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GENERAL NOTICES

NOTICE 1942 OF 1999

DEPARTMENT OF TRADE AND INDUSTRY

THE COMPETITION ACT, 1998 (ACT 89 OF 1998)

Determination of Threshold

I, Alexander Erwin, Minister of Trade and Industry, do hereby determine in terms of section 6 (1) of the Competition Act, 1998 (Act 89 of 1998), in consultation with the Competition Commission, that -

(1) Part B of Chapter 2 of the Competition Act, 1998 (Act 89 of 1998) applies to any firm -

(a) whose annual turnover in the Republic is valued at or above R 5 million; or

(b) whose assets in the Republic are valued at or above R 5 million; and

(2) For the purposes of section 6 of the Act, the assets and the turnover of a firm must be calculated in accordance with the provisions as set out in the Schedule.

ALEXANDER ERWIN

MINISTER OF TRADE AND INDUSTRY

SCHEDULE

Method of Calculation

1 Generally accepted accounting practices apply

For the purposes of section 6 of the Act, the assets, and the turnover, of a firm must be calculated in accordance with South African generally accepted accounting practice - ("G.A.A.P."), subject only to the following provisions of this notice.

1. Valuation of Assets

(1) For the purpose of section 6 of the Act, the asset value of a firm at any time is based on the gross value of the firm's assets as recorded on the firm's balance sheet for the end of the immediately previous financial year, subject to the provisions of sub-items (2) and (3).

(2) In particular –

(a) the asset value equals the total assets less any amount shown on that balance sheet for depreciation or diminution of value;

(b) the assets are to include all assets on the balance sheet of the firm including any goodwill or intangible assets included in the balance sheet;

(c) no deduction may be taken for liabilities or encumbrances of the firm;

(d) assets in the Republic includes all assets arising from activities in, into or from the Republic.

(3) If, between the date of the financial statements being used to calculate the asset value of a firm, and the date on which that calculation is being made, the firm has acquired any subsidiary company, associated company or joint venture not shown on those financial statements, or divested itself of any subsidiary company, associated company or joint venture shown on those statements –

(a) The following items must be added to the calculation of the firm's asset value if these items should in terms of G.A.A.P. be included in the firm's asset value;

(i) The value of those recently acquired assets; and

(ii) Any asset received in exchange for those recently divested assets.

(b) The following items may be deducted in calculating the firm's asset value if these items were included in the firm's asset value:

(i) The value of those recently divested assets at the date of their divestiture; and

(ii) Any asset that was shown on the balance sheet and was subsequently used to acquire the recently acquired asset.

2. Calculation of annual turnover

(1) For the purpose of section 6 of the Act, the annual turnover of a firm at any time is the gross revenue of that firm from income in, into or from the Republic, arising from the following transactions and events as recorded on the firm's income statement for the immediately previous financial year, subject to the provisions of sub-items (2), (3) and (4):

(a) the sale of goods;

(b) the rendering of services; and

(c) the use by others of the firm's assets yielding interest, royalties and dividends.

(2) In particular –

(a) When calculating turnover the following amounts may be excluded:

(i) any amount that is properly excluded from gross revenue in accordance with G.A.A.P.;

(ii) taxes, rebates, or any similar amount calculated and paid in direct relation to revenue, as for example, sales tax, value added tax, excise duties, and sales rebates, may be deducted from gross revenue;

(b) revenue excludes gains arising from non current assets and from foreign currency transactions; and

(c) for banks and insurance firms revenue includes those amounts of income required to be included in an income statement in terms of generally accepted accounting practice, but excluding those amounts noted in 3(2)(c).

(3) If, between the date of the most recent financial statements being used to calculate the turnover of a firm, and the date on which that calculation is being made, the firm has acquired any subsidiary company, associated company or joint venture not shown on those financial statements, or divested itself of any subsidiary company, associated company or joint venture shown on those financial statements –

(a) the turnover generated by those recently acquired assets must be included in the calculation of the firm's turnover if this turnover should in terms G.A.A.P. be included in the turnover of the firm; and

(b) the turnover generated by those recently divested assets in the immediately previous financial year may be deducted from the firm's turnover if this turnover was included in the turnover of the firm.

(4) If the financial statements used as a basis for calculating turnover or the turnover included in terms of sub-item 3(a) are for more or less than twelve months, the values recorded on those statements must be pro-rated to the equivalent of twelve months.

3. Form of financial statements

Financial statements used as a basis for calculating assets or turnover of a firm –

(a) must be the firm's audited financial statements, if, -

(i) in terms of any law, the firm is required to produce such statements; or

(ii) the firm has audited statements for the relevant period; and

(b) otherwise, must be prepared in accordance with G.A.A.P.

NOTICE 1943 OF 1999

DEPARTMENT OF TRADE AND INDUSTRY

THE COMPETITION ACT, 1998 (ACT 89 OF 1998)

DETERMINATION OF THRESHOLD

I, Alexander Erwin, Minister of Trade and Industry, do hereby determine in terms of section 11 (1) of the Competition Act, 1998 (Act 89 of 1998), in consultation with the Competition Commission, that -

(1) Chapter 3 of the Competition Act, 1998 does not apply to any merger that does not meet the threshold set out in sub-item (2).

(2) Chapter 3 of the Competition Act, 1998 applies to a merger if

(a) Either -

(i) the combined annual turnover in the Republic of the acquiring firm and the target firm is valued at or above R 50 million; or

(ii) the combined assets in the Republic of the acquiring firm and the target firm are valued at or above R 50 million; or

(iii) the annual turnover in the Republic of the acquiring firm plus the assets in the Republic of the target firm are valued at or above R 50 million; or

(iv) the assets in the Republic of the acquiring firm plus the annual turnover in the Republic of target firm are valued at or above R 50 million; and

(b) Either -

(i) The annual turnover of the Target firm exceeds R 5 million; or

(ii) The asset value of the Target firm exceeds R 5 million.

(3) The provisions of the Competition Act 1998 respecting a "large" merger apply to a merger if -

(a) Either -

(i) The combined annual turnover in the Republic of the acquiring firm and the target firm is valued at or above R 3,5 billion; or

(ii) If the combined assets in the Republic of the acquiring firm and the target firm are valued at or above R 3,5 billion; or

(iii) If the annual turnover in the Republic of the acquiring firm plus the assets in the Republic of the target firm are valued at or above R 3,5 billion; or

(iv) If the assets in the Republic of the acquiring firm plus the annual turnover in the Republic of target firm are valued at or above R 3,5 billion; and

(b) Either -

(i) The annual turnover of the Target firm exceeds R 100 million; or

(ii) The asset value of the Target firm exceeds R 100 million.

(4) In accordance with section 11(3)(a), an "intermediate merger" is a merger that –

(a) falls within the threshold described in sub-item (2); but

(b) falls outside the threshold described in sub-item (3).

(5) For the purposes of section 11 of the Act, the assets and the turnover of a firm in the Republic must be calculated in accordance with the provisions as set out in the Schedule

(6) For the purpose of this notice -

(a) "*acquiring firm*" means the total of all the firms that are acquiring firms in respect of that merger, as defined in Rule 25(1); and

(b) "*target firm*" means the total of all the firms that are target firms in respect of that merger, as defined in Rule 25(1).

ALEXANDER ERWIN

MINISTER OF TRADE AND INDUSTRY

SCHEDULE

Method of Calculation

1. Generally accepted accounting practices apply

For the purposes of section 11 of the Act, the assets, and the turnover, of a firm must be calculated in accordance with South African generally accepted accounting practice - ("G.A.A.P."), subject only to the following provisions of this notice.

2. Valuation of Assets

(1) For the purpose of section 11 of the Act, the asset value of a firm at any time is based on the gross value of the firm's assets as recorded on the firm's balance sheet for the end of the immediately previous financial year, subject to the provisions of sub-items (2) and (3).

(2) In particular -

(a) the asset value equals the total assets less any amount shown on that balance sheet for depreciation or diminution of value;

(b) the combined assets are to include all assets on the balance sheets of the firms concerned, including any goodwill or intangible assets included in their balance sheets;

(c) no deduction may be taken for liabilities or encumbrances of the firm;

(d) the combined assets are to be calculated on the basis of the combined assets before giving affect to the merger and accordingly the combined assets do not include any goodwill or intangible assets that would arise as a result of the merger;

(e) the combined assets are not adjusted for any investments the acquiring firm might have in the target firm or amounts due by one firm to the other; and

(f) assets in the Republic includes all assets arising from activities in the Republic.

(3) If, between the date of the financial statements being used to calculate the asset value of a firm, and the date on which that calculation is being made, the firm has acquired any subsidiary company, associated company or joint venture not shown on those financial statements, or divested itself of any subsidiary company, associated company or joint venture shown on those financial statements –

(a) The following items must be added to the calculation of the firm's asset value if these items should in terms of G.A.A.P. be included in the firm's asset value;

(i) The value of those recently acquired assets; and

(ii) Any asset received in exchange for those recently divested assets.

(b) The following items may be deducted in calculating the firm's asset value if these items were included in the firm's asset value:

(i) The value of those recently divested assets at the date of their divestiture; and

(ii) Any asset that was shown on the balance sheet and was subsequently used to acquire the recently acquired asset.

3. Calculation of annual turnover

(1) For the purpose of section 11 of the Act, the annual turnover of a firm at any time is the gross revenue of that firm from income in, into or from the Republic, arising from the following transactions and events as recorded on the firm's income statement for the immediately previous financial year, subject to the provisions of sub-items (2), (3) and (4):

(a) the sale of goods;

(b) the rendering of services; and

(c) the use by others of the firm's assets yielding interest, royalties and dividends.

(2) In particular –

(a) When calculating turnover the following amounts may be excluded:

(i) any amount that is properly excluded from gross revenue in accordance with G.A.A.P.;

(ii) taxes, rebates, or any similar amount calculated and paid in direct relation to revenue, as for example, sales tax, value added tax, excise duties, and sales rebates, may be deducted from gross revenue;

(b) no adjustment is made for any amount that represents a duplication arising from transactions between the acquiring firm and the target firm;

(c) revenue excludes gains arising from non current assets and from foreign currency transactions; and

(d) for banks and insurance firms revenue includes those amounts of income required to be included in an income statement in terms of generally accepted accounting practice, but excluding those amounts noted in 3(2)(c).

(3) If, between the date of the most recent financial statements being used to calculate the turnover of a firm, and the date on which that calculation is being made, the firm has acquired any subsidiary company, associated company or joint venture not shown on those financial statements, or divested itself of any subsidiary company, associated company or joint venture shown on those financial statements –

(e) the turnover generated by those recently acquired assets must be included in the calculation of the firm's turnover if this turnover should in terms G.A.A.P. be included in the turnover of the firm; and

(f) the turnover generated by those recently divested assets in the immediately previous financial year may be deducted from the firm's turnover if this turnover was included in the turnover of the firm.

(2) If the financial statements used as a basis for calculating turnover or the turnover included in terms of sub-item 3(a) are for more or less than twelve months, the values recorded on those statements must be pro-rated to the equivalent of twelve months.

4. Combined valuation of firms

(1) If the acquiring firm is a subsidiary of a group of companies as contemplated in the Companies Act, 1973 (Act No. 61 of 1973) for the purposes of calculations required in terms of this notice –

(a) the combined assets of the firms that are part of that group, and the combined turnover of those firms, must be consolidated;

(b) the consolidated assets and turnover of the group are to exclude turnover or assets arising as a result of transactions by one part of the group with another part of the same group.

(2) If the target firm controls any other firm or business for the purposes of calculations required in terms of this notice –

(a) the combined assets of those firms and businesses, and their combined turnover, must be consolidated; and

(b) the consolidated assets and turnover of the group are to exclude turnover or assets arising as a result of transactions by one part of the group with another part of the same group.

5. Form of financial statements

Financial statements used as a basis for calculating assets or turnover of a firm –

(a) must be the firm's audited financial statements, if, -

(i) in terms of any law, the firm is required to produce such statements; or

(ii) the firm has audited statements for the relevant period; and

(b) otherwise, must be prepared in accordance with G.A.A.P.

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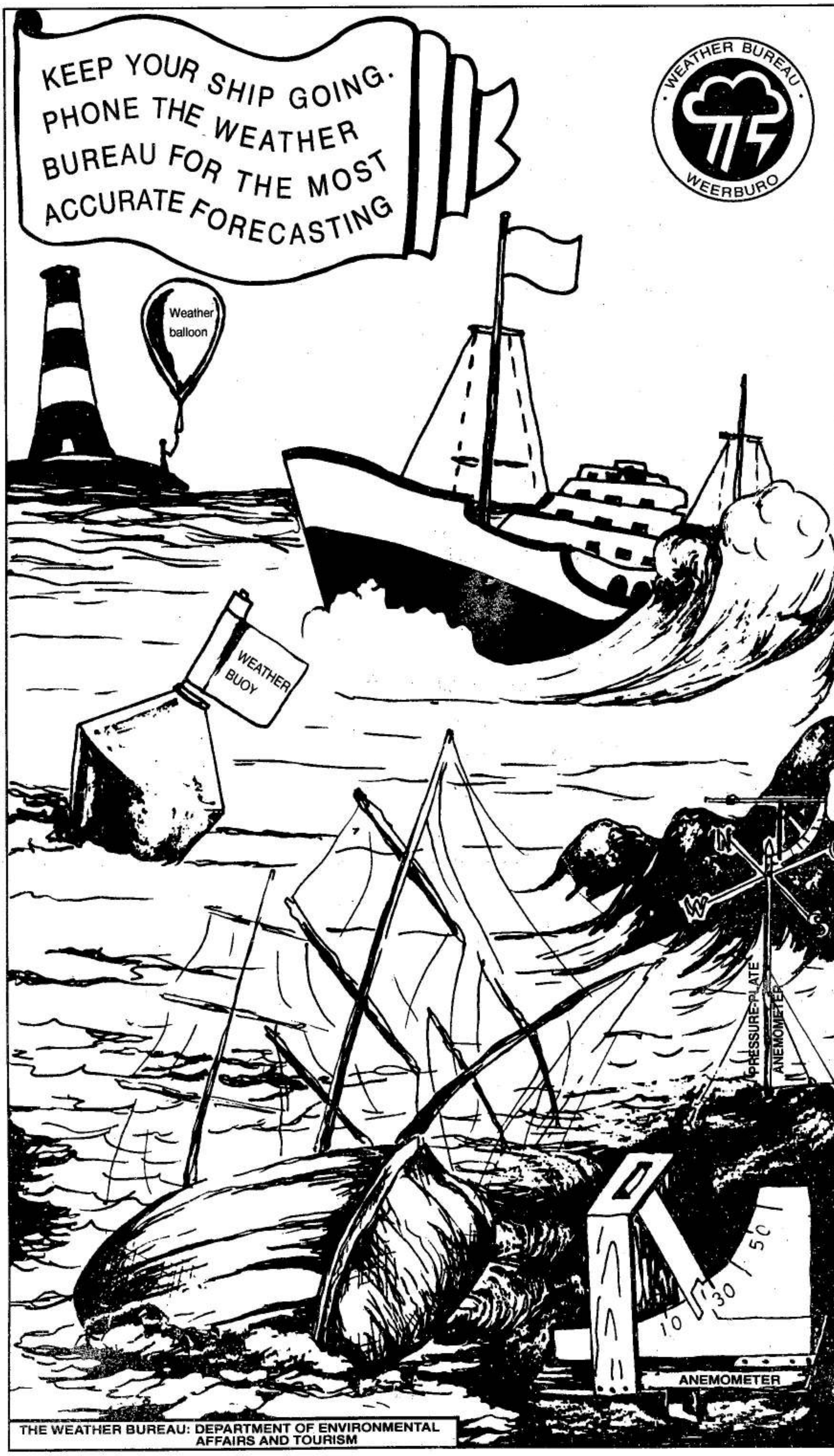

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