking van daardie
handeling swaarder weeg as die tegnologiese, doeltreffendheids- of ander
pro-mededingende, voordeel; of
- (d) mee te doen aan enige van die volgende uitsluitende handelinge, tensy die
betrokke firma tegnologiese, doeltreffendheids- of ander pro-mededingende,
30 voordele kan aantoon wat swaarder weeg as die anti-mededingende uitwer-
king van sy handeling:
 - (i) om van 'n verskaffer of kliënt te verlang, of 'n verskaffer of kliënt aan
te spoor, om nie met 'n mededinger te handel nie;
 - (ii) die weiering om skaars goedere aan 'n mededinger te verskaf wanneer
35 die verskaffing daarvan ekonomies uitvoerbaar is;
 - (iii) die verkoop van goedere of dienste op voorwaarde dat die koper aparte
goedere of dienste, onverwant aan die oogmerk van 'n kontrak, koop, of
'n koper dwing om 'n voorwaarde wat onverwant aan die doel van die
kontrak is, te aanvaar;
 - 40 (iv) die verkoop van goedere of dienste benede hul marginale of gemiddelde
veranderlike koste; of
 - (v) die opkoop van 'n skaars voorraad intermediêre goedere of hulpmiddele
deur 'n mededinger benodig.

Verbod op prysdiskriminasie deur dominante firma

45 9. (1) 'n Handeling deur 'n dominante firma, as verkoper van goedere of dienste, is
verbode prysdiskriminasie, indien—

- (a) dit waarskynlik die uitwerking sal hê van mededinging wesenlik te voorkom
of te verminder;
- 50 (b) dit verband hou met die verkoop, in gelyksoortige transaksies, van goedere
of dienste van soortgelyke graad en gehalte aan verskillende kopers; en
- (c) dit diskriminasie tussen daardie kopers behels met betrekking tot—
 - (i) die prys vir die goedere of dienste gehê;

- (ii) any discount, allowance, rebate or credit given or allowed in relation to the supply of *goods or services*;
 - (iii) the provision of services in respect of the *goods or services*; or
 - (iv) payment for services provided in respect of the *goods or services*.
- (2) Despite subsection (1), conduct involving differential treatment of purchasers in terms of any matter listed in paragraph (c) of that subsection is not prohibited price discrimination if the dominant *firm* establishes that the differential treatment—
- (a) makes only reasonable allowance for differences in cost or likely cost of manufacture, distribution, sale, promotion or delivery resulting from the differing places to which, methods by which, or quantities in which, *goods or services* are supplied to different purchasers;
 - (b) is constituted by doing acts in good faith to meet a price or benefit offered by a competitor; or
 - (c) is in response to changing conditions affecting the market for the *goods or services* concerned, including—
 - (i) any action in response to the actual or imminent deterioration of perishable goods;
 - (ii) any action in response to the obsolescence of goods;
 - (iii) a sale pursuant to a liquidation or sequestration procedure; or
 - (iv) a sale in good faith in discontinuance of business in the *goods or services* concerned.

PART C

EXEMPTIONS FROM APPLICATION OF CHAPTER

Exemption

10. (1) A *firm* may apply to the Competition Commission to exempt an *agreement*, or practice, or category of either *agreements*, or practices, from the application of this Chapter.
- (2) Upon receiving an application in terms of subsection (1), the Competition Commission may—
- (a) advise the applicant in writing that the *agreement*, or practice, or category of either *agreements*, or practices, does not constitute a *prohibited practice* in terms of this Chapter;
 - (b) grant a conditional or unconditional exemption for a specified term, if the *agreement*, or practice, or category of either *agreements*, or practices concerned meets the requirements of subsection (3); or
 - (c) refuse to grant an exemption.
- (3) The Competition Commission may grant an exemption in terms of subsection (2)(b), if—
- (a) any restriction imposed on the firms concerned by the *agreement*, or practice, or category of either *agreements*, or practices, concerned, is required to attain an objective mentioned in paragraph (b); and
 - (b) the *agreement*, or practice, or category of either *agreements*, or practices, concerned, contributes to any of the following objectives:
 - (i) maintenance or promotion of exports;
 - (ii) promotion of the ability of *small businesses*, or *firms* controlled or owned by historically disadvantaged persons, to become competitive;
 - (iii) change in productive capacity necessary to stop decline in an industry; or
 - (iv) the economic stability of any industry designated by the *Minister*, after consulting the minister responsible for that industry.
- (4) In addition to the provisions of subsections (2) and (3), the Competition Commission may exempt an *agreement*, or practice, or category of either *agreements*, or practices, that relates to the exercise of a right acquired or protected in terms of the Performers' Protection Act, 1967 (Act No. 11 of 1967), the Plant Breeder's Rights Act, 1976 (Act No. 15 of 1976), the Patents Act, 1978 (Act No. 57 of 1978), the Copyright

- (ii) enige korting, toelaag, rabat of krediet gegee of toegelaat met betrekking tot die verskaffing van die goedere of dienste;
 - (iii) die voorsiening van dienste met betrekking tot die goedere of dienste; of
 - (iv) betaling vir dienste verskaf ten opsigte van die goedere of dienste.
- 5 (2) Ondanks subartikel (1), is optrede wat onderskeidende behandeling van kopers behels met betrekking tot enige aangeleentheid in paragraaf (c) van daardie subartikel gelys, nie verbode prysdiskriminasie nie indien die dominante firma bewys dat die onderskeidende behandeling—
- 10 (a) slegs redelike ruimte laat vir verskille in koste of waarskynlike koste van vervaardiging, verspreiding, verkoop of lewering voortspruitend uit die verskillende plekke waarheen, metodes waardeur, of hoeveelhede waarin, goedere of dienste aan verskillende kopers gelever word;
 - (b) daaruit bestaan dat handelinge te goeder trou verrig word ten einde 'n prys of voordeel deur 'n mededinger aangebied, te ewenaar; of
 - 15 (c) in reaksie is op veranderende omstandighede wat die mark vir die betrokke goedere of dienste raak, met inbegrip van—
 - (i) enige reaksie op die werklike of dreigende agteruitgang van bederfbare goedere;
 - (ii) enige reaksie op veroudering van goedere;
 - 20 (iii) 'n verkoping na aanleiding van 'n likwidasië- of sekwestrasieprosedure; of
 - (iv) 'n verkoping te goeder trou ter beëindiging van besigheid in die betrokke goedere of dienste.

DEEL C

25 VRYSTELLING VAN TOEPASSING VAN HOOFSTUK

Vrystelling

10. (1) 'n Firma kan by die Mededingingskommissie aansoek doen om 'n ooreenkoms, of praktyk, of kategorie van enige ooreenkomste, of praktyke, van die toepassing van hierdie Hoofstuk vry te stel.
- 30 (2) By ontvangs van 'n aansoek ingevolge subartikel (1), kan die Mededingingskommissie—
- (a) die applikant skriftelik adviseer dat die ooreenkoms of praktyk, of kategorie van enige ooreenkomste, of praktyke, nie 'n verbode praktyk ingevolge hierdie Hoofstuk behels nie;
 - 35 (b) voorwaardelike of onvoorwaardelike vrystelling verleen vir 'n bepaalde termyn, indien die betrokke ooreenkoms, of praktyk, of kategorie van enige ooreenkomste, of praktyke, voldoen aan die vereistes van subartikel (3); of
 - (c) weier om 'n vrystelling te verleen.
- (3) Die Mededingingskommissie kan 'n vrystelling ingevolge subartikel 2(b)
- 40 verleen, indien—
- (a) enige beperking opgelê aan die firmas betrokke by die bepaalde ooreenkoms, of praktyk, of kategorie van enige ooreenkomste, of praktyke, nodig is om 'n oogmerk in paragraaf (b) vermeld, te bereik; en
 - 45 (b) die betrokke ooreenkoms, of praktyk, of kategorie van enige ooreenkomste, of praktyke, bydra tot enige van die volgende oogmerke:
 - (i) handhawing en bevordering van uitvoer;
 - (ii) bevordering van die vermoë van kleinsake of firmas wat beheer of besit word deur histories benadeelde persone, om mededingend te raak;
 - 50 (iii) verandering in produksievermoë wat nodig is om agteruitgang in 'n nywerheid te stuit; of
 - (iv) die ekonomiese stabiliteit van enige nywerheid deur die Minister aangewys, na oorlegpleging met die minister verantwoordelik vir daardie nywerheid.
- (4) Bykomend tot die bepalinge van subartikels (2) en (3), kan die Mededingings-
- 55 kommissie 'n ooreenkoms, of praktyk, of kategorie van enige ooreenkomste, of praktyke, vrystel wat verband hou met die uitoefening van 'n reg verkry of beskerm ingevolge die Wet op die Beskerming van Voordraers, 1967 (Wet No.11 van 1967), die Wet op Planttelersregte, 1976 (Wet No.15 van 1976), die Wet op Patente, 1978 (Wet No.57 van 1978), die Wet op Outeursreg, 1978 (Wet No.98 van 1978), die Wet op

Act, 1978 (Act No. 98 of 1978), the Trade Marks Act, 1993 (Act No. 194 of 1993) and the Designs Act, 1993 (Act No. 195 of 1993).

(5) The Competition Commission may revoke its written advice given in terms of subsection 2(a), or an exemption granted in terms of subsection (2)(b), if—

- (a) the advice was given, or the exemption was granted, on the basis of false or incorrect information; 5
- (b) a condition for the exemption is not fulfilled; or
- (c) the reason for granting the exemption no longer exists.

(6) Before granting an exemption in terms of subsection (2) or (4), or revoking an exemption in terms of subsection (5), the Competition Commission must— 10

- (a) give notice in the *Gazette* of the application for an exemption, or of its intention to revoke that exemption; and
- (b) allow interested parties 30 days from the date of that notice to make written representations as to why the exemption should not be granted or revoked.

(7) The Competition Commission must, by notice in the *Gazette*, give notice of any exemption granted or revoked in terms of this section. 15

(8) The firm concerned, or any other person with a substantial material interest affected by a decision of the Competition Commission in terms of subsection (2)(b) or (c), or subsections (4) or (5), may appeal against that decision to the Competition Tribunal in the *prescribed* manner. 20

CHAPTER 3

MERGER CONTROL

Restricted application of Chapter

11. (1) As soon as practicable after *this Act* comes into operation, and at intervals of not less than five years thereafter, the *Minister* must, in consultation with the Competition Commission, and by notice in the *Gazette*— 25

- (a) determine a threshold of combined annual turnover, or assets, in the Republic, either in general or in relation to specific industries, at or below which this Chapter does not apply to a merger;
- (b) determine a second threshold of combined annual turnover, or assets, in the Republic, either in general or in relation to specific industries, higher than the threshold referred to in paragraph (a), for the purpose of determining categories of mergers in terms of subsection (3); and 30
- (c) provide a method for the calculation of annual turnover and assets.

(2) A threshold determined by the *Minister* in terms of subsection (1) takes effect six months after the date of publication of that notice in the *Gazette*. 35

(3) For the purposes of this Chapter, at any time—

- (a) “an intermediate merger” means a merger or proposed merger with a value between the then current thresholds established in terms of subsection (1)(a) and (b) respectively; and 40
- (b) “a large merger” means a merger or proposed merger with a value at or above the then current threshold established in terms of subsection (1)(b).

Merger defined

12. (1) For the purpose of this Chapter, “merger” means the direct or indirect acquisition or direct or indirect establishment of control, by one or more persons over all significant *interests* in the whole or part of the business of a competitor, supplier, customer or other person, whether that control is achieved as a result of— 45

- (a) purchase or lease of the shares, *interest*, or assets of that competitor, supplier, customer or other person;
- (b) amalgamation or combination with that competitor, supplier, customer or other person; or 50
- (c) any other means.

Handelsmerke, 1993 (Wet No.194 van 1993), en die Wet op Modelle, 1993 (Wet No.195 van 1993).

(5) Die Mededingingskommissie kan sy skriftelike advies ingevolge subartikel 2(a) gegee, of 'n vrystelling ingevolge subartikel 2(b) verleen, intrek, indien—

- 5 (a) die advies gegee is, of die vrystelling verleen is op die basis van valse, of onjuiste inligting;
- (b) aan 'n voorwaarde vir die vrystelling nie voldoen is nie; of
- (c) die rede vir die verlening van die vrystelling nie meer bestaan nie.

(6) Alvorens 'n vrystelling ingevolge subartikel (2) of (4) verleen word, of 'n
10 vrystelling ingevolge subartikel (5) ingetrek word, moet die Mededingingskommissie—

- (a) in die *Staatskoerant* kennis gee van die aansoek om vrystelling, of van sy voorneme om die vrystelling in te trek; en
- 15 (b) belanghebbende partye 30 dae van die datum van daardie kennisgewing af gun om skriftelike verhoër te rig waarom die vrystelling nie verleen of ingetrek moet word nie.

(7) Die Mededingingskommissie moet in die *Staatskoerant* kennis gee van enige vrystelling ingevolge hierdie artikel verleen of ingetrek.

(8) Die betrokke firma, of enige ander persoon met 'n wesenlike materiële belang by
20 'n beslissing van die Mededingingskommissie, ingevolge subartikel 2(b) of (c), of subartikel 4 of 5, kan, op die voorgeskrewe wyse, teen daardie beslissing na die Mededingingstribunaal appelleer.

HOOFSTUK 3

BEHEER OOR SAMESMELTING

25 Beperkte toepassing van Hoofstuk

11. (1) So gou doenlik na inwerkingtreding van hierdie Wet, en in tydperke van nie minder nie as vyf jaar daarna, moet die Minister, in oorleg met die Mededingingskommissie, by kennisgewing in die *Staatskoerant*,—

- 30 (a) 'n drempel bepaal van gesamentlike jaarlikse omset, of bates, in die Republiek, of in die algemeen, of in verband met besondere nywerhede, waarop of waaronder hierdie Hoofstuk nie op 'n samesmelting van toepassing is nie;
- (b) 'n tweede drempel bepaal van gesamentlike jaarlikse omset, of bates, in die Republiek, of in die algemeen, of in verband met besondere nywerhede, hoër
35 as die drempel waarna in paragraaf (a) verwys, vir doeleindes van bepaling van kategorieë van samesmeltings ingevolge subartikel (3); en
- (c) 'n metode bepaal vir die berekening van jaarlikse omset en bates.

(2) 'n Drempel deur die Minister ingevolge subartikel (1) bepaal word van krag, ses maande na die datum van publikasie van die kennisgewing in die *Staatskoerant*.

40 (3) Vir doeleindes van hierdie Hoofstuk, op enige tydstip, beteken—

- (a) “'n intermediêre samesmelting” 'n samesmelting of voorgestelde samesmelting met 'n waarde tussen die dan heersende drempels ingevolge subartikel 1(a) en (b) onderskeidelik bepaal; en
- 45 (b) “'n groot samesmelting” 'n samesmelting of voorgestelde samesmelting met 'n waarde van, of hoër as, die dan heersende drempel ingevolge subartikel 1(b) bepaal.

Omskrywing van samesmelting

12. (1) Vir die doeleindes van hierdie Hoofstuk beteken “samesmelting” die regstreekse of onregstreekse verkryging of regstreekse of onregstreekse vestiging van
50 beheer deur een of meer persone oor alle beduidende belange in die geheel of 'n deel van die besigheid van 'n mededinger, verskaffer, kliënt of ander persoon, hetsy daardie beheer bereik is as gevolg van—

- (a) koop of huur van die aandele, belang of bates van daardie mededinger, verskaffer, kliënt of ander persoon;
- 55 (b) amalgamering of kombinerings met daardie mededinger, verskaffer, kliënt of ander persoon; of
- (c) enige ander wyse.

- (2) A person controls a *firm* if that person—
- (a) beneficially owns more than one half of the issued share capital of the *firm*;
 - (b) is entitled to vote a majority of the votes that may be cast at a general meeting of the *firm*, or has the ability to control the voting of a majority of those votes, either directly or through a controlled entity of that person; 5
 - (c) is able to appoint or to veto the appointment of a majority of the directors of the *firm*;
 - (d) is a holding company, and the *firm* is a subsidiary of that company as contemplated in section 1(3)(a) of the Companies Act, 1973 (Act No. 61 of 1973); 10
 - (e) in the case of a *firm* that is a trust, has the ability to control the majority of the votes of the trustees, to appoint the majority of the trustees, to appoint or change the majority of the beneficiaries of the trust;
 - (f) in the case of a close corporation, owns the majority of members' interest, or controls directly, or has the right to control the majority of members' votes in the close corporation; or 15
 - (g) has the ability to materially influence the policy of the *firm* in a manner comparable to a person who, in ordinary commercial practice, can exercise an element of control referred to in paragraphs (a) to (f).

Notification of merger required

20

13. (1) Any party to an intermediate or large merger must notify the Competition Commission of that merger no more than seven days after the earlier of—

- (a) the conclusion of the merger *agreement*;
- (b) the public announcement of a proposed merger bid; or
- (c) the acquisition by any one of the parties to that merger, of a controlling interest in another. 25

(2) A party that is required in terms of subsection (1) to notify the Competition Commission of a merger must provide a copy of that notice to a representative trade union representing the employees of any of the merging *firms*, and, if there is no representative trade union in one of the merging *firms*, the notice in respect of that *firm*, must be directed to— 30

- (a) any registered trade union that represents a substantial number of the employees of that *firm*; or
- (b) if there are no registered trade unions in that *firm*, the employees concerned, or representatives of the employees concerned. 35

(3) The parties to an intermediate or large merger must not implement that merger until they have received approval from either the Competition Commission in terms of section 14(1), the Competition Tribunal in terms of section 15(2) or the Competition Appeal Court in terms of section 17.

Competition Commission merger proceedings

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14. (1) Within 30 days after receiving notice of an intermediate merger, the Competition Commission must—

- (a) extend the period in which it has to consider the proposed merger by a period not exceeding 60 days, and in that case, issue an extension certificate to any party that notified it of the merger; or 45
- (b) after considering the merger in terms of section 16—
 - (i) approve the merger by issuing a clearance certificate;
 - (ii) approve the merger subject to any conditions; or
 - (iii) prohibit implementation of the merger.

(2) If, upon the expiry of the 30 day period provided for in subsection (1), the Competition Commission has not issued any of the certificates referred to in that subsection, or upon the expiry of an extension period contemplated in subsection (1)(a), 50

- (2) 'n Persoon beheer 'n firma indien daardie persoon—
- (a) die voordeel van meer as die helfte van die uitgereikte aandeelkapitaal van die firma besit;
 - (b) geregtig is om die meerderheid van die stemme uit te bring wat by 'n algemene vergadering van die firma uitgebring kan word, of die vermoë het om die meerderheid van daardie stemme, hetsy regstreeks of deur 'n beheerde entiteit van daardie persoon, te beheer;
 - (c) by magte is om die meerderheid van die direkteure van die firma aan te stel, of die aanstelling te veto;
 - (d) 'n houermaatskappy is, en die firma 'n filiaal van daardie maatskappy is, soos beoog in artikel 1(3)(a) van die Maatskappywet, 1973 (Wet No. 61 van 1973);
 - (e) in die geval van 'n firma wat 'n trust is, by magte is om die meerderheid van die stemme van die trustees te beheer, om die meerderheid van die trustees aan te stel, om die meerderheid van die begunstigdes van die trust aan te stel of te verander;
 - (f) in die geval van 'n beslote korporasie, die meerderheid van die ledebelaang besit, of die meerderheid van die ledestemme in die beslote korporasie regstreeks beheer, of die reg het om dit te beheer; of
 - (g) die vermoë het om die beleid van die firma wesenlik te beïnvloed op 'n wyse vergelykbaar met 'n persoon wat, in normale kommersiële praktyk, 'n element van beheer kan uitoefen soos waarna in paragraaf (a) tot (f) verwys word.

Kennisgewing van samesmelting vereis

13. (1) Enige party tot 'n intermediêre of groot samesmelting moet die Mededingingskommissie van sodanige samesmelting in kennis stel, nie meer as sewe dae na die vroegste van—
- (a) die sluit van die samesmeltingsooreenkoms;
 - (b) die openbare aankondiging van 'n voorgestelde samesmeltingsaanbod; of
 - (c) die verkryging, deur enigeen van die partye tot daardie samesmelting, van 'n behorende aandeel in die ander.
- (2) 'n Party van wie ingevolge subartikel (1) vereis word om die Mededingingskommissie in kennis te stel van 'n samesmelting, moet 'n afskrif van daardie kennisgewing voorsien aan 'n verteenwoordigende vakbond wat die werkgewers van enige van die samesmelgende firmas verteenwoordig, en, indien daar geen verteenwoordigende vakbond in een van die samesmelgende firmas is nie, die kennisgewing ten opsigte van daardie firma, gerig moet word aan—
- (a) enige geregistreerde vakbond wat 'n wesenlike getal van die werkgewers van daardie firma verteenwoordig; of
 - (b) indien daar geen geregistreerde vakbonde in daardie firma is nie, die werknemers betrokke, of verteenwoordigers van die betrokke werknemers.
- (3) Die partye tot 'n intermediêre of groot samesmelting mag nie die samesmelting toepas nie alvorens hulle goedkeuring van of die Mededingingskommissie, ingevolge artikel 14(1), of die Mededingingstribunaal, ingevolge artikel 15(2), of die Appèlhof vir Mededinging ingevolge artikel 17, ontvang het.

Samesmeltingsverrigtinge van Mededingingskommissie

14. (1) Binne 30 dae na ontvangs van 'n kennisgewing van 'n intermediêre samesmelting moet die Mededingingskommissie—
- (a) die tydperk waarbinne dit die voorgestelde samesmelting moet oorweeg, verleng met 'n tydperk van hoogstens 60 dae, en in daardie geval, 'n verlengingsertifikaat uitreik aan enige party wat hom van die samesmelting in kennis gestel het, of
 - (b) na oorweging van die samesmelting ingevolge artikel 16,—
 - (i) die samesmelting goedkeur deur uitreiking van 'n klaringsertifikaat;
 - (ii) die samesmelting goedkeur, behoudens enige voorwaardes; of
 - (iii) die toepassing van die samesmelting verbied.
- (2) Indien, by verstryking van die tydperk van 30 dae, in subartikel (1) bepaal, die Mededingingskommissie nie enige van die sertifikate in daardie subartikel bedoel, uitgereik het nie, of by verstryking van 'n verlengde tydperk, in subartikel 1(a) bedoel,

the Commission has not issued a certificate referred to in subsection (1)(b), the Commission will be deemed to have approved the merger, subject to subsection (5).

(3) After receiving notice of a large merger, the Competition Commission, must refer that notice to the Competition Tribunal and to the Minister, and must within the prescribed time, forward to the Competition Tribunal and the Minister a recommendation whether implementation of the merger should be either — 5

- (a) approved;
- (b) approved subject to any conditions; or
- (c) prohibited.

(4) Upon making a decision in terms of subsection (1) or (2), or a referral and recommendation in terms of subsection (3), the Competition Commission must — 10

- (a) issue written reasons for the decision or recommendation; and
- (b) publish a notice of the decision, or referral and recommendation, in the Gazette.

(5) The Competition Commission may revoke a decision to approve or conditionally approve a merger in terms of subsection (1) if — 15

- (a) the decision was based on incorrect information for which a party to the merger is responsible;
- (b) the approval was obtained by deceit; or
- (c) a firm concerned has breached an obligation attached to the decision. 20

(6) Despite the time limits set out in this section, if, in terms of subsection (5), the Competition Commission revokes a decision to approve a merger, the Commission may prohibit that merger even though any of those time limits may have elapsed.

Competition Tribunal merger proceedings

15. (1) If the Competition Commission approves a merger subject to any conditions in terms of section 14(1)(b)(ii), or prohibits a merger in terms of section 14(1)(b)(iii), a party to the merger may, by written notice in the *prescribed* form, request the Competition Tribunal to consider the conditions or prohibited merger. 25

(2) Upon receiving a referral of a large merger and recommendation from the Competition Commission in terms of section 14(3), or a request from a party to an intermediate merger in terms of subsection (1), the Competition Tribunal must consider the merger in terms of section 16, and the recommendation or decision, as the case may be, of the Competition Commission, and must within the *prescribed* time— 30

- (a) approve the merger;
- (b) approve the merger subject to any conditions; or
- (c) prohibit implementation of the merger. 35

(3) Section 14(4), (5) and (6), each read with the changes required by the context, apply to the Competition Tribunal in relation to any merger that it is required to consider in terms of subsection (2).

Consideration of Mergers

16. (1) Whenever required to consider a merger, the Competition Commission or Competition Tribunal must initially determine whether or not the merger is likely to substantially prevent or lessen competition, by assessing the factors set out in subsection (2), and— 40

- (a) if it appears that the merger is likely to substantially prevent or lessen competition, the Commission or the Tribunal must then determine— 45
 - (i) whether the merger is likely to result in any technological, efficiency or other pro-competitive, gain which will be greater than, and offset, the effects of any prevention or lessening of competition, that may result or

die Kommissie nie 'n sertifikaat waarna in subartikel 1(b) verwys, uitgereik het nie, sal die Kommissie, behoudens subartikel 5, geag word die samesmelting goed te keur het.

- (3) Na ontvangs van 'n kennisgewing van 'n groot samesmelting, moet die Mededingingskommissie daardie kennisgewing na die Mededingingstribunaal en die Minister verwys, en moet binne die voorgeskrewe tydperk, 'n aanbeveling aan die Mededingingstribunaal en die Minister rig oor of toepassing van die samesmelting—
- (a) goedgekeur;
 - (b) goedgekeur, onderhewig aan enige voorwaardes; of
 - (c) verbied moet word.
- (4) By die neem van 'n besluit ingevolge subartikel (1) of (2), of by verwysing of aanbeveling ingevolge subartikel (3), moet die Mededingingskommissie—
- (a) skriftelike redes vir die besluit of aanbeveling uitreik; en
 - (b) 'n kennisgewing van die besluit, of verwysing en aanbeveling, in die Staatskoerant publiseer.
- (5) Die Mededingingskommissie kan 'n besluit om 'n samesmelting goed te keur, of voorwaardelik ingevolge subartikel (1), goed te keur, terugtrek indien—
- (a) die besluit gegrond was op foutiewe inligting waarvoor 'n party tot die samesmelting verantwoordelik was;
 - (b) die goedkeuring deur misleiding verkry is; of
 - (c) 'n betrokke firma 'n verpligting tot die besluit toegevoeg, verbreek het.
- (6) Indien die Mededingingskommissie, ondanks die tydsbeperkings in hierdie artikel uiteengesit, 'n besluit om 'n samesmelting goed te keur, ingevolge subartikel (5) terugtrek, kan die Kommissie daardie samesmelting verbied selfs al sou enige van daardie tydsbeperkings verstryk het.

Samesmeltingsverrigtinge van Mededingingstribunaal

15. (1) Indien die Mededingingskommissie 'n samesmelting onderhewig aan enige voorwaardes ingevolge artikel 14 (1)(b)(ii) goedkeur, of 'n samesmelting ingevolge artikel 14(1)(b)(iii) verbied, kan 'n party tot die samesmelting, by skriftelike kennisgewing op die voorgeskrewe wyse, die Mededingingstribunaal versoek om die voorwaardes of verbode samesmelting te oorweeg.
- (2) By ontvangs van die verwysing van 'n groot samesmelting, en van 'n aanbeveling van die Mededingingskommissie ingevolge artikel 14(3), of van 'n versoek van 'n party tot 'n intermediêre samesmelting ingevolge subartikel (1), moet die Mededingingstribunaal die samesmelting ingevolge artikel 16 oorweeg, en ook die aanbeveling of beslissing, van die Mededingingskommissie, na gelang van die geval, en, binne die voorgeskrewe tydperk,—
- (a) die samesmelting goedkeur;
 - (b) die samesmelting goedkeur, onderhewig aan enige voorwaardes;
 - (c) die toepassing van die samesmelting verbied.
- (3) Artikel 14(4), (5) en (6), elk saamgelees met die veranderinge deur die konteks vereis, is van toepassing op die Mededingingstribunaal in verband met enige samesmelting wat, ingevolge subartikel (2), van hom vereis word om te oorweeg.

Oorweging van samesmeltings

16. (1) Wanneer van hom verlang word om 'n samesmelting te oorweeg, moet die Mededingingskommissie of Mededingingstribunaal aanvanklik bepaal of die samesmelting waarskynlik mededinging wesenlik sal voorkom of verminder, deur die faktore in subartikel (2) uiteengesit te beoordeel, en—
- (a) indien dit blyk dat die samesmelting mededinging waarskynlik wesenlik sal voorkom of verminder, moet die Kommissie of die Tribunaal dan bepaal—
 - (i) of die samesmelting waarskynlik enige tegnologiese, doeltreffendheids of ander pro-mededingende, voordeel tot gevolg sal hê wat groter sal wees as, en die gevolg sal uitkanselleer van enige voorkoming of vermindering van mededinging, wat moontlik of waarskynlik uit die

- is likely to result from the merger, and would not likely be obtained if the merger is prevented; and
- (ii) whether the merger can or cannot be justified on substantial public interest grounds by assessing the factors set out in subsection (3); and
- (b) otherwise, must determine whether the merger can or cannot be justified on substantial public interest grounds by assessing the factors set out in subsection (3).
- (2) When determining whether or not a merger is likely to substantially prevent or lessen competition, the Competition Commission or the Competition Tribunal must assess the strength of competition in the relevant market, and the probability that the *firms* in the market after the merger will behave competitively or co-operatively, taking into account any factor that is relevant to competition in that market, including—
- (i) the actual and potential level of import competition in the market;
 - (ii) the ease of entry into the market, including tariff and regulatory barriers;
 - (iii) the level, trends of concentration, and history of collusion, in the market;
 - (iv) the degree of countervailing power in the market;
 - (v) the likelihood that the acquisition would result in the merged *firm* having *market power*;
 - (vi) the dynamic characteristics of the market, including growth, innovation, and product differentiation;
 - (vii) the nature and extent of vertical integration in the market;
 - (viii) whether the business or part of the business of a party to the merger or proposed merger has failed or is likely to fail; and
 - (ix) whether the merger will result in the removal of an effective competitor.
- (3) When determining whether a merger can or cannot be justified on public interest grounds, the Competition Commission or the Competition Tribunal must consider the effect that the merger will have on—
- (i) a particular industrial sector or region;
 - (ii) employment;
 - (iii) the ability of *small businesses*, or *firms* controlled or owned by historically disadvantaged persons, to become competitive; and
 - (iv) the ability of national industries to compete in international markets.

Competition Appeal Court Merger Proceedings

17. (1) Within 30 days after notice of a decision by the Competition Tribunal in terms of section 15(2), a party to the merger, or any other person who, in terms of section 13(2), is required to be given notice of the merger, may appeal to the Competition Appeal Court from that decision, and the Court must either—
- (a) set aside the decision of the Tribunal;
 - (b) amend that decision by ordering restrictions or by including conditions; or
 - (c) confirm that decision.

Minister may participate in proceedings

18. In order to make representations on any public interest ground referred to in section 16(3), the *Minister* may participate as a party in any merger proceedings before the Competition Commission, the Competition Tribunal or the Competition Appeal Court, in the manner provided for in rules made in terms of section 21(4), 27(2) or 38(1)(c), respectively.

- samesmelting sal spruit, en wat waarskynlik nie verkry sal word indien die samesmelting voorkom word nie; en
- (ii) of die samesmelting geregverdig of nie geregverdig kan word nie, op wesenlike gronde van openbare belang deur die faktore in subartikel (3) uiteengesit, te beoordeel; en
- 5 (b) moet andersins bepaal of die samesmelting geregverdig of nie geregverdig kan word nie, op wesenlike gronde van openbare belang, deur die faktore in subartikel (3) uiteengesit, te beoordeel.
- (2) Wanneer bepaal word of 'n samesmelting mededinging waarskynlik wesenlik sal 10 voorkom of verminder, moet die Mededingingskommissie of die Mededingingstribunaal die sterkte van mededinging in die relevante mark beoordeel, asook die waarskynlikheid dat die firmas in die mark na die samesmelting mededingend of samewerkend sal optree, met inagneming van enige faktor wat relevant is vir mededinging in daardie mark, met inbegrip van—
- 15 (i) die werklike en potensiele vlak van invoermededinging in die mark;
- (ii) die gemak van toetrede tot die mark, met inbegrip van tarief- en regulatoriese hindernisse;
- (iii) die vlak, neigings van konsentrasie en geskiedenis van samespanning in die mark;
- 20 (iv) die graad van kompenserende krag in die mark;
- (v) die waarskynlikheid dat die verkryging daartoe sal lei dat die saamgesmelte firma markkrag sal hê;
- (vi) die dinamiese eienskappe van die mark, met inbegrip van groei, innovering, en produk differensiasie;
- 25 (vii) die aard en omvang van vertikale integrasie in die mark;
- (viii) of die besigheid of gedeelte van die besigheid, of 'n party tot die samesmelting of voorgestelde samesmelting, gefaal het, of waarskynlik sal faal; en
- (ix) of die samesmelting sal lei tot die verwydering van 'n doeltreffende mededinger.
- 30 (3) Wanneer bepaal word of 'n samesmelting op gronde van openbare belang geregverdig kan word of nie, moet die Mededingingskommissie of die Mededingingstribunaal die effek oorweeg wat die samesmelting sal hê op—
- (i) 'n besondere nywerheidsektor of streek;
- (ii) indiensneming;
- 35 (iii) die vermoë van kleinsake, of van firmas beheer of besit deur histories benadeelde persone, om mededingend te raak; en
- (iv) die vermoë van nasionale nywerhede om in internasionale markte mee te ding.

Samesmeltingsverrigtinge van Appèlhof vir Mededinging

- 40 17. (1) Binne 30 dae na kennisgewing van 'n besluit deur die Mededingingstribunaal ingevolge artikel 15(2), kan 'n party tot 'n samesmelting, of enige ander persoon aan wie, ingevolge subartikel 13(2), kennisgewing van die samesmelting gegee moet word, na die Appèlhof vir Mededinging teen daardie besluit appelleer, en die Hof moet of—
- (a) die besluit van die Tribunaal tersyde stel;
- 45 (b) daardie besluit wysig deur beperkings te beveel of voorwaardes toe te voeg; of
- (c) daardie besluit bekragtig.

Minister kan deelneem aan verrigtinge

18. Ten einde voorleggings te doen op enige gronde van openbare belang waarna in 50 artikel 16(3) verwys word, kan die Minister, as 'n party, deelneem aan enige samesmeltingsverrigtinge voor die Mededingingskommissie, die Mededingingstribunaal of die Appèlhof vir Mededinging, op 'n wyse waarvoor in die reëls, ingevolge artikel 21(4), 27(2) of 38 (1)(c) onderskeidelik, voor voorsiening gemaak word.

- (k) over time, review legislation and *public regulations*, and report to the *Minister* concerning any provision that permits uncompetitive behaviour; and
- (l) deal with any other matter referred to it by the Tribunal.
- (2) In addition to the functions listed in subsection (1), the Competition Commission may—
 - (a) report to the *Minister* on any matter relating to the application of *this Act*;
 - (b) enquire into and report to the *Minister* on any matter concerning the purposes of *this Act*; and
 - (c) perform any other function assigned to it in terms of this or any other Act.
- (3) The *Minister* must table in the National Assembly any report submitted in terms of subsection (1)(k), and any report submitted in terms of subsection (2) if that report deals with a substantial matter relating to the purposes of *this Act*—
 - (a) within 14 days after receiving that report from the Competition Commission, if Parliament is in session at that time; or
 - (b) if Parliament is not in session, within 14 days after the commencement of the next session.
- (4) The *Minister* may, in consultation with the Competition Commission, and by notice in the Gazette, *prescribe regulations* for matters relating to the functions of the Commission, including—
 - (a) forms;
 - (b) time periods;
 - (c) information required;
 - (d) additional definitions;
 - (e) filing fees;
 - (f) access to *confidential information*;
 - (g) manner and form of participation in Commission procedures; and
 - (h) procedures.

Appointment of Commissioner

- 22. (1) The *Minister* must appoint a person with suitable qualifications and experience in economics, law, commerce, industry or public affairs to be the Commissioner for a term of five years.
- (2) The *Minister* may re-appoint a person as Commissioner at the expiry of that person's term of office.
- (3) The Commissioner, who is the Chief Executive Officer of the Competition Commission, is responsible for the general administration of the Commission and for carrying out any functions assigned to it in terms of *this Act*, and must—
 - (a) perform the functions that are conferred on the Commissioner by or in terms of *this Act*;
 - (b) manage and direct the activities of the Commission; and
 - (c) supervise the Commission's staff.
- (4) The *Minister* must, in consultation with the Minister of Finance, determine the Commissioner's remuneration, allowances, benefits, and other terms and conditions of employment.
- (5) The Commissioner, on one month written notice addressed to the *Minister*, may resign as Commissioner.
- (6) The *Minister*—
 - (a) must remove the Commissioner from office if that person becomes subject to any of the disqualifications referred to in section 28(3)(a) to (d); and
 - (b) other than as provided in paragraph (a), may remove the Commissioner from office only for—
 - (i) serious misconduct;
 - (ii) permanent incapacity; or
 - (iii) engaging in any activity that may undermine the integrity of the Competition Commission.

- (k) met verloop van tyd, wetgewing en openbare regulasies te hersien, en aan die Minister verslag te doen aangaande enige bepaling wat onmededingende gedrag toelaat; en
- (l) hantering van enige ander aangeleentheid deur die Tribunaal na hom verwys.
- 5 (2) Bykomend tot die funksies in subartikel (1) gelys, kan die Mededingingskommissie—
 - (a) aan die Minister verslag doen oor enige aangeleentheid wat verband hou met die toepassing van hierdie Wet;
 - (b) navraag doen na enige verslag aan die Minister oor enige aangeleentheid met
 - 10 betrekking tot die oogmerke van hierdie Wet; en
 - (c) enige ander funksie uitvoer wat ingevolge hierdie of enige ander Wet aan hom opgedra is.
- (3) Die Minister moet enige verslag voorgelê ingevolge subartikel (1)(k), in die Nasionale Vergadering ter tafel lê, en enige verslag ingevolge subartikel (2) voorgelê,
- 15 indien daardie verslag handel oor 'n wesenlike aangeleentheid wat verband hou met die oogmerke van hierdie Wet—
 - (a) binne 14 dae na ontvangs van die verslag van die Mededingingskommissie, indien die Parlement dan in sitting is; of
 - (b) indien die Parlement nie in sitting is nie, binne 14 dae na aanvang van die
 - 20 daaropvolgende sessie.
- (4) Die Minister kan, in oorleg met die Mededingingskommissie, en by kennisgewing in die *Staatskoerant*, regulasies uitvaardig vir aangeleenthede wat verband hou met die funksies van die Kommissie, met inbegrip van—
 - (a) vorms;
 - 25 (b) tydperke;
 - (c) inligting vereis;
 - (d) bykomende woordomskrywings;
 - (e) indieningsgelde;
 - (f) toegang tot vertroulike inligting;
 - 30 (g) wyse en vorm van deelname aan Kommissieverrigtinge; en
 - (h) prosedures.

Aanstelling van Kommissaris

- 22. (1) Die Minister moet 'n persoon met gepaste kwalifikasies en ondervinding in die ekonomie, die regte, die handel, die nywerheid of openbare aangeleenthede, aanstel
- 35 om, vir 'n tydperk van 5 jaar, Kommissaris te wees.
- (2) Die Minister kan, by die verstryking van daardie persoon se ampstermyn 'n persoon as Kommissaris heraanstel.
- (3) Die Kommissaris wat die Hoof- Uitvoerende Beampte van die Mededingingskommissie is, is verantwoordelik vir die algemene administrasie van die Kommissie en
- 40 vir uitvoering van enige funksies wat ingevolge hierdie Wet daaraan opgedra is, en moet—
 - (a) die funksies uitvoer wat deur of ingevolge hierdie Wet aan die Kommissaris toegewys is;
 - (b) die aktiwiteite van die Kommissie bestuur en lei; en
 - 45 (c) toesig hou oor die Kommissie se personeel.
- (4) Die Minister moet, in oorleg met die Minister van Finansies, die Kommissaris se vergoeding, toelaes, voordele, en ander bedinge en diensvoorwaardes bepaal.
- (5) Die Kommissaris kan, met een maand skriftelike kennisgewing aan die Minister, as Kommissaris bedank.
- 50 (6) Die Minister—
 - (a) moet die Kommissaris uit die amp onthef indien daardie persoon onderhewig raak aan enige van die diskwalifikasies waarna in artikel 28(3)(a) tot (d) verwys word; en,
 - (b) anders as waarvoor in paragraaf (a) voorsiening gemaak word, kan die
 - 55 Kommissaris slegs uit die amp onthef vanweë—
 - (i) ernstige wangedrag;
 - (ii) permanente onbevoegheid; of
 - (iii) deelname aan enige aktiwiteit wat die integriteit van die Mededingingskommissie kan ondermyn.

Appointment of Deputy Commissioner

23. (1) The *Minister* must appoint at least one person, and may appoint other persons, with suitable qualifications and experience in economics, law, commerce, industry or public affairs as Deputy Commissioner to assist the Commissioner in carrying out the functions of the Competition Commission. 5

(2) The *Minister* must designate a Deputy Commissioner to perform the functions of the Commissioner whenever—

- (a) the Commissioner is unable for any reason to perform the functions of the Commissioner; or
- (b) the office of Commissioner is vacant. 10

Appointment of inspectors

24. (1) The Commissioner may appoint any person in the service of the Competition Commission, or any other suitable person, as an inspector.

(2) The *Minister* may, in consultation with the Minister of Finance, determine the remuneration paid to a person who is appointed in terms of subsection (1), but who is not in the full-time service of the Competition Commission. 15

(3) An inspector must be provided with a certificate of appointment signed by the Commissioner stating that the person has been appointed as an inspector in terms of *this Act*.

(4) When an inspector performs any function in terms of Chapter 5, the inspector must— 20

- (a) be in possession of a certificate of appointment issued to that inspector in terms of subsection (3); and
- (b) show that certificate to any person who—
 - (i) is affected by the exercise of the functions of the inspector; and 25
 - (ii) requests to see the certificate.

Staff of Competition Commission

25. (1) The Commissioner may—

- (a) appoint staff, or contract with other persons, to assist the Competition Commission in carrying out its functions; and 30
- (b) in consultation with the *Minister* and the Minister of Finance, determine the remuneration, allowances, benefits, and other terms and conditions of appointment of each member of the staff.

PART B**THE COMPETITION TRIBUNAL**

35

Establishment and constitution of Competition Tribunal

26. (1) There is hereby established a body to be known as the Competition Tribunal, which—

- (a) has jurisdiction throughout the Republic;
- (b) is a juristic person; 40
- (c) is a Tribunal of record; and
- (d) must exercise its functions in accordance with *this Act*.

(2) The Competition Tribunal consists of a Chairperson and not less than three, but not more than ten, other women or men appointed by the President, on a full or part-time basis, on the recommendation of the *Minister*, from among persons nominated by the *Minister* either on the *Minister's* initiative or in response to a call for nominations, which must be published by the *Minister* in the *Gazette*. 45

(3) The President must—

- (a) appoint the Chairperson and other members of the Competition Tribunal on the date that *this Act* comes into operation; and 50
- (b) appoint a person to fill any vacancy on the Tribunal.

(4) Section 20, read with the changes required by the context, applies to the Competition Tribunal.

Aanstelling van Adjunktkommissaris

23. (1) Die Minister moet ten minste een persoon aanstel, en kan ook ander persone, met toepaslike kwalifikasies en ondervinding in die ekonomie, die regte, die handel, die nywerheid of openbare aangeleenthede, as Adjunktkommissaris aanstel om die Kommissaris met die uitoefening van die funksies van die Mededingingskommissie by te staan.

(2) Die Minister moet 'n Adjunktkommissaris aanstel om die funksies van die Kommissaris uit te oefen wanneer—

- (a) die Kommissaris, om welke rede ook al, nie die funksies van die Kommissaris kan uitoefen nie; of
- (b) die amp van Kommissaris vakant is.

Aanstelling van inspekteurs

24. (1) Die Kommissaris kan enige persoon in die diens van die Mededingingskommissie, of enige ander geskikte persoon, as inspekteur aanstel.

(2) Die Minister kan, in oorleg met die Minister van Finansies, die vergoeding bepaal, betaalbaar aan 'n persoon wat aangestel is ingevolge subartikel (1), maar wat nie voltyds in diens van die Mededingingskommissie is nie.

(3) 'n Inspekteur moet voorsien word van 'n sertifikaat van aanstelling wat deur die Kommissaris onderteken word en wat bevestig dat die persoon aangestel is as inspekteur ingevolge hierdie Wet.

(4) Wanneer 'n inspekteur enige funksies ingevolge Hoofstuk 5 uitoefen, moet die inspekteur—

- (a) in besit wees van 'n sertifikaat van aanstelling, aan daardie inspekteur ingevolge subartikel (3) uitgereik; en
- (b) daardie sertifikaat toon aan enige persoon wat—
 - (i) deur die uitoefening van die funksies van die inspekteur geraak word; en
 - (ii) versoek om die sertifikaat te sien.

Personeel van Mededingingskommissie

25. Die Kommissaris kan—

- (a) personeel aanstel, of met ander persone kontrakteer, om die Mededingingskommissie in die uitoefening van sy funksies by te staan; en
- (b) in oorleg met die Minister en die Minister van Finansies, die vergoeding, toelaes, voordele, en ander voorwaardes van aanstelling van elke lid van die personeel, bepaal.

DEEL B**35 DIE MEDEDINGINGSTRIBUNAAL****Instel en samestelling van Mededingingstribunaal**

26. (1) Daar word hierby 'n liggaam ingestel, te wete die Mededingingstribunaal, wat—

- (a) regsbevoegdheid oor die hele Republiek het;
- (b) 'n regspersoon is;
- (c) 'n notulerende Tribunaal is; en
- (d) wat sy funksies ingevolge die bepalings van hierdie Wet moet uitoefen.

(2) Die Mededingingstribunaal bestaan uit 'n voorsitter en nie minder nie as 3, maar nie meer as 10 nie, ander vrouens of mans, deur die President aangestel, op 'n voltydse of deeltydse basis, op aanbeveling van die Minister, uit die geledere van persone deur die Minister aangewys, óf op die Minister se inisiatief, óf in reaksie op 'n oproep om nominasies, wat deur die Minister in die *Staatskoerant* gepubliseer moet word.

(3) Die President moet—

- (a) die voorsitter en ander lede van die Mededingingstribunaal aanstel op die inwerkingtreedingsdatum van hierdie Wet; en
- (b) 'n persoon aanstel om enige vakature in die Tribunaal te vul.

(4) Artikel 20, saamgelees met die veranderinge deur die konteks vereis, is op die Mededingingstribunaal van toepassing.

Functions of Competition Tribunal

27. (1) Upon a matter being referred to it in terms of *this Act*, the Competition Tribunal may—

- (a) grant an exemption from a relevant provision of *this Act*;
- (b) authorise a merger, with or without conditions, or prohibit a merger;
- (c) adjudicate in relation to any conduct prohibited in terms of Chapter 2 or 3, by determining whether prohibited conduct has occurred, and if so, impose a remedy provided for in Chapter 6; or
- (d) grant an order for costs in terms of section 57.

(2) Section 21(4), read with the changes required by the context, applies to the Competition Tribunal.

Qualifications of members of Competition Tribunal

28. (1) The Chairperson and other members of the Competition Tribunal, viewed collectively must—

- (a) represent a broad cross-section of the population of the Republic; and
- (b) comprise sufficient persons with legal training and experience to satisfy the requirements of section 31(2)(a).

(2) Each member of the Competition Tribunal must—

- (a) be a citizen of South Africa, who is ordinarily resident in South Africa;
- (b) have suitable qualifications and experience in economics, law, commerce, industry or public affairs; and
- (c) be committed to the purposes and principles enunciated in section 2.

(3) A person may not be a member of the Competition Tribunal if that person—

- (a) is an office-bearer of any party, movement, organisation or body of a partisan political nature;
- (b) is an unrehabilitated insolvent;
- (c) is subject to an order of a competent court holding that person to be mentally unfit or disordered; or
- (d) has been convicted of an offence committed after the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), took effect, and sentenced to imprisonment without the option of a fine.

Term of office of members of Competition Tribunal

29. (1) Subject to subsection (2), the Chairperson and each other member of the Competition Tribunal serves for a term of five years.

(2) The President may re-appoint a member of the Competition Tribunal at the expiry of that member's term of office, but no person may be appointed to the office of the Chairperson of the Tribunal for more than two consecutive terms.

(3) The Chairperson, on one month written notice addressed to the *Minister*, may—

- (a) resign from the Competition Tribunal; or
- (b) resign as Chairperson, but remain as a member of the Tribunal.

(4) A member of the Competition Tribunal other than the Chairperson may resign by giving at least one month's written notice to the *Minister*.

(5) The President, on the recommendation of the *Minister*, —

- (a) must remove the Chairperson or any other member of the Competition Tribunal from office if that person becomes subject to any of the disqualifications referred to in section 28(3); and
- (b) other than as provided in subsection (a), may remove the Chairperson or a member from office only for—
 - (i) serious misconduct;
 - (ii) permanent incapacity; or
 - (iii) engaging in any activity that may undermine the integrity of the Tribunal.

Funksies van Mededingingstribunaal

27. (1) By verwysing van 'n aangeleentheid na hom, ingevolge hierdie Wet, kan die Mededingingstribunaal—

- (a) vrystelling van 'n relevante bepaling van hierdie Wet verleen;
 - 5 (b) 'n samesmelting magtig, met of sonder voorwaardes, of 'n samesmelting verbied;
 - (c) oordeel in verband met enige gedrag ingevolge Hoofstuk 2 of 3 verbied, deur te bepaal of verbode gedrag plaasgevind het, en indien wel, 'n regs middel instel waarvoor in Hoofstuk 6 voorsiening gemaak; of
 - 10 (d) 'n bevel vir koste ingevolge artikel 57 toestaan.
- (2) Artikel 21(4), saamgelees met die veranderinge deur die konteks vereis, is op die Mededingingstribunaal van toepassing.

Kwalifikasies van lede van die Mededingingstribunaal

28. (1) Die voorsitter en ander lede van die Mededingingstribunaal, gesamentlik 15 beskou moet—

- (a) ,in die breë, verteenwoordigend wees van die hele Republiek; en
 - (b) bestaan uit 'n voldoende getal persone met regsopleiding en ondervinding om die vereistes van artikel 31(2)(a) na te kom.
- (2) Elke lid van die Mededingingstribunaal moet—
- 20 (a) 'n burger van die Republiek wees en, in die gewone gang van sake, in die Republiek woon;
 - (b) gepaste kwalifikasies en ondervinding hê in die ekonomie, die regte, die handel, die nywerheid en openbare aangeleenthede; en
 - (c) verbind wees tot die oogmerke en beginsels soos uiteengesit in artikel 2.
 - 25 (3) 'n Persoon mag nie 'n lid van die Mededingingstribunaal wees nie, indien daardie persoon—
 - (a) 'n ampsdraer van enige party, beweging, organisasie of liggaam van 'n partypolitieke aard is nie;
 - (b) 'n ongerehabiliteerde insolvent is nie;
 - 30 (c) onderhewig is aan 'n bevel van 'n bevoegde hof wat daardie persoon as geestelik onbevoeg en versteurd verklaar het nie; of
 - (d) skuldig bevind is aan 'n misdryf wat gepleeg is nadat die Grondwet van die Republiek van Suid-Afrika, 1993 (Wet No. 200 van 1993), in werking getree het, en gevonnissen tot gevangenisstraf sonder die keuse van 'n boete.

35 Ampstermyn van lede van Mededingingstribunaal

29. (1) Behoudens subartikel (2), dien die Voorsitter en elke ander lid van die Mededingingstribunaal vir 'n tydperk van vyf jaar.

(2) Die President kan 'n lid van die Mededingingstribunaal, by verstryking van daardie lid se ampstermyn, opnuut aanstel, maar geen persoon mag vir meer as twee 40 opeenvolgende termyne in die amp van die voorsitter van die Tribunaal aangestel word nie.

(3) Die Voorsitter kan, by skriftelike kennisgewing van een maand, gerig aan die Minister—

- (a) uit die Mededingingstribunaal bedank; of
 - 45 (b) bedank as voorsitter, maar aanbly as lid van die Tribunaal
- (4) 'n Lid van die Mededingingstribunaal wat nie Voorsitter is nie, kan bedank deur skriftelik kennis van minstens een maand aan die Minister te gee.
- (5) Die President, op aanbeveling van die Minister,—
- 50 (a) moet die Voorsitter of enige ander lid van die Mededingingstribunaal uit die amp onthef indien daardie persoon onderhewig raak aan enige van die diskwalifikasies in artikel 28(3) bedoel; en
 - (b) kan, anders as wat in subartikel (a) bepaal word, die voorsitter of 'n lid uit die amp onthef slegs vanweë—
 - (i) ernstige wangedrag;
 - 55 (ii) permanente onbevoegdheid; of
 - (iii) die meedoen aan enige aktiwiteit wat die integriteit van die Tribunaal kan ondermyn.

Deputy Chairperson of Competition Tribunal

30. (1) The President must, on the recommendation of the *Minister*, designate a member of the Competition Tribunal as Deputy Chairperson of the Tribunal.

(2) The Deputy Chairperson performs the functions of Chairperson whenever—

- (a) the office of Chairperson is vacant; or
- (b) the Chairperson is for any other reason temporarily unable to perform the functions of Chairperson.

Competition Tribunal proceedings

31. (1) The Chairperson is responsible to manage the caseload of the Competition Tribunal, and must assign each matter referred to the Tribunal to a panel composed of any three members of the Tribunal.

(2) When assigning a matter in terms of subsection (1), the Chairperson must—

- (a) ensure that at least one member of the panel is a person who has legal training and experience; and
- (b) designate a member of the panel to preside over the panel's proceedings.

(3) If, because of withdrawal from a hearing in terms of section 32, resignation, illness or death, a member of the panel is unable to complete the proceedings in a matter assigned to that panel, the Chairperson must—

- (a) direct that the hearing of that matter proceed before any remaining members of the panel subject to the requirements of subsection (2)(a); or
- (b) terminate the proceedings before that panel and constitute another panel, which may include any member of the original panel, and direct that panel to conduct a new hearing.

(4) The decision of a panel on a matter referred to it must be in writing and include reasons for that decision.

(5) A decision of a majority of the members of a panel is the decision of the Tribunal.

Conflicts and disclosure of interest by members of Competition Tribunal

32. (1) A member of the Tribunal may not represent any person before a panel of the Tribunal.

(2) If, during a hearing, it appears to a member of the Competition Tribunal that a matter concerns a financial or other interest of that member contemplated in section 20(2)(b), that member must—

- (a) immediately and fully disclose the fact and nature of that interest to the Chairperson and to the presiding member at that hearing; and
- (b) withdraw from any further involvement in that hearing.

Acting by member of Competition Tribunal after expiry of term of office

33. If, on the expiry of the term of office of a member of the Competition Tribunal, that member is still considering a matter before the Tribunal, that member may continue to act as a member in respect of that matter only.

Remuneration and benefits of members of Competition Tribunal

34. (1) The *Minister* may, in consultation with the Minister of Finance, determine the remuneration, allowances, and other benefits of the Chairperson, Deputy Chairperson and other members of the Competition Tribunal.

(2) The *Minister* may not during the term of office of a member of the Competition Tribunal, reduce the member's salary, allowances or benefits.

(3) The *Minister* may determine any other conditions of appointment not provided for in this section.

Staff of Competition Tribunal

35. The Chairperson may—

- (a) appoint staff, or contract with other persons, to assist the Competition Tribunal in carrying out its functions; and

Adjunkvoorsitter van Tribunaal

30. (1) Die President moet, op aanbeveling van die Minister, 'n lid van die Mededingingstribunaal as adjunkvoorsitter van die Tribunaal aanwys.

(2) Die Adjunkvoorsitter oefen die funksies van die Voorsitter uit wanneer—

- 5 (a) die amp van Voorsitter vakant is; of
 (b) die Voorsitter, om welke rede ook al, tydelik nie daartoe in staat is om die funksies van Voorsitter uit te oefen nie.

Verrigtinge van Mededingingstribunaal

31. (1) Die Voorsitter is verantwoordelik vir die bestuur van die werklading van die Mededingingstribunaal, en moet elke saak wat na die Tribunaal verwys word, toewys aan 'n paneel wat uit enige drie lede van die Tribunaal bestaan.

(2) Wanneer 'n saak ingevolge subartikel (1) toegewys word, moet die Voorsitter—

- 15 (a) verseker dat ten minste een lid van die paneel 'n persoon is wat regsopleiding en ondervinding het; en
 (b) 'n lid van die paneel aanwys om voor te sit by die paneel se verrigtinge.

(3) Indien, as gevolg van onttrekking aan 'n verhoor ingevolge artikel 32, bedanking, siekte of dood, 'n lid van die paneel nie die verrigtinge van 'n saak wat, aan daardie paneel toegewys is, kan voltooi nie, moet die Voorsitter—

- 20 (a) beveel dat die verhoor voortgaan voor enige oorblywende lede van die paneel, onderhewig aan die vereistes van subartikel 2(a); of
 (b) die ondersoek voor daardie paneel beëindig en 'n ander paneel saamstel, welke paneel enige lid van die oorspronklike paneel kan insluit, en daardie paneel beveel om 'n nuwe verhoor te hou.

(4) Die beslissing van 'n paneel aangaande enige saak wat aan hom toegewys word, moet skriftelik wees en redes vir daardie beslissing insluit.

25 (5) 'n Besluit van 'n meerderheid van die lede van 'n paneel is die besluit van die Tribunaal.

Botsings en bekendmaking van belang deur lede van Mededingingstribunaal

32. (1) 'n Lid van die Tribunaal mag nie enige persoon voor 'n paneel van die Tribunaal verteenwoordig nie.

(2) Indien, tydens 'n verhoor, dit aan 'n lid van die Mededingingstribunaal blyk dat 'n aangeleentheid verband hou met 'n finansiële of ander belang van daardie lid, soos beoog in artikel 20(2)(b), moet daardie lid—

- 35 (a) onmiddellik en ten volle die feit en aard van daardie belang aan die Voorsitter en aan die voorsittende lid by daardie verhoor openbaar; en hom/haar
 (b) onttrek aan enige verdere betrokkenheid by daardie verhoor.

Waarneming as lid van Mededingingstribunaal na verstryking van ampstermyn

33. Indien, by die verstryking van die ampstermyn van 'n lid van die Mededingingstribunaal, daardie lid steeds 'n aangeleentheid voor die Tribunaal oorweeg, kan daardie lid voortgaan om, slegs ten opsigte van daardie aangeleentheid, as lid op te tree.

Vergoeding en voordele van lede van Mededingingstribunaal

34. (1) Die Minister kan, in oorleg met die Minister van Finansies, die vergoeding, toelaes en ander voordele van die Voorsitter, Adjunkvoorsitter en ander lede van die Mededingingstribunaal bepaal.

45 (2) Die Minister mag nie gedurende die ampstermyn van 'n lid van die Tribunaal, daardie lid se vergoeding, toelaes of voordele verminder nie.

(3) Die Minister kan enige ander diensvoorwaardes vasstel waarvoor nie in hierdie artikel voorsiening gemaak word nie.

Personeel van Mededingingstribunaal

50 35. Die Voorsitter kan—

- (a) personeel aanstel, of met ander persone kontrakteer, om die Mededingingstribunaal in die uitoefening van sy funksies by te staan; en

- (b) in consultation with the *Minister* and the Minister of Finance, determine the remuneration, allowances, benefits, and other terms and conditions of appointment of a member of the staff.

PART C

THE COMPETITION APPEAL COURT

5

Establishment and constitution of Competition Appeal Court

36. (1) There is hereby established a court to be known as the Competition Appeal Court, which —

- (a) is a court contemplated in section 166(e) of the *Constitution* with a status similar to that of a High Court; 10
 (b) has jurisdiction throughout the Republic; and
 (c) is a court of record.

(2) The Competition Appeal Court consists of members appointed by the President in accordance with section 174 of the *Constitution*, and comprises—

- (a) at least three members, each of whom is a judge of the High Court, and one of whom must be designated by the President to be Judge President of the Competition Appeal Court; and 15
 (b) two other members, each of whom—
 (i) is a citizen of South Africa, and is ordinarily resident in the Republic;
 (ii) has suitable qualifications and experience in economics, law, commerce, industry or public affairs; and 20
 (iii) is committed to the purposes and principles mentioned in section 2.

Function of Competition Appeal Court

37. (1) The Competition Appeal Court may consider any appeal from, or review of, a decision of the Competition Tribunal. 25

(2) The Competition Appeal Court may—

- (a) confirm, amend or set aside a decision or order that is the subject of an appeal or review from the Competition Tribunal; and
 (b) give any judgment or make any order that the circumstances require.

Business of Competition Appeal Court

30

38. (1) The Judge President of the Competition Appeal Court—

- (a) is responsible to supervise and direct the work of the Court;
 (b) must preside at proceedings of the Court; and
 (c) by notice in the *Gazette*, may make rules for the proceedings of the Court.

(2) A matter before the Competition Appeal Court must be heard by the full Court. 35

(3) The decision of a majority of the members of the Competition Appeal Court is the decision of the Court.

(4) Despite subsection (2) and (3), any matter of law arising for decision by the Competition Appeal Court, and any question as to whether a matter for decision is a matter of fact or a matter of law, must be decided only by the members appointed in terms of section 36(2)(a), and a decision by a majority of them is the decision of the Court. 40

(5) A decision of the Competition Appeal Court must be in writing and include reasons for that decision.

Terms of office of members of Competition Appeal Court

45

39. (1) Subject to subsection (2)—

- (a) sections 26(3) and 33, each read with the changes required by the context, apply to the Competition Appeal Court; and

- (b) , in oorleg met die Minister en die Minister van Finansies, die vergoeding, toelaes, voordele, en ander bedinge en voorwaardes van aanstelling van elke lid van die personeel bepaal.

DEEL C

5

DIE APPÈLHOF VIR MEDEDINGING

Instel en samestelling van Appèlhof vir Mededinging

36. (1) Daar word hierby 'n hof ingestel, te wete die Appèlhof vir Mededinging, wat—

- (a) 'n hof is, soos beoog in artikel 166(e) van die Grondwet, met 'n status soortgelyk aan die van 'n Hoë Hof;
 (b) regsbevoegdheid oor die hele Republiek het; en
 (c) 'n notulerende hof is.

(2) Die Appèlhof vir Mededinging bestaan uit lede deur die President, ooreenkomstig artikel 174 van die Grondwet, aangestel, en bestaan uit—

- (a) Ten minste drie lede, een van wie 'n regter van die Hoë Hof is, en een van wie deur die President, as Regter-president van die Appèlhof vir Mededinging, aangewys moet word; en
 (b) twee ander lede, elk van wie—
 (i) 'n burger van Suid-Afrika is en wat normaalweg in die Republiek woonagtig is;
 (ii) toepaslike kwalifikasies en ondervinding het in die ekonomie, die regte, die handel, die nywerheid of openbare aangeleenthede; en
 (iii) verbind is tot die oogmerke en beginsels in artikel 2 bedoel.

Funksies van Appèlhof vir Mededinging

37. (1) Die Appèlhof vir Mededinging kan enige appèl, of hersiening van 'n beslissing van die Mededingingstribunaal oorweeg.

(2) Die Appèlhof vir Mededinging kan—

- (a) die beslissing of bevel wat die onderwerp is van 'n appèl of 'n hersiening van die Mededingingstribunaal bekragtig, wysig of ter syde stel; en
 (b) enige uitspraak gee of bevel uitreik wat deur die omstandighede vereis word.

Sake van Appèlhof vir Mededinging

38. (1) Die Regter-president van die Appèlhof vir Mededinging—

- (a) is verantwoordelik vir toesighouding en leiding van die werk van die Hof;
 (b) moet voorsit by verrigtinge van die Hof; en
 (c) mag, by kennisgewing in die *Staatskoerant*, reëls vir die verrigtinge van die Hof maak.

(2) 'n Aangeleentheid voor die Appèlhof vir Mededinging moet aangehoor word deur die volle Hof.

(3) Die beslissing van 'n meerderheid van die lede van die Appèlhof vir Mededinging is die beslissing van die Hof.

(4) Ondanks subartikel (2) en (3), moet enige regsangeleentheid wat vir beslissing deur die Appèlhof vir Mededinging ontstaan, en enige vraag oor of die aangeleentheid vir beslissing, 'n feite aangeleentheid of 'n regsangeleentheid is, slegs deur die lede ingevolge artikel 36(2)(a) aangestel, beslis word, en 'n beslissing deur die meerderheid van hulle is die beslissing van die Hof.

(5) 'n Beslissing van die Appèlhof vir Mededinging moet skriftelik wees en redes vir daardie beslissing insluit.

Ampstermyne van lede van Appèlhof vir Mededinging

39. (1) Behoudens subartikel (2)—

- (a) is artikels 26(3) en 33, elk saamgelees met die veranderinge deur die konteks vereis, op die Appèlhof vir Mededinging van toepassing; en

- (b) Sections 28, 29, 32, and 34 each read with the changes required by the context, apply to the members of the Court appointed in terms of section 36(2)(b).
- (2) In addition to the provisions of subsection (1)(a), the following rules apply to the Judge President and each other member of the Competition Appeal Court appointed in terms of section 36(2)(a):
- (a) A member is appointed for a fixed term determined by the President at the time of appointment.
 - (b) a member may resign from the Court by giving written notice to the President.
 - (c) a member holds office until—
 - (i) the member's term of office in the Court ends;
 - (ii) the member's resignation takes effect;
 - (iii) the member is removed from office; or
 - (iv) the member ceases to be a judge of the High Court.
- (3) The Judge President is appointed for a fixed term determined by the President at the time of appointment.
- (4) The Judge president may resign from the Competition Appeal Court by giving written notice addressed to the President.
- (5) A person holds office as Judge President of the Competition Appeal Court until—
- (a) that person's term of office in the Court ends;
 - (b) that person's resignation takes effect;
 - (c) that person is removed from office; or
 - (d) that person ceases to be a judge of the High Court.
- (6) The tenure of office, the remuneration, and the terms and conditions of appointment applicable to a judge of the High Court in terms of the Judges Remuneration and Conditions of Employment Act, 1989 (Act No. 88 of 1989), are not affected by that judge's appointment and concurrent tenure of office as a member of the Competition Appeal Court appointed in terms of section 36(2)(a).
- (7) A member of the Competition Appeal Court, appointed in terms of section 36(2)(a)—
- (a) may be removed from the Court only if that person has first been removed from office as a judge of the High Court; and
 - (b) upon being removed as a judge of the High Court, must be removed from office as a judge of the Competition Appeal Court.

PART D

ADMINISTRATIVE MATTERS CONCERNING THE COMPETITION COMMISSION AND THE COMPETITION TRIBUNAL

Finances

40. (1) The Competition Commission is financed from—
- (a) money that is appropriated by Parliament for the Commission;
 - (b) fees payable to the Commission in terms of *this Act*;
 - (c) income derived by the Commission from its investment and deposit of surplus money in terms of subsection (6); and
 - (d) money received from any other source.
- (2) The financial year of the Competition Commission is the period from 1 April in any year to 31 March in the following year, except that the first financial year of the Commission begins on the date that *this Act* comes into operation, and ends on 31 March next following that date.
- (3) Each year, at a time determined by the *Minister*, the Commissioner must submit to the *Minister* a statement of the Competition Commission's estimated income and expenditure, and requested appropriation from Parliament, in respect of the next ensuing financial year.
- (4) The Competition Commission must open and maintain an account in the name of the Commission with a registered bank, or other registered financial institution, in the Republic, and—
- (a) any money received by the Commission must be deposited into that account; and
 - (b) every payment on behalf of the Commission must be made from that account.

- (b) Artikels 28, 29, 32 en 34, elk saamgelees met die veranderinge deur die konteks vereis, is van toepassing op die lede van die Hof, ingevolge artikel 36 (2)(b) aangestel.
- (2) Bykomend tot die bepalings van subartikel 1(a), is die volgende reëls van toepassing op die Regter-president en op elke ander lid van die Appèlhof vir Mededinging, ingevolge artikel 36(2)(a) aangestel:
- (a) Die lid word aangestel vir 'n vaste termyn deur die President op die datum van aanstelling bepaal.
- (b) 'n lid kan uit die Hof bedank deur skriftelik kennis te gee aan die President.
- 10 (c) 'n lid bekleë die amp totdat—
- (i) die lid se ampstermyn in die Hof eindig;
- (ii) die lid se bedanking van krag word;
- (iii) die lid uit die amp onthef word; of
- (iv) die lid nie meer 'n regter van die Hoë Hof is nie.
- 15 (3) Die Regter-president word aangestel vir 'n vaste tydperk wat, ten tyde van die aanstelling, deur die President bepaal word.
- (4) Die Regter-president kan uit die Appèlhof vir Mededinging bedank deur skriftelik kennisgewing aan die President te rig.
- (5) 'n Persoon bekleë die amp van Regter-president van die Appèlhof vir Mededinging totdat—
- 20 (a) daardie persoon se ampstermyn in die Appèlhof eindig;
- (b) daardie persoon se bedanking van krag word;
- (c) daardie persoon uit die amp onthef word; of
- (d) daardie persoon nie meer 'n regter van die Hoë Hof is nie.
- 25 (6) Die ampstermyn, die vergoeding, asook die bedinge en voorwaardes van aanstelling, van toepassing op 'n regter van die Hoë Hof ingevolge die Wet op Besoldiging en Diensvoorwaardes van Regters, 1989 (Wet No. 88 van 1989), word nie geraak deur daardie regter se aanstelling en gelyktydige ampstermyn as lid van die Appèlhof vir Mededinging, ingevolge artikel 36(2)(a) aangestel, nie.
- 30 (7) 'n Lid van die Appèlhof vir Mededinging, ingevolge artikel 36 (2)(a) aangestel—
- (a) mag slegs uit die Hof onthef word indien daardie persoon eerstens van die amp van regter van die Hoë Hof onthef is; en
- (b) moet, by ontheffing as regter van die Hoë Hof, onthef word van die amp van regter van die Appèlhof vir Mededinging.

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DEEL D**ADMINISTRATIEWE AANGELEENTHEDE BETREFFENDE DIE MEDEDINGINGSKOMMISSIE EN DIE MEDEDINGINGSTRIBUNAAL****Finansies**

- 40 40. (1) Die Mededingingskommissie word gefinansier uit—
- (a) geld wat deur die Parlement vir die Kommissie bewillig word;
- (b) gelde betaalbaar aan die Kommissie ingevolge hierdie Wet;
- (c) inkomste verdien deur die Kommissie uit sy belegging en deponering van surplusgelde ingevolge subartikel (6); en
- (d) geld ontvang uit enige ander bron.
- 45 (2) Die boekjaar van die Mededingingskommissie is die tydperk van 1 April van enige jaar tot 31 Maart van die volgende jaar, behalwe die eerste boekjaar van die Kommissie, wat begin op die datum van die inwerkingtreding van hierdie Wet, en eindig op 31 Maart van daardie boekjaar.
- (3) In elke boekjaar, op 'n datum bepaal deur die Minister, moet die Kommissaris 'n staat van die Mededingingskommissie se verwagte inkomste en uitgawes, en die bewilliging wat van die Parlement versoek is ten opsigte van die volgende boekjaar, aan die Minister voorlê.
- 50 (4) Die Mededingingskommissie moet 'n bankrekening by 'n geregistreerde bank of ander geregistreerde finansiële instelling in die Republiek, in die naam van die
- 55 Kommissie, open en bedryf, en—
- (a) enige geld ontvang deur die Kommissie, moet in daardie rekening gedeponeer word; en
- (b) elke betaling namens die Kommissie moet uit daardie rekening gedoen word.

- (5) Cheques drawn on the account of the Competition Commission must be signed on its behalf by two persons authorised for that purpose by resolution of the Commission.
- (6) The Competition Commission may invest or deposit money of the Commission that is not immediately required for contingencies or to meet current expenditures—
- (a) on a call or short-term fixed deposit with any registered bank or financial institution in the Republic; or 5
 - (b) in an investment account with the Corporation for Public Deposits established by section 2 of the Corporation for Public Deposits Act, 1984 (Act No. 46 of 1984).
- (7) The Commissioner— 10
- (a) is the accounting officer of the Competition Commission in terms of the Exchequer Act, 1975, (Act No. 66 of 1975); and
 - (b) is accountable for all money that the Commission receives or pays, and must keep the accounting records required by that Act.
- (8) The Competition Commission— 15
- (a) is exempt from the provisions of the Exchequer Act, 1975, subject to subsection (7);
 - (b) is exempt from the provisions of the State Tender Board Rules; and
 - (c) is subject to the provisions of the Reporting by Public Entities Act, 1992 (Act No. 93 of 1992). 20
- (9) Within six months after the end of each financial year, the Commissioner must prepare financial statements in accordance with established accounting practice, principles and procedures, comprising—
- (a) a statement reflecting, with suitable and sufficient particulars, the income and expenditure of the Competition Commission during the preceding financial year; and 25
 - (b) a balance sheet showing the state of its assets, liabilities and financial position as at the end of that financial year.
- (10) The Auditor General must audit the Competition Commission's financial records each year. 30

Annual Report

41. (1) Within six months after the end of the Competition Commission's financial year, the Commissioner must prepare and submit to the *Minister* an annual report in the *prescribed* form, including—
- (a) the audited financial statements prepared in terms of section 40(9); 35
 - (b) the auditor's report prepared in terms of section 40(10);
 - (c) a report of activities undertaken in terms of its functions set out in *this Act*;
 - (d) a statement of the progress achieved during the preceding year towards realization of the purposes of *this Act*; and
 - (e) any other information that the *Minister*, by notice in the *Gazette*, determines. 40
- (2) The *Minister* must table in the National Assembly each annual report submitted in terms of subsection (1) —
- (a) within 14 days after receiving that report from the Competition Commission, if Parliament is in session at that time; or
 - (b) if Parliament is not in session, within 14 days after the commencement of the next session. 45

Rules applicable to Competition Tribunal

42. Sections 40 and 41, each read with the changes required by the context, applies to the Competition Tribunal, except that a reference in either section to the Commissioner must be read as referring to the Chairperson of the Tribunal. 50

(5) Tjeks getrek op die rekening van die Mededingingskommissie, moet namens die Kommissie onderteken word deur twee persone daartoe gemagtig deur 'n besluit van die Kommissie.

(6) Die Mededingingskommissie kan geld van die Kommissie belê of deponeer wat nie onmiddellik vir onvoorsiene of lopende uitgawes nodig word nie—

(a) in 'n onmiddellik opeisbare of korttermyn- vaste deposito by enige geregistreerde bank of finansiële instelling in die Republiek; of

(b) in 'n beleggingsrekening by die Korporasie vir Openbare Deposito's, ingestel by artikel 2 van die Wet op die Korporasie vir Openbare Deposito's, 1984 (Wet No. 46 van 1984).

(7) Die Kommissaris—

(a) is die rekenpligtige beampte van die Mededingingskommissie, ingevolge die Skatkiswet, 1975 (Wet No. 66 van 1975); en

(b) is verantwoordingspligtig vir al die geld wat die Kommissie ontvang of betaal en moet die rekenkundige opgawes hou wat deur daardie Wet vereis word.

(8) Die Mededingingskommissie—

(a) is vrygestel van die bepalings van die Skatkiswet, 1975, onderworpe aan subartikel (7);

(b) is vrygestel van die bepalings van die Staatstenderraadreëls; en

(c) is onderhewig aan die bepalings van die Wet op Verslagdoening deur Openbare Entiteite, 1992, (Wet No. 93 van 1992).

(9) Binne ses maande na die einde van elke boekjaar, moet die Kommissaris, in ooreenstemming met gevestigde rekenkundige praktyk, beginsels en prosedures, finansiële state voorberei, wat bestaan uit—

(a) 'n staat wat, met toepaslike en genoegsame besonderhede, die inkomste en uitgawes van die Mededingingskommissie gedurende die voorafgaande boekjaar uiteensit; en

(b) 'n balansstaat wat die stand van bates, laste en die finansiële posisie, soos aan die einde van daardie boekjaar, aandui.

(10) Die Ouditeur-Generaal moet die Mededingingskommissie se finansiële opgawes elke jaar ouditeer.

Jaarverslag

41. (1) Die Kommissaris moet, binne ses maande na die einde van die Mededingingskommissie se boekjaar, 'n jaarverslag in die voorgeskrewe vorm aan die Minister voorlê, wat insluit—

(a) die geouditeerde finansiële state, ingevolge artikel 40(9) opgestel;

(b) die ouditeursverslag ingevolge artikel 40(10) opgestel;

(c) 'n verslag van aktiwiteite wat onderneem is ingevolge sy funksies in hierdie Wet uiteengesit;

(d) 'n verslag van die vordering wat gedurende die voorafgaande jaar bereik is ter verwesenliking van die oogmerke van hierdie Wet; en

(e) enige ander inligting wat die Minister, by kennisgewing in die *Staatskoerant*, bepaal.

(2) Die Minister moet elke jaarverslag ingevolge subartikel (1) voorgelê, in die Nasionale Vergadering ter tafel lê—

(a) binne 14 dae na ontvangs van die verslag van die Mededingingskommissie, indien die Nasionale Vergadering dan in sitting is; of

(b) indien die Nasionale Vergadering nie in sitting is nie, binne 14 dae na aanvang van die daaropvolgende sessie.

Reëls van toepassing op die Mededingingstribunaal

42. Artikels 41 en 42, elk saamgelees met die veranderinge deur die konteks vereis, is op die Mededingingstribunaal van toepassing, behalwe dat 'n verwysing in enigeen van die artikels na die Kommissaris, gelees moet word as 'n verwysing na die Voorsitter van die Tribunaal.

Liability

43. (1) The State Liability Act, 1957 (Act No. 20 of 1957), read with the changes required by the context, applies to the Competition Commission and to the Competition Tribunal, but a reference in that Act to “the Minister of the Department concerned” must be interpreted as referring to the Commissioner, or to the Chairperson, as the case may be. 5

(2) No Competition Tribunal member, Competition Appeal Court member, Commissioner, staff person or contractor is liable for any report, finding, point of view or recommendation that is given in good faith and is submitted to Parliament, or made known, under the *Constitution* or *this Act*. 10

CHAPTER 5**COMPETITION TRIBUNAL PROCEDURES****Initiating a complaint**

44. A complaint against a *prohibited practice* by a *firm* may be initiated by the Commissioner, or submitted to the Competition Commission by any person in the *prescribed* manner. 15

Investigation by Competition Commission

45. (1) Upon initiating or receiving a complaint in terms of section 44, the Commissioner must direct an inspector to investigate the complaint as quickly as practicable. 20

(2) At any time during an investigation, the Commissioner may designate one or more persons to assist the inspector conducting the investigation.

(3) A person questioned by an inspector conducting an investigation must answer each question truthfully and to the best of that person’s ability, but a person is not obliged to answer any question if the answer is self-incriminating. 25

(4) At any time during an investigation, the Commissioner may summon any person who is believed to be able to furnish any information on the subject of the investigation, or to have possession or control of any book, document or other object that has a bearing on that subject—

- (a) to appear before the Commissioner or a person authorised by the Commissioner, to be interrogated at a time and place specified in the summons; or 30
- (b) to deliver or produce to the Commissioner, or a person authorised by the Commissioner, any book, document or other object referred to in paragraph (a) at a time and place specified in the summons.

(5) No self-incriminating answer given or statement made by any person to an inspector exercising powers in terms of this section will be admissible as evidence against that person in criminal proceedings against that person instituted in any court, except in criminal proceedings for perjury or in which that person is tried for an offence contemplated in section 72 or section 73(2)(d), and then only to the extent that the answer or statement is relevant to prove the offence charged. 40

Authority to enter and search under warrant

46. (1) A judge of the High Court, a regional magistrate or a magistrate may issue a warrant to enter and search any premises that are within the jurisdiction of that judge or magistrate, if, from information on oath or affirmation, there are reasonable grounds to believe that — 45

- (a) a *prohibited practice* has taken place, is taking place or is likely to take place on or in those *premises*; or
- (b) that anything connected with an investigation into that *prohibited practice* is in the possession of or under the control of, a person who is on or in those *premises*. 50

(2) A warrant to enter and search may be issued at any time and must specifically —

- (a) identify the *premises* that may be entered and searched; and

Aanspreeklikheid

43. (1) Die Wet op Staatsaanspreeklikheid, 1957 (Wet No. 20 van 1957), saamgelees met die veranderinge deur die konteks vereis, is van toepassing op die Mededingingskommissie en op die Mededingingstribunaal, maar 'n verwysing in daardie Wet na "die Minister van die Departement wat van toepassing is" moet uitgelê word as 'n verwysing na die Kommissaris, of na die Voorsitter, na gelang van die geval.

(2) Geen lid van die Mededingingstribunaal, lid van die Appèlhof vir Mededinging, Kommissaris, personeellid of kontrakteur is aanspreeklik vir enige verslag, beslissing, mening of aanbeveling wat te goeder trou gedoen en aan die Parlement voorgelê word of bekend gemaak word kragtens die Grondwet of hierdie Wet nie.

HOOFSTUK 5**MEDEDINGINGSTRIBUNAALPROSEDURES****Aanmelding van klagte**

44. 'n Klagte teen 'n verbode praktyk deur 'n firma, kan aanhangig gemaak word deur die Kommissaris of deur voorlegging aan die Mededingingskommissie deur enige persoon, op die voorgeskrewe wyse.

Ondersoek deur Mededingingskommissie

45. (1) Die Kommissaris moet, by aanmelding of ontvangs van 'n klagte ingevolge artikel 44, 'n inspekteur aansê om die klagte so gou moontlik te ondersoek.

(2) Te eniger tyd gedurende 'n ondersoek, kan die Kommissaris een of meer persone aanwys om die inspekteur wat die ondersoek uitvoer, by te staan.

(3) 'n Persoon wat deur 'n inspekteur wat 'n ondersoek uitvoer, ondervra word, moet elke vraag juis en na daardie persoon se beste vermoë beantwoord, maar 'n persoon is nie verplig om enige vraag te beantwoord indien die antwoord self-inkriminerend is nie.

(4) Te enige tyd gedurende 'n ondersoek, kan die Kommissaris enige persoon dagvaar wat vermoed word in staat te wees om enige inligting te verstrek oor die onderwerp van die ondersoek, of in besit of beheer te wees van enige boek, dokument of ander voorwerp wat ter sake is by daardie onderwerp—

(a) om voor die Kommissaris of 'n persoon deur die Kommissaris gemagtig te verskyn, om ondervra te word op 'n tyd en plek in die dagvaarding gespesifiseer; of

(b) om enige boek, dokument of ander voorwerp in paragraaf (a) vermeld, aan die Kommissaris, of 'n persoon deur die Kommissaris gemagtig, te oorhandig of voor te lê, op 'n tyd en plek in die dagvaarding gespesifiseer.

(5) Geen selfinkriminerende antwoord gegee of verklaring gedoen deur enige persoon aan 'n inspekteur wat bevoegdhede ingevolge hierdie artikel uitoefen, sal as getuienis in strafregtelike verrigtinge teen daardie persoon in enige Hof ingestel, toelaatbaar wees nie, behalwe in strafregtelike verrigtinge weens meened, of waarin daardie persoon verhoor word weens 'n misdryf in artikel 72 of artikel 73(2)(d) bedoel, en dan slegs in die mate waarin die antwoord of verklaring relevant is om die misdryf waarvan aangekla, te bewys.

Magtiging om te betree en te deursoek met lasbrief

46. (1) 'n Regter van die Hoë Hof, 'n streeklanddros of 'n landdros, kan 'n lasbrief uitreik om enige perseel te betree en te deursoek wat binne die regsbevoegdheid van daardie regter of landros is, indien, uit inligting onder eed of bevestiging, redelike gronde bestaan om te glo dat—

(a) 'n verbode handeling plaasgevind het, plaasvind, of waarskynlik sal plaasvind, op of binne daardie perseel; of

(b) enigiets wat verband hou met 'n ondersoek na daardie verbode praktyk, in die besit of onder die beheer is van 'n persoon wat op of in daardie perseel is.

(2) 'n Lasbrief om te betree en te deursoek, kan te enige tyd uitgereik word en moet spesifiek—

(a) die perseel wat betree en deursoek mag word, uitwys; en

- (b) authorise an inspector or a police officer to enter and search the *premises* and to do anything listed in section 48.
- (3) A warrant to enter and search is valid until one of the following events occurs:
 - (a) the warrant is executed;
 - (b) the warrant is cancelled by the person who issued it or, in that person's absence, by a person with similar authority;
 - (c) the purpose for issuing it has lapsed; or
 - (d) the expiry of one month after the date it was issued.
- (4) A warrant to enter and search may be executed only during the day, unless the judge, regional magistrate, or magistrate who issued it authorises that it may be executed at night at a time that is reasonable in the circumstances.
- (5) A person authorised by warrant issued in terms of subsection (2) may enter and search *premises* named in that warrant.
- (6) Immediately before commencing with the execution of a warrant, a person executing that warrant must—
 - (a) if the owner, or person in control, of the *premises* to be searched is present—
 - (i) provide identification to that person and explain to that person the authority by which the warrant is being executed; and
 - (ii) hand a copy of the warrant to that person or to the person named in it; or
 - (b) if none of those persons is present, affix a copy of the warrant to the *premises* in a prominent and visible place.

Authority to enter and search without warrant

- 47. (1) An inspector who is not authorised by a warrant in terms of section 46(2) may enter and search *premises* other than a *private dwelling*.
- (2) Immediately before entering and searching in terms of this section, the inspector conducting the search must provide identification to the owner or person in control of the *premises* and explain to that person the authority by which the search is being conducted, and must either—
 - (a) get permission from that person to enter and search the *premises*; or
 - (b) believe on reasonable grounds that a warrant would be issued under section 46 if applied for, and that the delay that would ensue by first obtaining a warrant would defeat the object or purpose of the entry and search.
- (3) An entry and search without a warrant may be carried out only during the day, unless doing it at night is justifiable and necessary in the circumstances.

Powers to enter and search

- 48. (1) A person who is authorised under section 46 or 47 to enter and search *premises* may—
 - (a) enter upon or into those *premises*;
 - (b) search those *premises*;
 - (c) search any person on those *premises* if there are reasonable grounds for believing that the person has personal possession of an article or document that has a bearing on the investigation;
 - (d) examine any article or document that is on or in those *premises* that has a bearing on the investigation;
 - (e) request information about any article or document from the owner of, or person in control of, the *premises* or from any person who has control of the article or document, or from any other person who may have the information;
 - (f) take extracts from, or make copies of, any book or document that is on or in the *premises* that has a bearing on the investigation;

- (b) 'n inspekteur of 'n polisiebeampte magtig om die perseel te betree en te deursoek, en om enigiets te doen in artikel 48 gelys.
- (3) 'n Lasbrief om te betree en te deursoek, is geldig totdat een van die volgende gebeure plaasvind:
- 5 (a) die lasbrief uitgevoer is;
- (b) die lasbrief deur die persoon wat dit uitgereik het, of, in die afwesigheid van daardie persoon, deur 'n persoon met soortgelyke magtiging, gekanselleer word;
- (c) die doel vir die uitreiking daarvan verval het; of
- 10 (d) die verstryking van een maand sedert die dag van uitreiking.
- (4) 'n Lasbrief om te betree en te deursoek, mag slegs gedurende die dag uitgevoer word, tensy die regter, streeklanddros, of landdros wat dit uitreik, die uitvoering daarvan in die nag magtig, op tye wat in die omstandighede redelik moet wees.
- (5) 'n Persoon wat deur 'n lasbrief ingevolge subartikel (2) uitgereik, gemagtig word,
- 15 kan 'n perseel in daardie lasbrief vermeld, betree en deursoek.
- (6) 'n Persoon wat 'n lasbrief uitvoer, moet onmiddellik voordat met sodanige uitvoering begin word—
- (a) indien die eienaar of persoon in beheer van die perseel wat deursoek staan te word, teenwoordig is—
- 20 (i) identifikasie aan daardie persoon voorsien en aan daardie persoon die magtiging op grond waarvan die lasbrief uitgevoer word, verduidelik; en
- (ii) 'n afskrif van die lasbrief aan daardie persoon of die persoon daarin vermeld oorhandig; of
- 25 (b) indien nie een van daardie persone aanwesig is nie, 'n afskrif van die lasbrief in 'n prominente en sigbare plek op die perseel vasheg.

Magtiging om te betree en te deursoek sonder lasbrief

47. (1) 'n Inspekteur wat nie deur 'n lasbrief ingevolge artikel 46(2) gemagtig word nie, kan 'n perseel, behalwe 'n privaatwoning, betree en deursoek.
- 30 (2) Onmiddellik voordat ingevolge hierdie artikel betree en deursoek word, moet die inspekteur wat die deursoeking uitvoer, identifikasie voorsien aan die eienaar of persoon in beheer van die perseel en aan daardie persoon die magtiging op grond waarvan die deursoeking uitgevoer word, verduidelik en moet—
- (a) toestemming van daardie persoon verkry om die perseel te betree en te
- 35 deursoek; of
- (b) op redelike gronde, glo dat 'n lasbrief ingevolge artikel 46 uitgereik sal word indien daarom aansoek gedoen word, en dat die vertraging wat daaruit sal voortspruit om eers 'n lasbrief te verkry, die oogmerk of doel van die betreding en deursoeking sal verydel.
- 40 (3) 'n Betreding en deursoeking sonder 'n lasbrief moet gedurende die dag uitgevoer word, tensy dit regverdigbaar en noodsaaklik in die omstandighede is, om dit gedurende die nag te doen.

Bevoegdhede om te betree en te deursoek

48. (1) 'n Persoon wat ingevolge artikel 46 of 47 gemagtig word om 'n perseel te
- 45 betree en te deursoek kan—
- (a) daardie perseel betree of binnegaan;
- (b) daardie perseel deursoek;
- (c) enige persoon op daardie perseel deursoek indien redelike gronde bestaan om te glo dat die persoon in persoonlike besit is van 'n artikel of dokument wat
- 50 verband hou met die ondersoek;
- (d) enige artikel of dokument ondersoek wat op of in die perseel is, wat verband hou met die ondersoek;
- (e) inligting rakende enige artikel of dokument versoek van die eienaar of
- 55 persoon in beheer van die perseel, of van enige persoon wat beheer oor die artikel of dokument het, of van enige ander persoon wat oor die inligting kan beskik;
- (f) uittreksels neem, of afskrifte maak van, enige boek of dokument wat op of in die perseel is wat met die ondersoek verband hou; en

- (g) use any computer system on the *premises*, or require assistance of any person on the *premises* to use that computer system, to —
(i) search any data contained in or available to that computer system;
(ii) reproduce any record from that data; and
(iii) seize any output from that computer for examination and copying; and 5
(h) attach and, if necessary, remove from the *premises* for examination and safekeeping anything that has a bearing on the investigation.

(2) Section 45(5) applies to an answer given or statement made to an inspector in terms of this section.

(3) An inspector authorised to conduct an entry and search in terms of section 46 or 47 may be accompanied and assisted by a police officer. 10

Conduct of entry and search

49. (1) A person who enters and searches any *premises* under section 48 must conduct the entry and search with strict regard for decency and order, and with regard for each person's right to dignity, freedom, security and privacy. 15

(2) During any search under section 48(1)(c), only a female inspector or police officer may search a female person, and only a male inspector or police officer may search a male person.

(3) A person who enters and searches *premises* under section 48, must before questioning anyone— 20

- (a) advise that person of the right to be assisted at the time by an advocate or attorney; and
(b) allow that person to exercise that right.

(4) A person who removes anything from *premises* being searched must—

- (a) issue a receipt for it to the owner of, or person in control of, the *premises*; and 25
(b) return it as soon as practicable after achieving the purpose for which it was removed.

(5) During a search, a person may refuse to permit the inspection or removal of an article or document on the grounds that it contains privileged information.

(6) If the owner or person in control of an article or document refuses in terms of subsection (5) to give that article or document to the person conducting the search, the person conducting the search may request the registrar or sheriff of the High Court that has jurisdiction to attach and remove the article or document for safe custody until that court determines whether or not the information is privileged. 30

(7) A police officer who is authorised to enter and search *premises* under section 46, or who is assisting an inspector who is authorised to enter and search *premises* under section 46 or 47, may overcome resistance to the entry and search by using as much force as is reasonably required, including breaking a door or window of the *premises*. 35

(8) Before using force in terms of subsection (7), a police officer must audibly demand admission and must announce the purpose of the entry, unless it is reasonable to believe that doing so may induce someone to destroy or dispose of an article or document that is the object of the search. 40

(9) The Competition Commission may compensate anyone who suffers damage because of a forced entry during a search when no one responsible for the *premises* was present. 45

Outcome of complaint

50. After completing its investigation, the Competition Commission must —

- (a) refer the matter to the Competition Tribunal, if it determines that a *prohibited practice* has been established; or
(b) in any other case, issue a notice of non-referral to the complainant in the 50
prescribed form.

- (g) enige rekenaarselstel op die perseel gebruik, of bystand vereis van enige persoon op daardie perseel om daardie rekenaarselstel te gebruik, om—
 (i) enige data vervat in of beskikbaar tot daardie rekenaarselstel, te soek;
 (ii) enige rekord van daardie data te reproduseer; en
 5 (iii) enige uitdruk van daardie rekenaar, vir ondersoek en kopiëring, te verwyder; en
 (h) enigiets wat met die ondersoek verband hou, in beslag neem en, indien nodig, vir ondersoek en veilige bewaring, vanaf die perseel verwyder.
 (2) Artikel 45(5) is van toepassing op 'n antwoord gegee of verklaring gedoen aan
 10 'n inspekteur ingevolge hierdie artikel.
 (3) 'n Inspekteur wat gemagtig is om 'n betreding en deursoeking ingevolge artikel 46 of 47 uit te voer, kan vergesel en bygestaan word deur 'n polisiebeampte.

Uitvoer van betreding en deursoeking

49. (1) 'n Persoon wat enige perseel, kragtens artikel 48 betree en deursoek moet die
 15 betreding en deursoeking uitvoer met streng inagneming van ordentlikheid en orde, en met inagneming van elke persoon se reg tot waardigheid, vryheid, sekuriteit en privaatheid.
 (2) Tydens enige deursoeking kragtens artikel 48(1)(c), mag slegs 'n vroulike inspekteur of polisiebeampte 'n vroulike persoon deursoek, en mag slegs 'n manlike
 20 inspekteur of polisiebeampte 'n manlike persoon deursoek.
 (3) 'n Persoon wat 'n perseel kragtens artikel 48 betree en deursoek, moet alvorens enigeen ondervra word—
 (a) daardie persoon adviseer oor die reg om op daardie tydstip deur 'n advokaat of prokureur bygestaan te word; en
 25 (b) daardie persoon toelaat om daardie reg uit te oefen.
 (4) 'n Persoon wat enigiets verwyder van 'n perseel wat deursoek word, moet—
 (a) 'n kwitansie daarvoor aan die eienaar van, of persoon in beheer van die perseel uitreik; en
 (b) dit so gou doenlik terugbesorg nadat die doel waarvoor dit verwyder is,
 30 verwesenlik is.
 (5) 'n Persoon kan tydens 'n deursoeking weier om die inspeksie of verwydering van 'n artikel of dokument toe te laat, op grond daarvan dat dit geprivilegieerde inligting is of behels.
 (6) Indien die eienaar of persoon in beheer van die artikel of dokument, ingevolge
 35 subartikel (5), weier om daardie artikel of dokument aan die persoon wat die deursoeking uitvoer, te oorhandig, kan die persoon wat die deursoeking behartig, die registrateur of balju van die Hoë Hof wat regsbevoegdheid het, versoek om die artikel of dokument in beslag te neem en vir veilige bewaring te verwyder totdat daardie hof beslis of die inligting geprivilegieerd is al dan nie.
 40 (7) 'n Polisiebeampte wat gemagtig is om 'n perseel kragtens artikel 46 te betree en te deursoek, of wat 'n inspekteur bystaan wat gemagtig is om 'n perseel kragtens artikel 46 of 47 te betree en te deursoek, kan enige weerstand teen die betreding en deursoeking oorkom deur die gebruik van soveel geweld as wat redelikerwys vereis word, met inbegrip van die afbreek van 'n deur of 'n venster op die perseel.
 45 (8) Alvorens geweld ingevolge subartikel (7) gebruik word, moet 'n polisiebeampte hoorbaar toegang vereis en die doel van die betreding aankondig, tensy dit redelik is om te glo dat sodanige optrede iemand sal aanmoedig om 'n artikel of dokument wat die voorwerp van die deursoeking is, te vernietig of daarvan ontslae te raak.
 (9) Die Mededingingskommissie kan enigeen vergoed wat skade ly as gevolg van
 50 gedwonge betreding gedurende 'n deursoeking waartydens niemand verantwoordelik vir die perseel, teenwoordig was nie.

Uitslag van klagte

50. Na voltooiing van 'n ondersoek moet die Mededingingskommissie—
 (a) die aangeleentheid na die Mededingingstribunaal verwys, indien hy beslis dat
 55 'n verbode praktyk bewys is; of
 (b) in enige ander geval, 'n kennisgewing van nie-verwysing, in die voorgeskrewe vorm, aan die klaer uitreik.

Referral to Competition Tribunal

51. (1) If the Competition Commission issues a notice of non-referral in response to a complaint, the complainant concerned may refer the matter directly to the Competition Tribunal.

(2) A referral to the Competition Tribunal, whether by the Competition Commission in terms of section 50(a), or by a complainant in terms of subsection (1), must be in the *prescribed* form. 5

(3) The Chairperson of the Competition Tribunal must, by notice in the *Gazette*, publish each referral made to the Tribunal.

(4) The notice published in terms of subsection (3) must include — 10

- (a) the name of the *firm* whose conduct is the subject of the referral; and
- (b) the nature of the conduct that is the subject of the referral.

Hearings before Competition Tribunal

52. (1) The Competition Tribunal must conduct a hearing into every matter referred to it in terms of section 50(a) or section 51(1). 15

(2) The Competition Tribunal must conduct its hearings in public —

- (a) in an inquisitorial manner;
- (b) as expeditiously as possible;
- (c) as informally as possible; and
- (d) in accordance with the principles of natural justice. 20

(3) Despite subsection (2), the Tribunal member presiding at a hearing may exclude members of the public, or specific persons or categories of persons, from attending the proceedings—

- (a) if evidence to be presented is *confidential information*, but only to the extent that the information cannot otherwise be protected; 25
- (b) if the proper conduct of the hearing requires it; or
- (c) for any other reason that would be justifiable in civil proceedings in a High Court.

(4) At the conclusion of a hearing, the Competition Tribunal must make any order permitted in terms of Chapter 6, and must issue written reasons for its decision. 30

(5) The Competition Tribunal must provide the participants and other members of the public reasonable access to the record of each hearing, subject to any ruling to protect *confidential information* made in terms of subsection (3)(a).

Right to participate in hearing

53. The following persons may participate in a hearing contemplated in section 52, in person or through a representative, and may put questions to witnesses and inspect any books, documents or items presented at the hearing: 35

- (a) the Commissioner, or any person appointed by the Commissioner;
- (b) the complainant;
- (c) the *firm* whose conduct forms the basis of the hearing; and 40
- (d) any other person who has a material interest in the hearing, unless, in the opinion of the presiding member of the Competition Tribunal, that interest is adequately represented by another participant.

Powers of member presiding at hearing

54. The member of the Competition Tribunal presiding at a hearing may— 45

- (a) direct or summon any person to appear at any specified time and place;
- (b) question any person under oath or affirmation;
- (c) summon or order any person—
 - (i) to produce any book, document or item necessary for the purposes of the hearing; or 50
 - (ii) to perform any other act in relation to *this Act*; and
- (d) give directions prohibiting or restricting the publication of any evidence given to the Competition Tribunal.

Verwysing na Mededingingstribunaal

51. (1) Indien die Mededingingskommissie 'n kennisgewing van nie-verwysing in reaksie op 'n klage uitreik, kan die betrokke klaer die aangeleentheid regstreeks na die Mededingingstribunaal verwys.

5 (2) 'n Verwysing na die Mededingingstribunaal, hetsy deur die Mededingingskommissie ingevolge artikel 50(a), of deur 'n klaer ingevolge subartikel (1), moet in die voorgeskrewe vorm wees.

(3) Die Voorsitter van die Mededingingstribunaal moet, by kennisgewing in die *Staatskoerant*, elke verwysing na die Tribunaal gedoen in daardie kennisgewing
10 publiseer.

(4) Die kennisgewing ingevolge subartikel (3) moet—

- (a) die naam van die firma wie se optrede die onderwerp van die verwysing is;
en
- (b) die aard van die optrede wat die onderwerp van die verwysing is, insluit.

15 Verhoor voor Mededingingstribunaal

52. (1) Die Mededingingstribunaal moet elke aangeleentheid wat na hom verwys word ingevolge artikel 50(a) of artikel 51(1) verhoor.

(2) Die Mededingingstribunaal moet sy verhoor in die openbaar hou—

- (a) op 'n inkwisitoriese wyse;
- 20 (b) so spoedig moontlik;
- (c) so informeel moontlik; en
- (d) in ooreenstemming met die beginsels van natuurlike geregtigheid.

(3) Ondanks subartikel (2), kan die lid van die Tribunaal wat voorsit by 'n verhoor, lede van die publiek, of spesifieke persone of kategorieë persone, van bywoning van
25 verrigtinge uitsluit—

- (a) indien getuienis wat aangebied staan te word, vertroulike inligting is, maar slegs in die mate waarin die inligting nie andersins beskerm kan word nie;
- (b) indien die behoorlike hou van die verhoor dit vereis; of
- 30 (c) om enige ander rede wat regverdigbaar sal wees in siviele verrigtinge in 'n Hoë Hof.

(4) By die afhandeling van 'n verhoor moet die Mededingingstribunaal enige bevel uitreik ingevolge Hoofstuk 6 toegelaat, en skriftelike redes vir sy beslissing verstrek.

(5) Die Mededingingstribunaal moet aan deelnemers en ander lede van die publiek redelike toegang tot die oorkonde van elke verhoor verleen, behoudens enige beslissing
35 om vertroulike inligting, ingevolge subartikel (3)(a) verstrek, te beskerm.

Reg om deel te neem aan verhoor

53. Die volgende persone kan, persoonlik of deur 'n verteenwoordiger, deelneem aan 'n verhoor in artikel 52 beoog, en kan vrae aan getuies stel en boeke, dokumente of items by die verhoor voorgelê, inspekteer:

- 40 (a) Die Kommissaris, of enige persoon deur die Kommissaris aangestel;
- (b) die klaer;
- (c) die firma wie se optrede die grondslag van die verhoor vorm; en
- (d) enige ander persoon wat 'n wesenlike belang by die verhoor het, tensy daardie belang, na die mening van die voorsittende lid van die Mededingingstribunaal, genoegsaam deur 'n ander deelnemer verteenwoordig word.
- 45

Bevoegdhe van voorsittende lid by verhoor

54. Die voorsittende lid van die Mededingingstribunaal by 'n verhoor kan—

- (a) enige persoon aansê of dagvaar om op enige spesifieke tyd of plek te verskyn;
- (b) enige persoon onder eed of bevestiging ondervra;
- 50 (c) enige persoon dagvaar of beveel—
 - (i) om enige boek, dokument of item wat vir doeleindes van die verhoor benodig word, voor te lê; of
 - (ii) om enige ander handeling in verband met hierdie Wet te verrig; en
- (d) voorskrifte uitvaardig wat die publikasie van enige getuienis aan die
55 Mededingingstribunaal gelewer, verbied of beperk.

Rules of procedure

55. Subject to the Competition Tribunal's rules of procedure, the Tribunal member presiding at a hearing may determine any matter of procedure for that hearing, with due regard to the circumstances of the case, and the requirements of section 52(2).

Witnesses

56. (1) Every person giving evidence at a hearing of the Competition Tribunal must answer any relevant question.

(2) The law regarding a witness' privilege in a criminal case in a court of law applies equally to a person who provides information during a hearing.

(3) The Competition Tribunal may order a person to answer any question, or to produce any article or document, even if it is self-incriminating to do so.

(4) Section 45(5) applies to evidence given by a witness in terms of this section.

Costs

57. (1) Subject to subsection (2), each party participating in a hearing must bear its own costs.

(2) If the Competition Tribunal—

(a) has not made a finding against a *respondent*, the Tribunal member presiding at a hearing may award costs to the *respondent*, and against a complainant who referred the complaint in terms of section 51(1); or

(b) has made a finding against a *respondent*, the Tribunal member presiding at a hearing may award costs against the *respondent*, and to a complainant who referred the complaint in terms of section 51(1).

Appeals

58. (1) Subject to the rules of the Competition Appeal Court, a participant in a hearing referred to in section 53 may —

(a) appeal against any decision of the Competition Tribunal, other than a decision in terms of section 62(3), to the Competition Appeal Court; or

(b) apply to the Competition Appeal Court to review a decision of the Competition Tribunal.

(2) The Competition Appeal Court may make an order for the payment of costs against any party in the hearing, or against any person who represented a party in the hearing, according to the requirements of the law and fairness.

(3) A judgment of the Competition Appeal Court is binding on the Competition Tribunal, and the Competition Commission.

CHAPTER 6

REMEDIES AND ENFORCEMENT

Interim relief

59. (1) At any time, whether or not a hearing has commenced into an alleged *prohibited practice*, a person referred to in section 44 may apply to the Competition Tribunal for an interim order in respect of that alleged practice, and the Tribunal may grant such an order if—

(a) there is evidence that a *prohibited practice* has occurred;

(b) an interim order is reasonably necessary to—

(i) prevent serious, irreparable damage to that person; or

(ii) to prevent the purposes of *this Act* being frustrated;

(c) the *respondent* has been given a reasonable opportunity to be heard, having regard to the urgency of the proceedings; and

Reëls van prosedure

55. Die voorsittende Tribunaallid kan, behoudens die Mededingingstribunaal se prosedurereëls, enige prosessuele aangeleentheid vir daardie verhoor bepaal, met behoorlike in agneming van die omstandighede van die saak en van die vereistes van artikel 52(2).

Getuies

56. (1) Elke persoon wat by 'n verhoor van die Mededingingstribunaal getuienis lewer, moet enige relevante vraag beantwoord.

(2) Die reg met betrekking tot 'n getuie se privilegie in 'n strafsak in 'n geregshof is eweneens van toepassing op 'n persoon wat inligting tydens 'n verhoor verskaf.

(3) Die Mededingingstribunaal kan 'n persoon beveel om enige vraag te beantwoord, of om enige artikel of dokument voor te lê, selfs indien dit selfinkriminerend is om dit te doen.

(4) Artikel 45(5) is van toepassing op getuienis wat deur 'n getuie ingevolge hierdie artikel gelewer word.

Koste

57. (1) Behoudens subartikel (2), moet elke party wat aan 'n verhoor deelneem, sy of haar eie koste dra.

(2) Indien die Mededingingstribunaal—

(a) nie 'n bevinding teen 'n respondent gedoen het nie, kan die Tribunaallid wat by die verhoor voorsit, koste aan die respondent toeken, en teen 'n klaer wat die klagte ingevolge artikel 51(1) verwys het; of

(b) 'n bevinding teen 'n respondent gedoen het, kan die Tribunaallid wat by 'n verhoor voorsit, koste teen daardie respondent toeken, en aan 'n klaer wat die klag ingevolge artikel 51(1) verwys het.

Appèlle

58. (1) Behoudens die reëls van die Appèlhof vir Mededinging, kan 'n deelnemer aan 'n verhoor in artikel 53 bedoel—

(a) teen enige beslissing van die Mededingingstribunaal, behalwe 'n beslissing ingevolge artikel 62(3), na die Appèlhof vir Mededinging appelleer; of

(b) aansoek doen by die Appèlhof vir Mededinging om 'n beslissing van die Mededingingstribunaal te hersien.

(2) Die Appèlhof vir Mededinging kan 'n bevel vir die betaling van koste teen enige party in die verhoor, of teen enige ander persoon wat 'n party in 'n verhoor verteenwoordig het, volgens die vereistes van die reg en regverdigheid, uitreik.

(3) 'n Uitspraak van die Appèlhof vir Mededinging is bindend op die Mededingingstribunaal, en die Mededingingskommissie.

HOOFSTUK 6**REGSMIDDELE EN AFDWINGING****40 Tussentydse regshulp**

59. (1) 'n Persoon in artikel 44 bedoel, kan te eniger tyd, ondanks of met 'n verhoor na 'n beweerde verbode praktyk begin is al dan nie, by die Mededingingstribunaal om 'n tussentydse bevel met betrekking tot daardie beweerde praktyk aansoek doen, en die Tribunaal kan sodanige bevel toestaan indien—

(a) bewyse is dat 'n verbode praktyk plaasgevind het;

(b) 'n tussentydse bevel redelik noodsaaklik is om—

(i) ernstige, onherroeplike skade aan daardie persoon te voorkom; of

(ii) te voorkom dat die oogmerke van hierdie Wet verydel word;

(c) die respondent 'n redelike geleentheid, met inagneming van die dringendheid van die verrigtinge, gegee is om aangehoor te word; en

- (d) the balance of convenience favours the granting of the order.
- (2) An interim order in terms of this section must not extend beyond the earlier of—
 - (a) the conclusion of a hearing into the alleged *prohibited practice*; or
 - (b) the date that is six months after the date of issue of the interim order.
- (3) If an interim order has been granted, and a hearing into that matter has not been concluded within six months after the date of that order, the Competition Tribunal, on good cause shown, may extend the interim order for a further period not exceeding six months. 5

Orders of Competition Tribunal

60. (1) In addition to its other powers in terms of *this Act*, the Competition Tribunal may— 10
- (a) make an appropriate order in relation to a *prohibited practice*, including—
 - (i) interdicting any *prohibited practice*;
 - (ii) ordering a party to supply or distribute goods or services to another party on terms reasonably required to end a *prohibited practice*; 15
 - (iii) imposing an administrative fine, in terms of section 61, with or without the addition of any other order in terms of this section;
 - (iv) ordering divestiture, subject to section 62;
 - (v) declaring conduct of a *firm* to be a *prohibited practice* in terms of *this Act*, for the purposes of section 65; 20
 - (vi) declaring the whole or any part of an *agreement* to be void;
 - (vii) ordering access to an *essential facility* on terms reasonably required;
 - (b) confirm a consent *agreement* in terms of section 63 as an order of the Tribunal; or
 - (c) condone any breach of its rules and procedures on good cause shown. 25
- (2) At any time, the Competition Tribunal may adjourn a hearing for a reasonable period of time, if there is reason to believe that the hearing relates to a *prohibited practice* that might qualify for exemption in terms of section 10.
- (3) Despite any other provision of *this Act*, if the Competition Tribunal adjourns a hearing in terms of subsection (2), the *respondent* may apply for an exemption during that adjournment. 30

Administrative fines

61. (1) The Competition Tribunal may impose an administrative penalty only—
- (a) for a *prohibited practice* in terms of sections 4(1)(b), 5(2) or 8(a), (b) and (d);
 - (b) for a *prohibited practice* in terms of sections 4(1)(a), 5(1), 8(c) or 9(1), if the conduct is substantially a repeat by the same *firm* of conduct previously found by the Tribunal to be a *prohibited practice*; or 35
 - (c) if the parties to a merger have—
 - (i) failed to give notice of the merger as required by section 13;
 - (ii) proceeded to implement the merger in contravention of a decision by the Competition Commission or the Competition Tribunal to prohibit that merger; 40
 - (iii) proceeded to implement the merger in a manner contrary to a condition for the approval of that merger imposed by the Commission in terms of section 14, or the Tribunal in terms of section 15; or 45
 - (iv) proceeded to implement the merger without the approval of the Commission or the Tribunal.
- (2) An administrative fine imposed in terms of subsection (1) may not exceed 10% of the *firm's* annual turnover in the Republic and its exports from the Republic during the *firm's* preceding financial year. 50
- (3) When determining an appropriate fine, the Competition Tribunal must consider the following factors:

- (d) die oorwig van gerief voorkeur laat toekom aan die uitreiking van die bevel.
- (2) 'n Tussentydse bevel ingevolge hierdie artikel mag nie strek tot later nie as die datum—
- (a) van die afhandeling van 'n verhoor na die beweerde verbode praktyk; of
- 5 (b) wat ses maande later is as die datum van uitreiking van die tussentydse bevel, welke datum ook al die vroegste is.
- (3) Indien 'n tussentydse bevel toegestaan is, en 'n verhoor na daardie aangeleentheid nog nie binne ses maande na die datum van daardie bevel afgehandel is nie, kan die Mededingingstribunaal, by aanvoer van goeie gronde, die tussentydse bevel vir 'n
- 10 verdere tydperk van hoogstens ses maande verleng.

Bevele van Mededingingstribunaal

60. (1) Benewens sy ander bevoegdhede ingevolge hierdie Wet, kan die Mededingingstribunaal—
- (a) 'n toepaslike bevel met betrekking tot 'n verbode praktyk uitreik, met
- 15 inbegrip van
- (i) enige verbode praktyk by interdik te verbied;
- (ii) 'n party te beveel om goedere of dienste te voorsien of te versprei aan 'n ander party op voorwaardes wat redelikerwys vereis word om die verbode praktyk uit te skakel;
- 20 (iii) 'n administratiewe boete, ingevolge artikel 61, met of sonder die byvoeging van enige ander bevel ingevolge hierdie artikel, op te lê;
- (iv) ontdoening, behoudens artikel 62, te beveel;
- (v) die optrede van 'n firma as verbode praktyk ingevolge hierdie Wet te verklaar, vir die doeleindes van artikel 65;
- 25 (vi) die geheel of enige gedeelte van 'n ooreenkoms nietig te verklaar;
- (vii) toegang tot 'n noodsaaklike fasiliteit op redelike voorwaardes, te beveel;
- (b) 'n toestemmingsooreenkoms ingevolge artikel 63 as 'n bevel van die Tribunaal bekragtig; of
- (c) enige verbreking van sy reëls en prosedures, by aanvoering van goeie redes,
- 30 kondoneer.
- (2) Die Mededingingstribunaal kan te eniger tyd 'n verhoor vir 'n redelike tydperk verdaag, indien daar rede is om te glo dat die verhoor in verband staan met 'n verbode praktyk wat moontlik vir vrystelling ingevolge artikel 10 kan kwalifiseer.
- (3) Indien die Mededingingstribunaal 'n verhoor ingevolge subartikel (2) verdaag,
- 35 kan die respondent, gedurende daardie verdaging, ondanks enige ander bepaling van hierdie Wet, om vrystelling aansoek doen.

Administratiewe boetes

61. (1) Die Mededingingstribunaal kan 'n administratiewe boete oplê slegs—
- (a) vir 'n verbode praktyk ingevolge artikel 4(1)(b), 5(2) of 8(a), (b) en (d);
- 40 (b) vir 'n verbode praktyk ingevolge artikel 4(1)(a), 5(1), 8(c) of 9(1), indien die optrede wesenlik die herhaling deur dieselfde firma is van optrede wat vantevore deur die Tribunaal 'n verbode praktyk bevind is; of
- (c) indien die partye tot 'n samesmelting—
- (i) versuim het om kennis te gee van die samesmelting soos ingevolge
- 45 artikel 13 vereis;
- (ii) voortgegaan het om 'n samesmelting uit te voer in stryd met 'n beslissing van die Mededingingskommissie of die Mededingingstribunaal wat daardie samesmelting verbied;
- (iii) voortgegaan het om die samesmelting uit te voer op 'n wyse strydig met
- 50 'n voorwaarde vir die goedkeuring van daardie samesmelting deur die Kommissie, ingevolge artikel 14, of deur die Tribunaal, ingevolge artikel 15, opgelê; of
- (iv) voortgegaan het om die samesmelting uit te voer, sonder die Kommissie of die Tribunaal se goedkeuring.
- 55 (2) 'n Administratiewe boete ingevolge subartikel (1) opgelê, mag nie 10% van die onderneming se jaarlikse omset in die Republiek en sy uitvoer uit die Republiek gedurende die firma se voorafgaande boekjaar, oorskry nie.
- (3) Wanneer 'n toepaslike boete deur die Mededingingstribunaal bepaal word, moet hy die volgende faktore oorweeg:

- (a) the nature, duration, gravity and extent of the contravention;
- (b) any loss or damage suffered as a result of the contravention;
- (c) the behaviour of the *respondent*;
- (d) the market circumstances in which the contravention took place;
- (e) the level of profit derived from the contravention;
- (f) the degree to which the *respondent* has co-operated with the Competition Commission and the Tribunal; and
- (g) whether the *respondent* has previously been found in contravention of *this Act*.

(4) A fine payable in terms of this section must be paid into the National Revenue Fund referred to in section 213 of the *Constitution*.

Divestiture

62. (1) If a merger is implemented in contravention of Chapter 3, the Competition Tribunal may—

- (a) order a party to the merger to sell any shares, *interest* or other assets it has acquired pursuant to the merger; or
- (b) declare void any provision of an *agreement* to which the merger was subject.

(2) The Competition Tribunal, in addition to or in lieu of making an order under section 60, may make an order directing any *firm*, or any other person to sell any shares, *interest* or assets of the *firm* if—

- (a) it has contravened section 8, and
- (b) the *prohibited practice*—
 - (i) cannot adequately be remedied in terms of another provision of *this Act*; or
 - (ii) is substantially a repeat by that *firm* of conduct previously found by the Tribunal to be a *prohibited practice*.

(3) An order made by the Competition Tribunal in terms of subsection (2) is of no force or effect unless confirmed by the Competition Appeal Court.

(4) An order made in terms of subsection (1) or (2) may set a time for compliance, and any other terms that the Competition Tribunal considers appropriate, having regard to the commercial *interests* of the party concerned.

Consent orders

63. (1) If a complaint of a *prohibited practice* has been investigated by the Competition Commission, and the Commission and the *respondent* agree on the terms of an appropriate order, the Competition Tribunal, without hearing any evidence, may confirm that *agreement* as a consent order in terms of section 60.

(2) With the consent of a complainant, a consent order confirmed in terms of subsection (1) may include an award of damages to that complainant.

(3) A consent order does not preclude a complainant applying for—

- (a) a declaration in terms of section 60(1)(a)(v) or (vi); or
- (b) an award of civil damages in terms of section 65, unless the consent order includes an award of damages to the complainant.

Status and enforcement of orders

64. (1) Any decision, judgment or order of the Competition Commission, Competition Tribunal or Competition Appeal Court may be served, executed and enforced as if it were an order of the High Court.

(2) The Competition Commission may institute proceedings in the High Court on its own behalf for recovery of an administrative penalty imposed by the Competition Tribunal.

(3) A proceeding under subsection (2) may not be initiated more than three years after the imposition of the administrative penalty.

Civil actions and jurisdiction

65. (1) Nothing in *this Act* renders void a provision of an *agreement* that, in terms of *this Act*, is prohibited or may be declared void, unless the Competition Tribunal or Competition Appeal Court declares that provision to be void.

- (a) die aard, duur, erns en omvang van die oortreding;
 - (b) enige verlies of skade gelyk as gevolg van die oortreding;
 - (c) die gedrag van die respondent;
 - (d) die markomstandighede waarin die oortreding plaasgevind het;
 - 5 (e) die vlak van wins uit die oortreding verkry;
 - (f) die graad waarin die respondent met die Mededingingskommissie en die Tribunaal saamgewerk het; en
 - (g) of die respondent voorheen skuldig bevind is aan 'n oortreding van hierdie Wet.
- 10 (4) 'n Boete betaalbaar ingevolge hierdie artikel, moet in die Nasionale Inkomstefonds, bedoel in artikel 213 van die Grondwet, inbetaal word.

Ontdoening

62. (1) Indien 'n samesmelting strydig met Hoofstuk 3 toegepas word, kan die Mededingingstribunaal—
- 15 (a) 'n party tot die samesmelting beveel om enige aandele, belange of ander bates wat dié verkry het as gevolg van die samesmelting, te verkoop; of
- (b) enige bepaling van 'n ooreenkoms waaraan die samesmelting onderworpe was, nietig verklaar.
- (2) Die Mededingingstribunaal kan, benewens of pleks van die uitreiking van 'n
- 20 bevel kragtens artikel 60, 'n bevel uitreik wat enige firma, of enige ander persoon beveel om enige aandele, belang of bates van die firma te verkoop indien—
- (a) dié artikel 8 oortree het; en
- (b) die verbode praktyk—
- 25 (i) nie genoegsaam ingevolge enige ander bepaling van die Wet goedge-
maak kan word nie; of
- (ii) wesenlik 'n herhaling is deur daardie firma van optrede wat voorheen deur die Tribunaal bevind is 'n verbode praktyk te wees.
- (3) 'n Bevel deur die Mededingingstribunaal ingevolge subartikel (2) uitgereik, is van geen krag of effek nie tensy dit deur die Appèlhof vir Mededinging bekragtig is.
- 30 (4) 'n Bevel ingevolge subartikel (1) of (2) uitgereik, kan 'n tyd vir nakoming stel, en enige ander voorwaardes wat die Mededingingstribunaal toepaslik vind, met inagneming van die kommersiële belange van die betrokke party.

Toestemmingsbevele

63. (1) Indien 'n klagte van 'n verbode praktyk deur die Mededingingskommissie
- 35 ondersoek is, en die Kommissie en die respondent saamstem oor die bepaling van 'n toepaslike bevel, kan die Mededingingstribunaal, sonder om enige getuienis aan te hoor, die ooreenkoms as 'n toestemmingsbevel ingevolge artikel 60 bekragtig.
- (2) Met die toestemming van 'n klaer, kan 'n toestemmingsbevel ingevolge subartikel (1) bekragtig, 'n toekenning vir skadevergoeding aan die klaer insluit.
- 40 (3) 'n Toestemmingsbevel belet nie 'n klaer om aansoek te doen om—
- (a) 'n verklaring ingevolge artikel 60(1)(a)(v) of (vi) nie; of
- (b) 'n toekenning van siviele skadevergoeding ingevolge artikel 65 nie, tensy die toestemmingsbevel 'n toekenning vir skadevergoeding aan die klaer insluit.

Status en afdwinging van bevele

- 45 64. (1) Enige beslissing, uitspraak of bevel van die Mededingingskommissie, Mededingingstribunaal of Appèlhof vir Mededinging kan beteken, ten uitvoer gelê en bekragtig word asof dit 'n bevel van die Hoë Hof is.
- (2) Die Mededingingskommissie kan, om eie ontwil, regstappe in die Hoë Hof instel vir die verhaal van 'n administratiewe boete opgelê deur die Mededingingstribunaal.
- 50 (3) 'n Regstap beoog in subartikel (2), mag nie meer as drie jaar na die oplegging van die administratiewe boete ingestel word nie.

Siviele aksies en regsbevoegdheid

65. (1) Niks in hierdie Wet maak 'n bepaling van 'n ooreenkoms nietig wat, ingevolge hierdie Wet, verbode is of nietig verklaar mag word nie, tensy die
- 55 Mededingingstribunaal of Appèlhof vir Mededinging daardie bepaling nietig verklaar.

- (2) If, in any action in a *civil court*, a party raises an issue concerning conduct that is prohibited in terms of *this Act*, that court must not consider that issue on its merits, and—
- (a) if the issue raised is one in respect of which the Competition Tribunal or Competition Appeal Court has made an order, the court must apply the determination of the Tribunal or the Competition Appeal Court to the issue; or
 - (b) otherwise, the court must refer that issue to the Tribunal to be considered on its merits, if the court is satisfied that—
 - (i) the issue has not been raised in a frivolous or vexatious manner; and
 - (ii) the resolution of that issue is required to determine the final outcome of the action.
- (3) The Competition Tribunal and the Competition Appeal Court share exclusive jurisdiction in respect of the following matters:
- (a) Interpretation and application of the provisions of Chapters 2, 3, and 6, other than this section; and
 - (b) the functions referred to in sections 21(1), 27(1) and 37(1).
- (4) The Competition Appeal Court has final jurisdiction in respect of any matter referred to in subsection (3) that may be appealed to it or reviewed by it.
- (5) For greater certainty, the Competition Tribunal and the Competition Appeal Court have no jurisdiction over the assessment of the amount, and awarding, of damages arising out of a *prohibited practice*.
- (6) A person who has suffered loss or damage as a result of a *prohibited practice*—
- (a) may not commence an action in a *civil court* for the assessment of the amount or awarding of damages if that person has been awarded damages in a consent order confirmed in terms of section 63(1); or
 - (b) if entitled to commence an action referred to in paragraph (a), when instituting proceedings, must file with the Registrar or Clerk of the Court a notice from the Chairperson of the Competition Tribunal, or from the Judge President of the Competition Appeal Court, in the *prescribed form*—
 - (i) certifying that the conduct constituting the basis for the action has been found to be a *prohibited practice* in terms of *this Act*; and
 - (ii) stating the date of the Tribunal or Competition Appeal Court finding; and
 - (iii) setting out the section of *this Act* in terms of which the Tribunal or the Competition Appeal Court made its finding.
- (7) A certificate referred to in subsection (6)(b) is conclusive proof of its contents, and is binding on a *civil court*.
- (8) An appeal or application for review against an order made by the Competition Tribunal in terms of section 60 suspends any right to commence an action in a *civil court* with respect to the same matter.
- (9) A person's right to damages arising out of a *prohibited practice* comes into existence—
- (a) on the date that the Competition Tribunal made a determination in respect of a matter that affects that person; or
 - (b) in the case of an appeal, on the date that the appeal process in respect of that matter is concluded.
- (10) For the purposes of section 2A(2)(a) of the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975), interest on a debt in relation to a claim for damages in terms of *this Act* will commence on the date of issue of the certificate referred to in subsection (6).

Variation of order

66. (1) The Competition Tribunal, or the Competition Appeal Court, acting of its own accord or on application of a person affected by a decision or order, may vary or rescind its decision or order—
- (a) erroneously sought or erroneously granted in the absence of any party affected by it;

(2) Indien, in enige aksie in 'n siviele hof, 'n party 'n aangeleentheid aangaande optrede wat ingevolge hierdie Wet verbied is, ophaal, mag daardie hof nie die aangeleentheid na verdienste beoordeel nie, en—

5 (a) indien die aangeleentheid wat opgehaal is, 'n aangeleentheid is ten opsigte waarvan die Mededingingstribunaal of Appèlhof vir Mededinging 'n bevel uitgereik het, moet die hof die bepaling van die Tribunaal of die Appèlhof vir Mededinging op die aangeleentheid toepas; of

(b) andersins, moet die hof die aangeleentheid na die Tribunaal verwys om dit na verdienste te oorweeg, indien die hof oortuig is dat—

10 (i) die aangeleentheid nie op beuselagtige of kwelsugtige wyse opgehaal is nie; en

(ii) die beslissing van daardie aangeleentheid nodig is om die finale uitslag van die geding te bepaal.

(3) Die Mededingingstribunaal en die Appèlhof vir Mededinging deel uitsluitlike 15 regsbevoegdheid ten opsigte van die volgende aangeleenthede:

(a) Uitleg en toepassing van die bepalings van Hoofstukke 2, 3, en 6, behalwe hierdie artikel; en

(b) die funksies in artikels 21(1), 27(1) en 37(1) vermeld.

(4) Die Appèlhof vir Mededinging het finale regsbevoegdheid ten opsigte van enige 20 aangeleentheid in subartikel (3) vermeld, waaroor na hom geappelleer, of wat deur hom hersien kan word.

(5) Vir groter sekerheid, het die Mededingingstribunaal en die Appèlhof vir Mededinging geen regsbevoegdheid oor die vasstel van die bedrag en toekenning vir skadevergoeding wat uit 'n verbode praktyk voortspruit nie.

25 (6) 'n Persoon wat verlies of skade gely het as gevolg van 'n verbode praktyk—

(a) mag nie 'n aksie in 'n siviele hof vir die vasstel van die bedrag of toekenning vir skadevergoeding instel nie indien aan daardie persoon skadevergoeding toegeken is in 'n toestemmingsbevel ingevolge artikel 63(1) bekragtig; of

30 (b) moet, indien geregtig om 'n aksie in paragraaf (a) vermeld, in te stel, wanneer die regsgeding ingestel word, by die Registrateur of Klerk van die Hof 'n kennisgewing van die Voorsitter van die Mededingingstribunaal, of van die Regter-president van die Appèlhof vir Mededinging, in die voorgeskrewe vorm indien wat—

35 (i) sertifiseer dat die optrede wat die grondslag van die regsgeding vorm, ingevolge die Wet, 'n verbode praktyk bevind is;

(ii) die datum meld van die Tribunaal of Appèlhof vir Mededinging se bevinding; en

40 (iii) die besonderhede van die artikel van die Wet uiteensit ingevolge waarvan die Tribunaal of die Appèlhof vir Mededinging sy bevinding gedoen het.

(7) 'n Sertifikaat in subartikel (6)(b) vermeld, is afdoende bewys van die inhoud daarvan, en is bindend op 'n siviele hof.

(8) 'n Appèl of 'n aansoek om hersiening teen 'n bevel uitgereik deur die Mededingingstribunaal ingevolge artikel 60, skort enige reg op om te begin met 'n 45 aksie in 'n siviele hof met betrekking tot dieselfde aangeleentheid.

(9) 'n Persoon se reg tot skadevergoeding voortspruitend uit 'n verbode praktyk word gevestig—

(a) op die datum waarop die Mededingingstribunaal 'n vasstelling doen met betrekking tot 'n aangeleentheid wat daardie persoon raak, of

50 (b) in die geval van 'n appèl, op die datum waarop die appèlproses met betrekking tot daardie aangeleentheid afgehandel is.

(10) Vir doeleindes van artikel 2A (2)(a) van die Wet op Voorgeskrewe Rentekoerse, 1975 (Wet No.55 van 1975), sal rente op skuld in verband met 'n eis om skadevergoeding ingevolge hierdie Wet 'n aanvang neem op die datum van uitreiking van die 55 sertifikaat in subartikel (6) vermeld.

Wysiging van bevel

66. (1) Die Mededingingstribunaal, of die Appèlhof vir Mededinging, wat optree uit eie beweging, of op aansoek van 'n persoon wat geraak word deur die beslissing of bevel, kan sy beslissing of bevel wysig of herroep—

60 (a) wat foutiewelik verkry is, of foutiewelik toegestaan is, in die afwesigheid van 'n party wat daardeur geraak word;

- (b) in which there is ambiguity, or an obvious error or omission, but only to the extent of correcting that ambiguity, error or omission; or
- (c) made or granted as a result of a mistake common to all of the parties to the proceeding.

Limitations of bringing action

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67. (1) A complaint in respect of a *prohibited practice* may not be initiated more than three years after the practice has ceased.

(2) A complaint may not be initiated against any *firm* that is, or has been, a *respondent* in proceedings under another section of *this Act* relating substantially to the same conduct.

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Standard of proof

68. In any proceedings in terms of Chapter 3 or this Chapter, the standard of proof is on a balance of probabilities.

CHAPTER 7**OFFENCES**

15

Breach of confidence

69. (1) It is an offence to disclose any *confidential information* concerning the affairs of any person or *firm* obtained—

- (a) in carrying out any function in terms of *this Act*; or
- (b) as a result of initiating a complaint or participating in any proceedings in terms of *this Act*.

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(2) Subsection (1) does not apply to information disclosed—

- (a) for the purpose of the proper administration or enforcement of *this Act*;
- (b) for the purpose of the administration of justice; or
- (c) at the request of an inspector, Commissioner, Deputy Commissioner or Competition Tribunal member entitled to receive the information.

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Hindering administration of Act

70. It is an offence to hinder, oppose, obstruct or unduly influence any person who is exercising a power or performing a duty delegated, conferred or imposed on that person by *this Act*.

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Failure to attend when summoned

71. (1) A person commits an offence who, having been directed or summoned to attend a hearing—

- (a) fails without sufficient cause to appear at the time and place specified or to remain in attendance until excused; or
- (b) attends as required, but—
 - (i) refuses to be sworn in or to make an affirmation; or
 - (ii) fails to produce a book, document or other item as ordered, if it is in the possession of, or under the control of, that person.

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Failure to answer fully or truthfully

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72. A person commits an offence who, having been sworn in or having made an affirmation—

- (a) subject to section 56, fails to answer any question fully and to the best of that person's ability; or
- (b) gives false evidence, knowing or believing it to be false.

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- (b) waarin dubbelsinnigheid, of 'n oogoplende fout of versuim voorkom, slegs in die mate waarin die dubbelsinnigheid, fout of versuim reggestel word; of
- (c) wat uitgereik of toegestaan is as gevolg van 'n fout gemeenskaplik tot al die partye tot die verrigtinge.

5 Beperkings op instel van aksie

67. (1) 'n Klagte met betrekking tot 'n verbode praktyk mag nie na meer as drie jaar nadat die praktyk opgehou het, ingestel word nie.

- (2) 'n Klagte mag nie teen 'n firma wat 'n respondent is, of was, in verrigtinge kragtens 'n ander artikel van hierdie Wet wat wesenlik betrekking het op dieselfde optrede, ingestel word nie.

Bewyslas

68. In enige verrigtinge ingevolge Hoofstuk 3, of kragtens hierdie Hoofstuk, berus die bewyslas op die oorwig van waarskynlikhede.

HOOFSTUK 7

MISDRYWE

Vertrouenskending

69. (1) Dit is 'n misdryf om enige vertroulike inligting aangaande die sake van enige persoon of firma te openbaar wat verkry word—

- (a) in die uitoefening van enige funksie ingevolge hierdie Wet; of
 - (b) as gevolg van die aanmeld van 'n klagte of deelname aan enige verrigtinge ingevolge hierdie Wet.
- (2) Subartikel (1) is nie van toepassing nie op inligting geopenbaar—
- (a) vir die doeleindes van die behoorlike administrasie of afdwinging van hierdie Wet;
 - (b) vir die doeleindes van die regspleging; of
 - (c) op versoek van 'n inspekteur, Kommissaris, Adjunkkommissaris of lid van die Mededingingstribunaal wat geregtig is om die inligting te ontvang.

Belemmering van toepassing van Wet

70. Dit is 'n misdryf om enige persoon wat 'n bevoegdheid uitoefen of 'n plig uitvoer wat by hierdie Wet aan daardie persoon gedelegeer of verleen is, of aan hom of haar opgelê is, te belemmer, tee te staan, te dwarsboom of onbehoorlik te beïnvloed.

Versuim om teenwoordig te wees wanneer gedagvaar

71. 'n Persoon pleeg 'n misdryf, wat, ná opdrag of dagvaarding om by 'n verhoor te verskyn—

- (a) sonder voldoende rede, versuim om te verskyn op die tyd en plek wat gespesifiseer is, of om teenwoordig te bly totdat hy of sy verskoon word; of
- (b) die ondersoek bywoon soos vereis, maar—
 - (i) weier om die eed of bevestiging af te lê.
 - (ii) versuim om 'n boek, dokument of ander item voor te lê soos beveel, indien dit in die besit of beheer van daardie persoon is.

Versuim om ten volle of eerlik te antwoord

72. 'n Persoon pleeg 'n misdryf, wat, nadat die eed of bevestiging afgelê is—

- (a) behoudens artikel 56, versuim om enige vraag ten volle en na daardie persoon se beste vermoë te beantwoord; of
- (b) valse getuienis aflê, wetende of in die geloof dat dit vals is.

Failure to comply with Act

73. (1) A person commits an offence who contravenes or fails to comply with an order of the Competition Tribunal or the Competition Appeal Court.

(2) A person commits an offence who—

- (a) does anything calculated to improperly influence the Competition Tribunal or Competition Commission concerning any matter connected with an investigation; 5
- (b) anticipates any findings of the Tribunal or Commission concerning an investigation in a way that is calculated to influence the proceedings or findings; 10
- (c) does anything in connection with an investigation that would have been contempt of court if the proceedings had occurred in a court of law;
- (d) knowingly provides false information to the Commission;
- (e) defames the Tribunal or the Competition Appeal Court, or a member of either of them, in their respective official capacities; 15
- (f) wilfully interrupts the proceedings or misbehaves in the place where a hearing is being conducted;
- (g) acts contrary to a warrant to enter and search;
- (h) without authority, but claiming to have authority in terms of section 46 or 47— 20
 - (i) enters or searches *premises*; or
 - (ii) attaches or removes an article or document.

Penalties

74. (1) Any person convicted of an offence in terms of *this Act*, is liable—

- (a) in the case of a contravention of section 73(1), to a fine not exceeding R500 000-00 or to imprisonment for a period not exceeding 10 years, or to both a fine and imprisonment; or 25
- (b) in any other case, to a fine not exceeding R2 000-00 or to imprisonment for a period not exceeding six months, or to both a fine and imprisonment.

Magistrate's Court jurisdiction to impose penalties

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75. Despite anything to the contrary contained in any other law, a Magistrate's Court has jurisdiction to impose any penalty provided for in *this Act*.

Serving documents

76. Unless otherwise provided in *this Act*, a notice, order or other document that, in terms of *this Act*, must be served on or given to a person, will have been properly served or given when it has been— 35

- (a) delivered to that person;
- (b) sent by registered post to that person's last known address; or
- (c) published in the *Gazette*.

Proof of facts

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77. (1) In any criminal proceedings in terms of *this Act*—

- (a) if it is alleged that a person at a *firm* is or was an employee, that person must be presumed to be an employee at that *firm*, unless the contrary is proved;
- (b) if it is proved that a false statement, entry or record or false information appears in or on a book, document, plan, drawing or computer storage medium, the person who kept that item must be presumed to have made the statement, entry, record or information, unless the contrary is proved; and 45
- (c) an order certified by the Chairperson of the Competition Tribunal or the Judge President of the Competition Appeal Court, is conclusive proof of the contents

Versuim om aan Wet te voldoen

73. (1) 'n Persoon pleeg 'n misdryf, wat 'n bevel van die Mededingingstribunaal of Appèlhof vir Mededinging oortree of versuim om daaraan te voldoen.

(2) 'n Persoon pleeg 'n misdryf, wat—

- 5 (a) enigiets doen wat bereken is om die Mededingingstribunaal of Mededingingskommissie onbehoorlik te beïnvloed aangaande enige aangeleentheid met betrekking tot 'n ondersoek;
- (b) enige bevindinge van die Tribunaal of Kommissie aangaande 'n ondersoek vooruitloop op 'n wyse wat bereken is om die verrigtinge of bevindinge te beïnvloed;
- 10 (c) enigiets doen in verband met 'n ondersoek wat minagting van die hof sou wees indien die verrigtinge in 'n geregshof sou plaasvind;
- (d) bewustelik, valse inligting aan die Kommissie verskaf;
- (e) die Tribunaal of Appèlhof vir Mededinging, of 'n lid van enigeen van die twee, in hul onderskeie amptelike hoedanighede, belaster;
- 15 (f) willens, die verrigtinge onderbreek of hom of haar wangedra in die plek waar 'n verhoor gehou word;
- (g) strydig optree met 'n lasbrief om te betree en te deursoek;
- (h) sonder magtiging, maar op voorwendsel dat hy/sy oor magtiging ingevolge artikel 46 of 47 beskik—
- 20 (i) 'n perseel betree en deursoek; of
- (ii) 'n artikel of dokument in beslag neem of verwyder.

Strawwe

74. (1) Enige persoon wat aan 'n misdryf ingevolge hierdie Wet skuldig bevind word, is strafbaar—

- 25 (a) in die geval van 'n oortreding van artikel 73(1), met 'n boete van hoogstens R500 000-00 of met gevangenisstraf vir 'n tydperk van hoogstens 10 jaar, of met beide die boete en gevangenisstraf; of
- (b) in enige ander geval, met 'n boete van hoogstens R2 000-00 of met gevangenisstraf vir 'n tydperk van hoogstens ses maande, of met beide die boete en gevangenisstraf.
- 30

Regsbevoegdheid van Landdroshof om boetes op te lê

75. Ondanks enige andersluidende bepalings in 'n ander Wet, het 'n Landdroshof regsbevoegdheid om enige straf waarvoor in hierdie Wet voorsiening gemaak word, op te lê.

Betekening van dokumente

76. (1) Tensy anders bepaal in hierdie Wet, sal 'n kennisgewing, bevel of ander dokument wat ingevolge hierdie Wet op of aan 'n persoon beteken of oorhandig moet word, behoorlik beteken of oorhandig wees indien dit—

- 40 (a) gelewer is aan daardie persoon;
- (b) per geregistreerde pos aan die persoon se laaste bekende adres gestuur is; of
- (c) in die *Staatskoerant* gepubliseer is.

Bewys van feite

77. (1) In enige strafregtelike verrigtinge ingevolge hierdie Wet—

- 45 (a) indien beweer word dat 'n persoon 'n werknemer by 'n firma is of was, moet daardie persoon vermoed word 'n werknemer van daardie firma te wees, tensy die teendeel bewys word;
- (b) indien bewys word dat 'n valse verklaring, inskrywing of rekord of valse inligting in of op 'n boek, dokument, plan, tekening of rekenaarbergingsmedium verskyn, moet die persoon wat daardie item gehou het, vermoed word die verklaring, inskrywing, rekord of inligting, te verstrek het, tensy die teendeel bewys word; en
- 50 (c) is 'n bevel deur die Voorsitter van die Mededingingstribunaal of die Regter-president van die Appèlhof vir Mededinging gesertifiseer, afdoende

of the order of the Competition Tribunal or the Competition Appeal Court, as the case may be.

(2) A statement, entry or record or information, in or on any book, document, plan, drawing or computer storage medium is admissible in evidence as an admission of the facts in or on it by the person who appears to have made, entered, recorded or stored it unless it is proved that that person did not make, enter, record or store it. 5

CHAPTER 8

GENERAL PROVISIONS

Regulations

78. The Minister, by notice in the *Gazette*, may make regulations that are required to give effect to the purposes of *this Act*. 10

Guidelines

79. (1) The Competition Commission may prepare guidelines to indicate the Commission's policy approach to any matter within its jurisdiction in terms of *this Act*.

(2) A guideline prepared in terms of subsection (1)— 15

(a) must be published in the *Gazette*; but

(b) is not binding on the Competition Commission, the Competition Tribunal or the Competition Appeal Court in the exercise of their respective discretion, or their interpretation of *this Act*.

Official seal 20

80. The President, by proclamation in the *Gazette*, may prescribe an official seal for each of the Competition Commission, Competition Tribunal and the Competition Appeal Court.

Act binds State

81. *This Act* binds the State. 25

Information exchange with foreign agencies

82. The President may assign to the Competition Commission any duty of the Republic, in terms of an international agreement relating to the purpose of *this Act*, to exchange information with a similar foreign agency.

Transitional arrangements and repeal of laws 30

83. (1) Subject to Schedule 3, the laws specified in Schedule 2, and all proclamations, regulations or notices promulgated or published in terms of those laws, are repealed.

(2) The repeal of those laws specified in Schedule 2 does not affect any transitional arrangements made in Schedule 3.

Short Title and commencement of Act 35

84. (1) This Act is called the Competition Act and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

(2) The President may set different dates for different provisions of *this Act* to come into operation.

(3) Unless the context otherwise indicates, a reference in a section of *this Act* to a time when *this Act* comes into operation must be construed as a reference to the time when that section comes into operation. 40

bewys van die inhoud van die bevel van die Mededingingstribunaal, of van die Appèlhof vir Mededinging, na gelang van die geval.

- (2) 'n Verklaring, inskrywing of rekord of inligting in of op enige boek, dokument, plan, tekening, of rekenaarbergingsmedium is toelaatbaar in getuienis as erkenning van die feite daarin of daarop deur die persoon wat blyk dit te gedoen, ingeskryf, afgeneem of geberg het, tensy bewys word dat die persoon dit nie gedoen, ingeskryf, afgeneem of geberg het nie.

HOOFSTUK 8

ALGEMENE BEPALINGS

10 Regulasies

78. Die Minister kan, by kennisgewing in die *Staatskoerant*, regulasies uitvaardig wat nodig is om uitvoering te gee aan die oogmerke van hierdie Wet.

Riglyne

79. (1) Die Mededingingskommissie kan riglyne voorberei om aan te dui wat die Kommissie se beleidsbenadering is tot enige aangeleentheid binne sy regsbevoegdheid ingevolge die Wet.

(2) 'n Riglyn voorberei ingevolge subartikel (1)—

- (a) moet in die *Staatskoerant* gepubliseer word; maar
(b) is nie bindend op die Mededingingskommissie, die Mededingingstribunaal of die Appèlhof vir Mededinging in die uitoefening van hul onderskeie diskresies of hul uitleg van hierdie Wet nie.

Amptelike seël

80. Die President kan, by proklamasie in die *Staatskoerant*, 'n amptelike seël vir elk van die Mededingingskommissie, Mededingingstribunaal en die Appèlhof vir Mededinging voorskryf.

Wet bind Staat

81. Hierdie Wet bind die Staat.

Uitruil van inligting met buitelandse agentskappe

82. Die President kan enige plig van die Republiek, ingevolge 'n internasionale ooreenkoms wat verband hou met die doel van hierdie Wet, aan die Mededingingskommissie toewys om inligting uit te ruil met 'n soortgelyke buitelandse agentskap.

Oorgangsmatreëls en herroeping van wette

83. (1) Behoudens Bylae 3, word die Wette vermeld in Bylae 2 en alle proklamasies, regulasies of kennisgewings ingevolge daardie Wette uitgevaardig of gepubliseer, herroep.

(2) Die herroeping van die Wette in Bylae 2 gespesifiseer, affekteer nie enige oorgangsmatreëls in Bylae 3 gedoen nie.

Kort titel en inwerkingtreëding van Wet

84. (1) Hierdie Wet heet die Wet op Mededinging en tree in werking op 'n datum deur die President, by proklamasie in die *Staatskoerant*, bepaal.

(2) Die President kan verskillende datums bepaal vir die inwerkingtreëding van verskillende bepalings van hierdie Wet.

- (3) Tensy die konteks andersins aantoon, moet 'n verwysing in 'n artikel van hierdie Wet na 'n tyd wanneer hierdie Wet in werking tree, uitgelê word as 'n verwysing na die tyd wanneer daardie artikel in werking tree.

SCHEDULE 1

EXEMPTION OF PROFESSIONAL RULES IN TERMS OF SECTION 2(c)

PART A

1. A *professional association* may apply in the *prescribed* manner to the Competition Commission to have all or part of its *rules* exempted from the provisions of Part A of Chapter 2 of *this Act*, provided—

- (a) the *rules* do not contain any restriction that has the effect of substantially preventing or lessening competition in a market; or
- (b) if the *rules* do contain a restriction contemplated in paragraph (a), that restriction, having regard to internationally applied norms, is reasonably required to maintain—
 - (i) professional standards; or
 - (ii) the ordinary function of the profession.

2. Upon receiving an application in terms of item 1, the Competition Commission may exempt the *rules* concerned after it has —

- (a) given notice of the application in the *Gazette*;
- (b) allowed interested parties 30 days from the date of that notice to make representations concerning the application; and
- (c) consulted the responsible Minister, or member of the Executive Council.

3. The Competition Commission, in the *prescribed* manner, may revoke an exemption granted under item 2 on good cause shown, at any time after it has —

- (a) given notice in the *Gazette* of its intention to revoke the exemption;
- (b) allowed interested parties 30 days from the date of that notice to make representations concerning the exemption; and
- (c) consulted the responsible Minister, or member of the Executive Council.

4. A *professional rule* is exempt, or its exemption revoked, only as of the date that notice of the exemption or revocation, as the case may be, is published in the *Gazette*.

5. The Competition Commission must maintain for public inspection a record of all *professional rules* that have received exemption, or for which exemption has been revoked.

6. In this Schedule —

‘*professional association*’ means an association referred to in Part B of this Schedule;

‘*professional rules*’ means rules regulating a *professional association* that are binding on its members;

‘*rules*’ includes regulations, codes of practice and statements of principle;

PART B

For the purpose of *this Act*, a *professional association* is—

- (a) for each of the following professions, a governing body of that profession registered in terms of an Act mentioned below the name of that profession; or
- (b) any other association, if the Competition Commission is satisfied that it represents the interests of members of a profession referred to in paragraph (a):

Accountants and Auditors

Public Accountants and Auditors Act, 1991 (Act No. 80 of 1991).

Architects

Architects Act, 1970 (Act No. 35 of 1970).

Engineering

Engineering Profession of South Africa Act, 1990 (Act No. 114 of 1990)

BYLAE 1**VRYSTELLING VAN PROFESSIONELE REËLS****INGEVOLGE ARTIKEL 2(c)****Deel A**

1. 'n Professionele liggaam mag op die voorgeskrewe wyse by die Mededingingskommissie aansoek doen om die geheel of 'n gedeelte van sy reëls te laat vrystel van die bepalinge van Deel A van Hoofstuk 2 van hierdie Wet, met die voorbehoud dat—

- (a) die reëls nie enige beperking bevat nie wat in effek mededinging in 'n mark wesenlik voorkom, of verminder; of
- (b) indien die reëls 'n beperking in paragraaf (a) bedoel, bevat, daardie beperking, met inagneming van internasionaal toegepaste norme, redelikerwys vereis word om—
 - (i) professionele standaarde; of
 - (ii) die normale funksie van die beroep te handhaaf.

2. By ontvangs van 'n aansoek ingevolge item 1, mag die Mededingingskommissie die betrokke reëls vrystel nadat hy—

- (a) kennis van die aansoek in die *Staatskoerant* gegee het;
- (b) belanghebbende partye 30 dae ná die datum van die kennisgewing toegelaat het om versoë aangaande die aansoek te rig; en
- (c) die verantwoordelike Minister, of lid van die Uitvoerende Raad, geraadpleeg het.

3. Die Mededingingskommissie kan, op die voorgeskrewe wyse, 'n vrystelling ingevolge item 2 toegestaan, terugtrek indien goeie rede bestaan, enige tyd nadat hy—

- (a) in die *Staatskoerant*, kennis gegee het van die voorneme om die vrystelling terug te trek;
- (b) belanghebbende partye, 30 dae ná die datum van die kennisgewing, toegelaat het om versoë aangaande die vrystelling te rig; en
- (c) die verantwoordelike Minister, of lid van die Uitvoerende Raad, geraadpleeg het.

4. 'n Professionele reël is vrygestel, of sy vrystelling teruggetrek, slegs van die datum af waarop kennis van die vrystelling of terugtrekking, na gelang van die geval, in die *Staatskoerant* gepubliseer is.

5. Die Mededingingskommissie moet, vir openbare insae, 'n opgawe in stand hou van al die professionele reëls wat vrygestel is, of ten opsigte waarvan vrystelling teruggetrek is.

6. In hierdie Bylae beteken—

- “professionele liggaam” 'n liggaam vermeld in Deel B van hierdie Bylae;
- “professionele reëls” die reëls wat 'n professionele liggaam reguleer en wat bindend is op al sy lede;
- “reëls” ook regulasies, praktykskodes en beginselverklarings;

Deel B

Vir doeleindes van hierdie Wet, is 'n professionele liggaam—

- (a) vir elk van die volgende beroepe, 'n beheerliggaam van daardie beroep geregistreer ingevolge 'n Wet onder die naam van daardie beroep vermeld; of
- (b) enige ander liggaam, indien die Mededingingskommissie tevrede is dat dit die belange van lede van 'n beroep in paragraaf (a) vermeld, verteenwoordig;

Rekenmeesters en Ouditeurs

Wet op Openbare Rekenmeesters en Ouditeurs, 1991 (Wet No. 80 van 1991).

Argitekte

Wet op Argitekte, 1970 (Wet No. 35 van 1970).

Ingenieurswese

Wet op die Ingenieursweseprofessie van Suid-Afrika, 1990 (Wet No. 114 van 1990).

Estate Agents

Estate Agents Act, 1976 (Act No. 112 of 1976)

Attorneys and Advocates

Attorneys Act, 1979 (Act No. 53 of 1979)

Admission of Advocates Act, 1964 (Act No. 74 of 1964)

Natural sciences

Natural Scientific Professions Act, 1993 (Act No. 106 of 1993)

Quantity Surveyors

Quantity Surveyors Act, 1970 (Act No. 36 of 1970)

Surveyors

Professional and Technical Surveyors Act, 1984 (Act No. 40 of 1984)

Town and Regional Planners

Town and Regional Planners Act, 1984 (Act No. 19 of 1984)

Valuers

Valuers Act, 1982 (Act No. 23 of 1982)

Medical

Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act No. 56 of 1974)

Nursing Act, 1978 (Act No. 50 of 1978)

Dental Technicians Act, 1979 (Act No. 19 of 1979)

Pharmacy Act, 1974 (Act No. 53 of 1974)

Veterinary and Para-veterinary Professions Act, 1982 (Act No. 19 of 1982)

Chiropractors Homeopaths and Allied Health Service Professions Act, 1982 (Act No. 63 of 1982)

Miscellaneous

Any other *professional association* to whom the provisions of this Schedule have been declared applicable by the *Minister* by notice in the *Gazette*.

Eiendomsagente

Wet op Eiendomsagente, 1976 (Wet No.112 van 1976).

Prokureurs

Wet op Prokureurs, 1979 (Wet No. 53 van 1979).

Wet op die Toelating van Advokate, 1964 (Wet No. 74 van 1964).

Natuurwetenskappe

Wet op Natuurwetenskaplike Professies, 1993 (Wet No.106 van 1993).

Bourekenaars

Wet op Bourekenaars, 1970 (Wet No. 36 van 1970).

Landmeters

Wet op Professionele Landmeters en Tegniese Opmeters, 1984 (Wet No. 40 van 1984).

Stads-en Streeksbeplanners

Wet op Stads-en Streeksbeplanners, 1984 (Wet No. 19 van 1984).

Waardeerders

Wet op Waardeerders, 1982 (Wet No. 23 van 1982).

Medies

Wet op Geneeshere, Tandartse en Aanvullende Gesondheidsdiensberoepe, 1974 (Wet No. 56 van 1974).

Wet op Verpleging, 1978 (Wet No. 50 van 1978).

Wet op Tandtegnici, 1979 (Wet No. 19 van 1979).

Wet op Aptekers, 1974 (Wet No. 53 van 1974).

Wet op Veterinêre en Para-veterinêre Beroepe, 1982 (Wet No. 19 van 1982).

Wet op Chiropraktisyns, Homeopate en Verwante Gesondheidsdiensberoepe, 1982 (Wet No. 63 van 1982).

Diverse

Enige ander professionele liggaam op wie die bepalings van hierdie Bylae deur die Minister, by kennisgewing in die *Staatskoerant*, van toepassing gemaak is.

Act No. 89, 1998

COMPETITION ACT, 1998

SCHEDULE 2**REPEAL OF LAWS (SECTION 83)**

No and Year of Law	Short Title	Extent of Repeal
Act No. 96 of 1979	Maintenance and Promotion of Competition Act, 1979	The whole
Act No. 58 of 1980	Maintenance and Promotion of Competition Amendment Act, 1980	The whole
Act No. 62 of 1983	Maintenance and Promotion of Competition Amendment Act, 1983	The whole
Act No. 12 of 1985	Maintenance and Promotion of Competition Amendment Act, 1985	The whole
Act No. 5 of 1986	Maintenance and Promotion of Competition Amendment Act, 1986	The whole
Act No. 96 of 1987	Maintenance and Promotion of Competition Amendment Act, 1987	The whole
Act No. 88 of 1990	Maintenance and Promotion of Competition Amendment Act, 1990	The whole

Bylae 2**HERROEPING VAN WETTE****(ARTIKEL 83)**

No. en jaar van wet	Kort titel	Omvang van herroeping
Wet No. 96 van 1979	Wet op die Handhawing en Bevordering van Mededinging, 1979	Die geheel
Wet No. 58 van 1980	Wysigingswet op die Handhawing en Bevordering van Mededinging, 1980	Die geheel
Wet No. 62 van 1983	Wysigingswet op die Handhawing en Bevordering van Mededinging, 1983	Die geheel
Wet No. 12 van 1985	Wysigingswet op die Handhawing en Bevordering van Mededinging, 1985	Die geheel
Wet No. 5 van 1986	Wysigingswet op die Handhawing en Bevordering van Mededinging, 1986	Die geheel
Wet No. 96 van 1987	Wysigingswet op die Handhawing en Bevordering van Mededinging, 1987	Die geheel
Wet No. 88 van 1990	Wysigingswet op die Handhawing en Bevordering van Mededinging, 1990	Die geheel

SCHEDULE 3

Transitional Arrangements

1. A ruling issued in terms of section 6(1)(a) of the Maintenance and Promotion of Competition Act, 1979 (Act No. 86 of 1979), or notice issued in terms of section 14(1)(c) of that Act, in relation to an "acquisition" as defined in that Act, must be regarded for purposes of *this Act* to be a conditional approval of a merger as if it had been granted after *this Act* came into operation by the Competition Commission in terms of section 14(1)(b), or by the Competition Tribunal in terms of section 16(2)(b).

2. An arrangement entered into in terms of section 11(1) of the Maintenance and Promotion of Competition Act, 1979 (Act No. 86 of 1979), must be regarded as having been confirmed as a consent order in terms of section 63 of *this Act* and is valid for a period of 12 months from the date on which *this Act* comes into operation.

3. An exemption granted in terms of Section 14(5) of the Maintenance and Promotion of Competition Act, 1979 (Act No. 86 of 1979), must be regarded as having been granted in terms of section 10 of *this Act* and is valid for a period of 12 months from the date on which *this Act* comes into operation.

4. Any reference in any other statute to—

- (a) the Maintenance and Promotion of Competition Act, 1979 (Act No. 86 of 1979), must be regarded as a reference to *this Act*;
- (b) a "restrictive practice" or "monopoly situation" as defined in terms of section 1 of the Maintenance and Promotion of Competition Act, 1979 (Act No. 86 of 1979), must be regarded as a reference to a "*prohibited practice*" in terms of *this Act*;
- (c) an "acquisition" as defined in terms of section 1 of the Maintenance and Promotion of Competition Act, 1979 (Act No. 86 of 1979), must be regarded as a reference to a "merger" in terms of *this Act*;
- (d) the "Competition Board" as established in terms of section 3 of the Maintenance and Promotion of Competition Act, 1979 (Act No. 86 of 1979), must be regarded as a reference to the Competition Commission.

5. When this Act comes into operation an officer or employee appointed in terms of the Public Service Act, 1994, to serve the Competition Board established by the Maintenance and Promotion of Competition Act, 1979 (Act No. 86 of 1979), continues to be an officer or employee under the Public Service Act, subject to the direction of the Department of Trade and Industry.

6. If an officer or an employee referred to in item 5 is appointed as an officer or employee of the Competition Commission, the accumulated value of that person's contributions to any pension fund, together with the accumulated value of the contributions made to that fund by that person's employer, may be transferred to a pension fund established for the benefit of the staff of the Commission.

BYLAE 3**Oorgangsmatreëls**

1. 'n Beslissing ingevolge artikel 6(1)(a) van die Wet op die Handhawing en Bevordering van Mededinging, 1979 (Wet No. 86 van 1979), of kennisgewing ingevolge artikel 14(1)(c) van daardie Wet, uitgereik in verband met 'n "verkryging", soos in daardie Wet omskryf, moet, vir doeleindes van hierdie Wet, geag word 'n voorwaardelike goedkeuring van 'n samesmelting te wees asof, ingevolge artikel 14(1)(b), deur die Mededingingskommissie verleen, nadat hierdie Wet in werking getree het, of deur die Mededingingstribunaal, ingevolge artikel 16(2)(b).

2. 'n Reëling aangegaan ingevolge artikel 11(1) van die Wet op die Handhawing en Bevordering van Mededinging, 1979 (Wet No. 86 van 1979), moet geag word bekragtig te wees as 'n toestemmingsbevel ingevolge artikel 63 van hierdie Wet en is geldig vir 'n tydperk van 12 maande van die datum af waarop hierdie Wet in werking tree.

3. 'n Vrystelling verleen ingevolge artikel 14(5) van die Wet op die Handhawing en Bevordering van Mededinging, 1979 (Wet No. 86 van 1979), moet geag word toegestaan te wees ingevolge artikel 10 van hierdie Wet en is geldig vir 'n tydperk van 12 maande van die datum af waarop hierdie Wet in werking tree.

4. Enige verwysing in enige ander Wet na—

- (a) die Wet op die Handhawing en Bevordering van Mededinging, 1979 (Wet No.86 van 1979), moet geag word 'n verwysing na hierdie Wet te wees;
- (b) 'n "Beperkende praktyk" of "monopoliesituasie" soos omskryf ingevolge artikel (1) van die Wet op die Handhawing en Bevordering van Mededinging, 1979 (Wet No.86 van 1979), moet geag word 'n verwysing te wees na 'n "verbode praktyk" ingevolge hierdie Wet;
- (c) 'n "verkryging", soos omskryf ingevolge artikel (1) van die Wet op die Handhawing en Bevordering van Mededinging, 1979 (Wet No.86 van 1979), moet geag word 'n verwysing te wees na 'n "samesmelting" ingevolge hierdie Wet;
- (d) die "Raad op Mededinging" soos ingestel ingevolge artikel (3) van die Wet op die Handhawing en Bevordering van Mededinging, 1979 (Wet No.86 van 1979), moet geag word 'n verwysing na die Mededingingskommissie te wees.

5. Wanneer hierdie Wet in werking tree, sal 'n beampte of werknemer, ingevolge die Staatsdienswet, 1994, aangestel om die Raad op Mededinging, ingestel deur die Wet op die Handhawing en Bevordering van Mededinging, 1979 (Wet No. 86 van 1979), te dien, voortgaan om 'n beampte of werknemer kragtens die Staatsdienswet te wees, onderworpe aan die opdrag van die Departement van Handel en Nywerheid.

6. Indien 'n beampte of werknemer in item 5 vermeld as beampte of werknemer van die Mededingingskommissie aangestel word, kan die opgehoopte waarde van daardie persoon se bydraes tot enige pensioenfonds, tesame met die opgehoopte waarde van die bydraes tot die fonds gelewer deur daardie persoon se werkgever, oorgedra word aan 'n pensioenfonds ingestel vir die voordeel van die personeel van die Kommissie.

