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13 December 2000

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

No. 39 of 2000: Competition Second Amendment Act, 2000.

THE PRESIDENCY

DIE PRESIDENSIE

No. 1354.

13 Desember 2000

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

No. 39 van 2000: Tweede Wysigingswet op Mededinging, 2000.

GENERAL EXPLANATORY NOTE:

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

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

*(English text signed by the President.)
(Assented to 5 December 2000.)*

ACT

To amend the Competition Act, 1998, so as to define certain expressions, to amend certain definitions and to delete a definition; to further regulate the prohibition of restrictive horizontal practices; to allow for more frequent determination of the thresholds for the application of the said Act; to further regulate certain exemptions; to make fresh provision for merger control; to further regulate the functions of the Competition Tribunal; to provide expressly that the Commissioner is the accounting authority of the Competition Commission for purposes of the Public Finance Management Act, 1999; to further regulate investigation and adjudication procedures and enforcement of decisions, judgments and orders of the Competition Commission, Competition Tribunal and Competition Appeal Court; to regulate the relationship between the Competition Commission and other agencies and to provide for concurrent jurisdiction; and to effect certain consequential amendments; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 89 of 1998

1. Section 1 of the Competition Act, 1998 (hereinafter referred to as the principal Act), is hereby amended—

5

(a) by the insertion in subsection (1) before the definition of “agreement” of the following definition:

“‘acquiring firm’ means a firm—

(a) that, as a result of a transaction in any circumstances set out in section 12, would directly or indirectly acquire, or establish direct or indirect control over, the whole or part of the business of another *firm*;

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(b) that has direct or indirect control over the whole or part of the business of a *firm* contemplated in paragraph (a); or

(c) the whole or part of whose business is directly or indirectly controlled by a *firm* contemplated in paragraph (a) or (b);”;

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(b) by the substitution in subsection (1) for the definition of “agreement” of the following definition:

“‘agreement’, when used in relation to a prohibited practice, includes a contract, arrangement or understanding, whether or not legally enforceable,’;”

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ALGEMENE VERDUIDELIKENDE NOTA:

- [] Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordenings aan.
- Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.
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(Engelse teks deur die President geteken.)
(Goedgekeur op 5 Desember 2000.)

WET

Tot wysiging van die Wet op Mededinging, 1998, ten einde sekere uitdrukking te omskryf, sekere woordomskrywings te wysig en 'n woordomskrywing te skrap; die verbod op beperkende horisontale praktyke verder te reël; voorsiening te maak vir meer gereelde bepaling van die drempels vir die toepassing van genoemde Wet; sekere vrystellings verder te reël; opnuut voorsiening te maak vir samesmeltingsbeheer; die funksies van die Mededingingstriboonal verder te reël; uitdruklik voorsiening te maak dat die Kommissaris die rekenpligtige gesag van die Mededingingskommissie is vir doeleinnes van die Wet op Openbare Finansiële Bestuur, 1999; ondersoek en beregingsprosedures en afdwinging van besluite, vonnisse en bevele van die Mededingingskommissie, Mededingingstriboonal en Appèlhof vir Mededinging verder te reël; die verhouding tussen die Mededingingskommissie en ander agentskappe te reël en voorsiening te maak vir konkurrante regstevoleheid; en sekere gevolglike wysigings aan te bring; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

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

Wysiging van artikel 1 van Wet 89 van 1998

1. Artikel 1 van die Wet op Mededinging, 1998 (hierna die Hoofwet genoem), word 5 hierby gewysig—
 (a) deur in subartikel (1) die volgende omskrywing na die omskrywing van "verbode praktyk" in te voeg:
 "verkrygende firma' 'n firma—
 (a) wat as gevolg van 'n transaksie in enige omstandighede in artikel 10 12 uiteengesit, regstreeks of onregstreeks beheer verkry, of regstreeks of onregstreeks beheer bewerkstellig, oor die geheel of 'n gedeelte van die besigheid van 'n ander firma;
 (b) wat regstreeks of onregstreeks beheer het oor die geheel of 'n 15 gedeelte van die besigheid van 'n firma in paragraaf (a) beoog; of waarvan die geheel of 'n gedeelte van sy besigheid regstreeks of onregstreeks deur 'n firma in paragraaf (a) of (b) beoog, beheer word;";
 (b) deur in subartikel (1) die omskrywing van "ooreenkoms" deur die volgende omskrywing te vervang:
 "ooreenkoms", wanneer gebruik word met betrekking tot 'n verbode praktyk, ook 'n kontrak, reëling of verstandhouding, hetsy regtens afdwingbaar al dan nie;";

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- (c) by the insertion in subsection (1) after the definition of “civil court” of the following definition:
“complainant” means a person who has submitted a complaint in terms of section 49B(2)(b);”;
- (d) by the deletion in subsection (1) of the definition of “interest”; 5
- (e) by the insertion in subsection (1) after the definition of “market power” of the following definition:
“members’ interest” has the meaning set out in the Close Corporations Act, 1984 (Act No. 69 of 1984);”;
- (f) by the insertion in subsection (1) after the definition of “organ of state” of the following definition: 10
“party to a merger” means an *acquiring firm* or a *target firm*;”;
- (g) by the substitution in subsection (1) for the definition of “prescribed” of the following definition:
“prescribed” means prescribed [from time to time] by regulation [in terms of section 78];”; 15
- (h) by the insertion in subsection (1) after the definition of “prescribed” of the following definition:
“primary acquiring firm” means any *firm* contemplated in paragraph (a) of the definition of ‘acquiring firm’;
“primary target firm” means any *firm* contemplated in paragraph (a) or (b) of the definition of ‘target firm’;”; 20
- (i) by the insertion in subsection (1) after the definition of “public regulation” of the following definition:
“registered trade union” means a trade union registered in terms of section 96 of the Labour Relations Act, 1995 (Act No. 66 of 1995);”; 25
- (j) by the insertion in subsection (1) after the definition of “small business” of the following definition:
“target firm” means a *firm*—
 (a) the whole or part of whose business would be directly or indirectly controlled by an *acquiring firm* as a result of a transaction in any circumstances set out in section 12; 30
 (b) that, as a result of a transaction in any circumstances set out in section 12, would directly or indirectly transfer direct or indirect control of the whole or part of, its business to an *acquiring firm*; or
 (c) the whole or part of whose business is directly or indirectly controlled, by a *firm* contemplated in paragraph (a) or (b);” and 35
- (k) by the insertion of the following subsection after subsection (1):
“(1A) When a particular number of business days is provided for performing an act, the number of days must be calculated by—
 (a) excluding the first day, any public holiday, Saturday and Sunday; and
 (b) including the last day.”. 40

Amendment of section 3 of Act 89 of 1998**2. Section 3 of the principal Act is hereby amended—**

- (a) by the addition in subsection (1) of the word “and” at the end of paragraph (b) 45 and the deletion in the said subsection of paragraphs (c) and (d); and
- (b) by the insertion after subsection (1) of the following subsection:
“(1A) (a) In so far as this Act applies to an industry, or sector of an industry, that is subject to the jurisdiction of another regulatory authority, which authority has jurisdiction in respect of conduct regulated in terms of Chapter 2 or 3 of this Act, this Act must be construed as establishing concurrent jurisdiction in respect of that conduct.
(b) The manner in which the concurrent jurisdiction is exercised in terms of this Act and any other *public regulation*, must be managed, to the extent possible, in accordance with any applicable agreement concluded in terms of sections 21(1)(h) and 82(1) and (2).”. 50 55

- (c) deur in subartikel (1) die volgende omskrywing na die omskrywing van "horizontale verhouding" in te voeg:
 " klaer 'n persoon wat 'n klagte ingevolge artikel 49B(2)(b) aangemeld het;"
- 5 (d) deur in subartikel (1) die omskrywing van "belang" te skrap;
- (e) deur in subartikel (1) die volgende omskrywing na die omskrywing van "kleinsaak" in te voeg:
 " ledebelang dieselfde as die betekenis wat in die Wet op Beslote Korporasies, 1984 (Wet No. 69 van 1984), uiteengesit word;"
- 10 (f) deur in subartikel (1) na die omskrywing van "openbare regulasie" die volgende omskrywing in te voeg:
 " party tot 'n samesmelting 'n verkrygende firma of 'n teikenfirma;"
- (g) deur in subartikel (1) die omskrywing van "voorgeskryf" deur die volgende omskrywing te vervang:
 " voorgeskryf [van tyd tot tyd] by regulasie [ingevolge artikel 78 voorgeskryf;";
- 15 (h) deur in subartikel (1) na die omskrywing van "perseel" die volgende omskrywings in te voeg:
 " primère teikenfirma enige firma in paragraaf (a) of (b) van die omskrywing van 'teikenfirma' beoog;
 ' primère verkrygende firma enige firma in paragraaf (a) van die omskrywing van 'verkrygende firma' beoog;"
- 20 (i) deur in subartikel (1) na die omskrywing van "firma" die volgende omskrywing in te voeg:
 " geregistreerde vakbond 'n vakbond geregistreer ingevolge artikel 96 van die Wet op Arbeidsverhoudinge, 1995 (Wet No. 66 van 1995);";
- (j) deur in subartikel (1) na die omskrywing van "staatsorgaan" die volgende omskrywing in te voeg:
 " teikenfirma 'n firma—
- 25 (a) waarvan die geheel of 'n gedeelte van sy besigheid regstreeks of onregstreeks deur 'n verkrygende firma beheer word as gevolg van 'n transaksie in enige omstandighede in artikel 12 uiteengesit;
- (b) wat, as gevolg van 'n transaksie in enige omstandighede in artikel 12 uiteengesit, regstreeks of onregstreeks regstreekse of onregstreekse beheer van die geheel of 'n gedeelte van sy besigheid aan 'n verkrygende firma oordra; of
- 30 (c) waarvan die geheel of 'n gedeelte van sy besigheid regstreeks of onregstreeks beheer word deur 'n firma in paragraaf (a) of (b) beoog; en
- (k) deur die volgende subartikel na subartikel (1) in te voeg:
 "(1A) Wanneer voorsiening gemaak word vir 'n bepaalde getal besigheidsdae vir die uitvoering van 'n handeling, moet die getal dae bereken word deur—
 (a) die eerste dag, enige openbare vakansiedag, Saterdag en Sondag uit te sluit; en
 (b) uit te sluit die laaste dag in te sluit."
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Wysiging van artikel 3 van Wet 89 van 1998

2. Artikel 3 van die Hoofwet word hierby gewysig—
- 50 (a) deur in subartikel (1) aan die einde van paragraaf (b) die woord "en" in te voeg en in genoemde subartikel paragrawe (c) en (d) te skrap; en
- (b) deur na subartikel (1) die volgende subartikel in te voeg:
 "(1A) (a) In sover hierdie Wet op 'n nywerheid, of sektor van 'n nywerheid, van toepassing is wat onderworpe is aan dieregsbevoegdheid van 'n ander regulerende owerheid, welke owerheidregsbevoegdheid het ten aansien van optrede wat ingevolge Hoofstuk 2 of 3 van hierdie Wet gereguleer word, moet hierdie Wet uitgelê word om konkurranteregsbevoegdheid ten aansien van daardie optrede te vestig.
- 55 (b) Die wyse waarop die konkurranteregsbevoegdheid ingevolge hierdie Wet en 'n ander openbare regulasie uitgeoefen word, moet sover moontlik behartig word ooreenkomsdig enige toepaslike ooreenkoms wat ingevolge artikels 21(1)(h) en 82(1) en (2) gesluit is.".
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Amendment of section 4 of Act 89 of 1998

- 3.** Section 4 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
- “An *agreement* between, or *concerted practice* by, *firms*, or a decision by an association of *firms*, is prohibited if it is between parties in a *horizontal relationship* and if—”;
- (b) by the substitution in subsection (1) for paragraph (a) of the following paragraph:
- “(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”;
- (c) by the substitution in subsection (2) for paragraph (a) of the following paragraph:
- “(a) any one of those *firms* owns a [**substantial shareholding, interest or similar right**] significant interest in the other, or they have at least one director or substantial shareholder in common; and”;
- (d) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:
- “For [**the**] purposes of [**subsection**] subsections (2) and (3), ‘director’ means—”.

Substitution of section 6 of Act 89 of 1998

- 4.** The following section is hereby substituted for section 6 of the principal Act: 25

“Restrictive application of Part

- 6.** (1) The *Minister*, in consultation with the Competition Commission, must determine—
- (a) 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) a method for the calculation of annual turnover or assets to be applied in relation to that threshold.
- (2) The *Minister* may make a new determination in terms of subsection (1) in consultation with the Competition Commission. 30
- (3) Before making a determination contemplated in this section, the *Minister*, in consultation with the Competition Commission, must publish in the *Gazette* a notice—
- (a) setting out the proposed threshold and method of calculation for purposes of this section; and
 - (b) inviting written submissions on that proposal.
- (4) Within six months after publishing a notice in terms of subsection (3), the *Minister*, in consultation with the Competition Commission, must publish in the *Gazette* a notice—
- (a) setting out the threshold and method of calculation for purposes of this section; and
 - (b) the effective date of that threshold.”. 40

Substitution of section 10 of Act 89 of 1998

- 5.** The following section is hereby substituted for section 10 of the principal Act: 45

“Exemptions

- 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—
- (a) an *agreement* or *practice*, if that *agreement* or *practice* meets the requirements of subsection (3); or

Wysiging van artikel 4 van Wet 89 van 1998

3. Artikel 4 van die Hoofwet word hierby gewysig—
- (a) deur in subartikel (1) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:
 - 5 “’n Ooreenkoms tussen, of ’n gesamentlike praktyk deur, firmas, of ’n besluit deur ’n genootskap van firmas, is verbode indien dit tussen partye in ’n horizontale verhouding is en indien—”;
 - (b) deur in subartikel (1) paragraaf (a) deur die volgende paragraaf te vervang:
 - 10 “(a) dit [tussen partye in ’n horizontale 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-mededingende, voordeel wat daaruit voortspruit, swaarder weeg as daardie uitwerking; of”;
 - (c) deur in subartikel (2) paragraaf (a) deur die volgende paragraaf te vervang:
 - 15 “(a) enigeen van daardie firmas ’n [wesenlike aandeelhouding, belang of soortgelyke reg] beduidende belang in die ander besit, of hulle minstens een direkteur of wesenlike aandeelhouer gemeen het; en”;
 - (d) deur in subartikel (4) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:
 - 20 “Vir [die] doeleindes van [subartikel] subartikels (2) en (3) beteken ‘direkteur’—”.

Vervanging van artikel 6 van Wet 89 van 1998

- 25 4. Artikel 6 van die Hoofwet word hierby deur die volgende artikel vervang:

“Beperkte toepassing van Deel

6. (1) Die Minister moet, in oorleg met die Mededingingskommissie—
- (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
 - 30 (b) ’n metode bepaal vir die berekening van jaarlikse omset of bates wat met betrekking tot daardie drempel toegepas moet word.
 - (2) Die Minister kan ’n nuwe bepaling ingevolge subartikel (1) in oorleg met die Mededingingskommissie maak.
 - 35 (3) Alvorens ’n bepaling in hierdie artikel beoog gemaak word, moet die Minister, in oorleg met die Mededingingskommissie, ’n kennisgewing in die *Staatskoerant* publiseer—
 - (a) wat die voorgestelde drempel en metode van berekening vir doeleindes van hierdie artikel uiteensit; en
 - 40 (b) wat skriftelike voorleggings oor daardie voorstel inwin.
 - (4) Binne ses maande na publikasie van ’n kennisgewing ingevolge subartikel (3), moet die Minister, in oorleg met die Mededingingskommissie, ’n kennisgewing in die *Staatskoerant* publiseer—
 - (a) wat die drempel en metode van berekening vir doeleindes van hierdie artikel uiteensit; en
 - 45 (b) wat die effektiewe datum van daardie drempel vermeld.”.

Vervanging van artikel 10 van Wet 89 van 1998

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

“Vrystellings

10. (1) ’n Firma kan by die Mededingingskommissie aansoek doen om [’n ooreenkoms, of praktyk, of kategorie van enige ooreenkomste, of praktyke,]—
- (a) ’n ooreenkoms of praktyk, indien daardie ooreenkoms of praktyk aan die vereistes van subartikel (3) voldoen; of

- (b) a category of *agreements* or practices, if that category of *agreements* or practices meets the requirements of subsection (3).
- (2) Upon receiving an application in terms of subsection (1), the Competition Commission [may] must—
- (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] grant a conditional or unconditional exemption for a specified term, if the *agreement* or practice concerned, or category of *agreements* or practices concerned, meets the requirements of subsection (3); or
- (b) [grant a conditional or unconditional exemption for a specified term] refuse to grant an exemption, if—
- (i) the *agreement* or practice concerned, or category of [either] *agreements* or practices concerned, does not meet the requirements of subsection (3); or
- (ii) the *agreement* or practice, or category of *agreements* or practices, does not constitute a prohibited practice in terms of this Chapter.
- (c) refuse to grant an exemption]
- (3) The Competition Commission may grant an exemption in terms of subsection [(2)(b)] (2)(a) only if—
- (a) any restriction imposed on the *firms* concerned by the *agreement* or practice concerned, or category of *agreements* or practices concerned, is required to attain an objective mentioned in paragraph (b); and
- (b) the *agreement* or practice concerned, 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)] A firm may apply to the Competition Commission [may exempt] to exempt from the application of this Chapter an *agreement* or practice, or category of [either] *agreements* or practices, that relates to the exercise of intellectual property rights, including a right acquired or protected in terms of the Performers' Protection Act, 1967 (Act No. 11 of 1967), the Plant Breeders' Rights Act, 1976 (Act No. 15 of 1976), the Patents Act, 1978 (Act No. 57 of 1978), the Copyright 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).
- (4A) Upon receiving an application in terms of subsection (4), the Competition Commission may grant an exemption for a specified term.
- (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)] (2)(a) or subsection (4A) if—
- (a) [the advice was given, or] the exemption was granted on the basis of false or incorrect information;
- (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)] (4A), or revoking an exemption in terms of subsection (5), the Competition Commission [must]—

- (b) 'n kategorie van ooreenkomste of praktyke, indien daardie kategorie van ooreenkomste of praktyke aan die vereistes van subartikel (3) voldoen,
 van die toepassing van hierdie Hoofstuk vry te stel.
- 5 (2) By ontvangs van 'n aansoek ingevolge subartikel (1), [kan] moet 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] 'n voorwaardelike of onvoorwaardelike vrystelling vir 'n bepaalde termyn verleen, indien die betrokke ooreenkoms of praktyk, of betrokke kategorie van ooreenkomste of praktyke, aan die vereistes van subartikel (3) voldoen; of
- 10 (b) [voorwaardelike of onvoorwaardelike vrystelling verleen vir 'n bepaalde termyn] weier om 'n vrystelling te verleen, indien—
 (i) die betrokke ooreenkoms, of praktyk, of betrokke kategorie van [enige] ooreenkomste, of praktyke, nie voldoen aan die vereistes van subartikel (3) nie; of
 (ii) die ooreenkoms of praktyk, of kategorie van ooreenkomste of praktyke, nie 'n verbode praktyk ingevolge hierdie Hoofstuk uitmaak nie.
- 15 (c) weier om 'n vrystelling te verleen.]";
 (3) Die Mededingingskommissie kan alleenlik 'n vrystelling ingevolge subartikel [(2)(b)] (2)(a) verleen, indien—
- 20 (a) enige beperking opgelê aan die firmas betrokke by die bepaalde ooreenkoms, of praktyk, of bepaalde kategorie van [enige] ooreenkomste, of praktyke, nodig is om 'n oogmerk in paragraaf (b) vermeld, te bereik; en
 (b) die betrokke ooreenkoms, of praktyk, of betrokke kategorie van [enige] ooreenkomste, of praktyke, bydra tot enige van die volgende oogmerke:
 (i) handhawing [en] of 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;
 (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.
- 25 (4) [Bykomend tot die bepalings van subartikels (2) en (3), kan 'n Firma kan aansoek doen by die Mededingingskommissie om 'n ooreenkoms, of praktyk, of kategorie van [enige] ooreenkomste, of praktyke, [vrystel] van die toepassing van hierdie Hoofstuk vry te stel wat verband hou met die uitoefening van intellektuele goederegeregte, met inbegrip van 'n reg verkry of beskerm ingevolge die Wet op die Beskerming van Voordraers, 1967 (Wet No. 11 van 1967), die Wet op Plantteilersregte, 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 Handelsmerke, 1993 (Wet No. 194 van 1993), en die Wet op Modelle, 1993 (Wet No. 195 van 1993).]
- 30 (4A) By ontvangs van 'n aansoek ingevolge subartikel (4), kan die Mededingingskommissie 'n vrystelling vir 'n bepaalde termyn verleen.
 (5) Die Mededingingskommissie kan [sy skriftelike advies ingevolge subartikel 2(a) gegee, of] 'n vrystelling ingevolge subartikel [(2)(b)] (2)(a) of subartikel (4A) verleen, intrek, indien—
- 35 (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.
- 40 (6) Alvorens 'n vrystelling ingevolge subartikel (2) of [(4)] (4A) verleen word, of 'n vrystelling ingevolge subartikel (5) ingetrek word [moet die Mededingingskommissie]—

- (a) must give notice in the *Gazette* of the application for an exemption, or of its intention to revoke that exemption; **[and]**
- (b) must allow interested parties [30] 20 business days from the date of that notice to make written representations as to why the exemption should not be granted or revoked; **and**
- (c) may conduct an investigation into the *agreement* or practice concerned, or category of *agreements* or practices concerned.

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

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

(9) At any time after refusing to grant an exemption in terms of subsection (2)(b)(ii), the Competition Commission—

- (a) may withdraw its notice of refusal to grant the exemption, in the *prescribed* manner; and
- (b) if it does withdraw its notice of refusal, must reconsider the application for exemption.”.

Substitution of Chapter 3 of Act 89 of 1998

6. The following Chapter is hereby substituted for Chapter 3 of the principal Act:

“CHAPTER 3

MERGER CONTROL

Thresholds and categories of mergers

11. (1) The *Minister*, in consultation with the Competition Commission, must determine—

- (a) a lower and a higher threshold of combined annual turnover or assets, or a lower and a higher threshold of combinations of turnover and assets, in the Republic, in general or in relation to specific industries, for purposes of determining categories of mergers contemplated in subsection (5); and
- (b) a method for the calculation of annual turnover or assets to be applied in relation to each of those thresholds.

(2) The *Minister* may make a new determination in terms of subsection (1) in consultation with the Competition Commission.

(3) Before making a determination contemplated in this section, the *Minister*, in consultation with the Competition Commission, must publish in the *Gazette* a notice—

- (a) setting out the proposed threshold and method of calculation for purposes of this section; and
- (b) inviting written submissions on that proposal.

(4) Within six months after publishing a notice in terms of subsection (3), the *Minister*, in consultation with the Competition Commission, must publish in the *Gazette* a notice—

- (a) setting out the new threshold and method of calculation for purposes of this section; and
- (b) the effective date of that threshold.

(5) For purposes of this Chapter—

- (a) ‘**a small merger**’ means a merger or proposed merger with a value at or below the lower threshold established in terms of subsection (1)(a);

- (a) moet die Mededingingskommissie in die *Staatskoerant* kennis gee van die aansoek om vrystelling, of van sy voorneme om die vrystelling in te trek; [en]
- (b) moet die Mededingingskommissie belanghebbende partye [30 dae] 20 besigheidsdae van die datum van daardie kennisgewing af gun om skriftelike vertoë te rig waarom die vrystelling nie verleen of ingetrek moet word nie; en
- (c) kan die Mededingingskommissie 'n ondersoek doen na betrokke die ooreenkoms of praktyk of betrokke kategorie van ooreenkomste of praktyke.
- (7) Die Mededingingskommissie moet by kennisgewing in die *Staatskoerant* kennis gee van enige vrystelling ingevolge hierdie artikel verleen, geweier of ingetrek.
- (8) Die betrokke firma, of enige ander persoon met 'n wesenlike [materiële] finansiële belang by 'n beslissing van die Mededingingskommissie, ingevolge subartikel [(2)(b) of (c), of subartikel (4)] (2), (4A) of 5, kan, op die voorgeskrewe wyse, teen daardie beslissing na die Mededingingstribunaal appelleer.
- (9) Te eniger tyd nadat geweier is om 'n vrystelling ingevolge subartikel (2)(b)(ii) te verleen—
- (a) kan die Mededingingskommissie sy kennisgewing van weiering om die vrystelling te verleen op die voorgeskrewe wyse terugtrek; en
- (b) moet die Mededingingskommissie, indien hy sy kennisgewing van weiering terugtrek, die aansoek om vrystelling heroorweeg.”.

25 Vervanging van Hoofstuk 3 van Wet 89 van 1998

6. Hoofstuk 3 van die Hoofwet word hierby deur die volgende Hoofstuk vervang:

“HOOFSTUK 3

SAMESMELTINGSBEHEER

Drempels en kategorieë van samesmeltings

- 30 11. (1) Die Minister moet in oorleg met die Mededingingskommissie—
- (a) 'n laer en hoër drempel bepaal van gesamentlike jaarlikse omset of bates, of 'n laer en hoër drempel van kombinasies van omset en bates, in die Republiek, in die algemeen, of in verband met besondere nywerhede, vir doeleindes van bepaling van kategorieë van samesmeltings in subartikel (5) beoog; en
- 35 (b) 'n metode bepaal vir die berekening van jaarlikse omset of bates wat met betrekking tot elkeen van daardie drempels toegepas moet word.
- (2) Die Minister kan 'n nuwe bepaling ingevolge subartikel (1) in oorleg met die Mededingingskommissie maak.
- 40 (3) Alvorens 'n bepaling in hierdie artikel beoog gemaak word, moet die Minister, in oorleg met die Mededingingskommissie 'n kennisgewing in die *Staatskoerant* publiseer—
- (a) wat die voorgestelde drempel en metode van berekening vir doeleindes van hierdie artikel uiteensit; en
- 45 (b) wat vra vir skriftelike voorleggings oor daardie voorstel.
- (4) Binne ses maande na publikasie van 'n kennisgewing ingevolge subartikel (3), moet die Minister, in oorleg met die Mededingingskommissie, 'n kennisgewing in die *Staatskoerant* publiseer—
- (a) wat die nuwe drempel en metode van berekening vir doeleindes van hierdie artikel uiteensit; en
- 50 (b) wat die effektiewe datum van daardie drempel vermeld.
- (5) Vir doeleindes van hierdie Hoofstuk beteken—
- (a) 'n klein samesmelting' 'n samesmelting of voorgestelde samesmelting met 'n waarde van, of minder as, die laer drempel ingevolge subartikel (1)(a) bepaal;

- (b) '**an intermediate merger**' means a merger or proposed merger with a value between the lower and higher thresholds established in terms of subsection (1)(a); and
- (c) '**a large merger**' means a merger or proposed merger with a value at or above the higher threshold established in terms of subsection (1)(a).

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Merger defined

12. (1) (a) For purposes of *this Act*, a merger occurs when one or more *firms* directly or indirectly acquire or establish direct or indirect control over the whole or part of the business of another *firm*.

(b) A merger contemplated in paragraph (a) may be achieved in any manner, including through—

- (i) purchase or lease of the shares, an interest or assets of the other *firm* in question; or

- (ii) amalgamation or other combination with the other *firm* in question.

(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;

(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);

(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 or 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

(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).

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Consideration of mergers

12A. (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—

(a) if it appears that the merger is likely to substantially prevent or lessen competition, then determine—

(i) whether or not 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 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); or

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- (b) '**n intermediére samesmelting**' 'n samesmelting of voorgestelde samesmelting met 'n waarde tussen die laer en hoér drempels ingevolge subartikel (1)(a) bepaal; en
 - (c) '**n groot samesmelting**' 'n samesmelting of voorgestelde same-smelting met 'n waarde van, of hoér as, die hoér drempel ingevolge subartikel (1)(a) bepaal.

Omskrywing van samesmelting

- 10 12. (1) (a) By die toepassing van hierdie Wet, vind 'n samesmelting plaas wanneer een of meer firmas regstreeks of onregstreeks regstreeks of onregstreekse beheer oor die geheel of 'n gedeelte van die besigheid van 'n ander firma verkry of bewerkstellig.

15 (b) 'n Samesmelting in paragraaf (a) beoog, kan op enige wyse bewerkstellig word, met inbegrip van deur—

15 (i) koop of huur van die aandele, 'n belang of bates van die ander firma betrokke; of

15 (ii) amalgamering of ander kombinasie met die ander betrokke firma.

20 (2) 'n Persoon beheer 'n firma indien daardie persoon—

20 (a) die voordeel van meer as die helfte van die uitgereikte aandelekapi-
taal van die firma besit;

20 (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;

25 (c) by magte is om die meerderheid van die direkteure van die firma aan te stel, of die aanstelling te veto;

25 (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);

30 (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 of om die meerderheid van die begunstigdes van die trust aan te stel of te verander;

35 (f) in die geval van 'n beslote korporasie, die meerderheid van die ledebelang besit, of die meerderheid van die ledestemme in die beslote korporasie regstreeks beheer, of die reg het om dit te beheer; of

35 (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 in paragraaf (a) tot (f) bedoel.

Oorweging van samesmeltings

- (b) otherwise, 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 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—
- (a) the actual and potential level of import competition in the market;
 - (b) the ease of entry into the market, including tariff and regulatory barriers;
 - (c) the level and trends of concentration, and history of collusion, in the market;
 - (d) the degree of countervailing power in the market;
 - (e) the dynamic characteristics of the market, including growth, innovation, and product differentiation;
 - (f) the nature and extent of vertical integration in the market;
 - (g) 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
 - (h) 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—
- (a) a particular industrial sector or region;
 - (b) employment;
 - (c) the ability of *small businesses*, or *firms* controlled or owned by historically disadvantaged persons, to become competitive; and
 - (d) the ability of national industries to compete in international markets.

Small merger notification and implementation

- 13. (1)** A party to a small merger—
- (a) is not required to notify the Competition Commission of that merger unless the Commission requires it to do so in terms of subsection (3); and
 - (b) may implement that merger without approval, unless required to notify the Competition Commission in terms of subsection (3).
- (2) A party to a small merger may voluntarily notify the Competition Commission of that merger at any time.
- (3) Within six months after a small merger is implemented, the Competition Commission may require the parties to that merger to notify the Commission of that merger in the *prescribed* manner and form if, in the opinion of the Commission, having regard to the provisions of section 12A, the merger—
- (a) may substantially prevent or lessen competition; or
 - (b) cannot be justified on public interest grounds.
- (4) A party to a merger contemplated in subsection (3) may take no further steps to implement that merger until the merger has been approved or conditionally approved.
- (5) Within 20 business days after all parties to a small merger have fulfilled all their notification requirements in the *prescribed* manner and form, the Competition Commission—
- (a) may extend the period in which it has to consider the proposed merger by a single period not exceeding 40 business days and, in that case,

- (b) 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.
- 5 (2) Wanneer bepaal word of 'n samesmelting mededinging waarskynlik wesenlik sal voorkom of verminder of nie, 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—
- 10 (a) die werklike en potensiële vlak van invoermededinging in die mark;
- (b) die gemak van toetreden tot die mark, met inbegrip van tarief- en regulatoriese hindernisse;
- 15 (c) die vlak, neigings van konsentrasie en geskiedenis van samespanning in die mark;
- (d) die graad van kompenserende krag in die mark;
- (e) die dinamiese eienskappe van die mark, met inbegrip van groei, innovering en produkdifferentiasie;
- 20 (f) die aard en omvang van vertikale integrasie in die mark;
- (g) of die besigheid of gedeelté van die besigheid, of 'n party tot die samesmelting of voorgestelde samesmelting, gefaal het, of waarskynlik sal faal; en
- (h) of die samesmelting sal lei tot die verwijdering van 'n doeltreffende mededinging.
- 25 (3) Wanneer bepaal word of 'n samesmelting op gronde van openbare belang geregverdig kan word of nie, moet die Mededingingskommissie of die Mededingingstribunaal die uitwerking oorweeg wat die samesmelting sal hê op—
- 30 (a) 'n besondere nywerheidsektor of streek;
- (b) indiensnemming;
- (c) die vermoë van kleinsake, of van firmas beheer of besit deur histories benadeelde persone, om mededingend te raak; en
- (d) die vermoë van nasionale nywerhede om in internasionale markte mee te ding.

35 Aanmelding en toepassing van klein samesmelting

- 13. (1) 'n Party tot 'n klein samesmelting**
- (a) word nie van verlang om die Mededingingskommissie van daardie samesmelting in kennis te stel nie tensy die Kommissie die party ingevolge subartikel (3) versoek om dit te doen; en
- 40 (b) kan daardie samesmelting sonder goedkeuring toepas tensy daar van die party verlang word om die Mededingingskommissie ingevolge subartikel (3) in kennis te stel.
- (2) 'n Party tot 'n klein samesmelting kan die Mededingingskommissie te eniger tyd uit vrye wil van daardie samesmelting in kennis stel.
- 45 (3) Binne ses maande na die toepassing van 'n klein samesmelting, kan die Mededingingskommissie van die partye tot daardie samesmelting verlang om die Kommissie van daardie samesmelting op die voorgeskrewe wyse en in die voorgeskrewe vorm in kennis te stel indien, na die mening van die Kommissie, met inagneming van die bepalings van artikel 12A. die samesmelting—
- 50 (a) mededinging wesenlik kan voorkom of verminder; of
- (b) nie op gronde van openbare belang geregverdig kan word nie.
- (4) 'n Party tot 'n samesmelting in subartikel (3) beoog, mag geen verdere stappe doen om daardie samesmelting toe te pas nie totdat die samesmelting goedgekeur of voorwaardelik goedgekeur is.
- 55 (5) Binne 20 besigheidsdae nadat alle partye tot 'n klein samesmelting aan al hul aanmeldingsvereistes op die voorgeskrewe wyse en in die voorgeskrewe vorm voldoen het—
- 60 (a) kan die Mededingingskommissie die tydperk waarbinne hy die voorgestelde samesmelting moet oorweeg met 'n enkele tydperk verleng wat nie 40 besigheidsdae oorskry nie en, in daardie geval, 'n

- must issue an extension certificate to any party who notified it of the merger; or
- (b) after having considered the merger in terms of section 12A, must issue a certificate in the *prescribed* form—
- (i) approving the merger;
 - (ii) approving the merger subject to any conditions;
 - (iii) prohibiting implementation of the merger, if it has not been implemented; or
 - (iv) declaring the merger to be prohibited.
- (6) If, upon the expiry of the 20 business day period provided for in subsection (5), 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 (5)(a), the Commission has not issued a certificate referred to in subsection (5)(b), the merger must be regarded as having been approved, subject to section 15.
- (7) The Competition Commission must—
- (a) publish a notice of the decision in the *Gazette*; and
 - (b) issue written reasons for the decision if—
- (i) it prohibits or conditionally approves the merger; or
 - (ii) requested to do so by a party to the merger.

Notification and implementation of other mergers

- 13A.** (1) A party to an intermediate or a large merger must notify the Competition Commission of that merger, in the *prescribed* manner and form.
- (2) In the case of an intermediate or a large merger, the *primary acquiring firm* and the *primary target firm* must each provide a copy of the notice contemplated in subsection (1) to—
- (a) any *registered trade union* that represents a substantial number of its employees; or
 - (b) the employees concerned or representatives of the employees concerned, if there are no such *registered trade unions*.
- (3) The parties to an intermediate or large merger may not implement that merger until it has been approved, with or without conditions, by the Competition Commission in terms of section 14(1)(b), the Competition Tribunal in terms of section 16(2) or the Competition Appeal Court in terms of section 17.

Merger investigations

- 13B.** (1) The Competition Commission may direct an inspector to investigate any merger, and may designate one or more persons to assist the inspector.
- (2) The Competition Commission may require any *party to a merger* to provide additional information in respect of the merger.
- (3) Any person, whether or not a party to or a participant in merger proceedings, may voluntarily file any document, affidavit, statement or other relevant information in respect of that merger.

Competition Commission intermediate merger proceedings

- 14.** (1) Within 20 business days after all parties to an intermediate merger have fulfilled all their notification requirements in the *prescribed* manner and form, the Competition Commission—
- (a) may extend the period in which it has to consider the proposed merger by a single period not exceeding 40 business days and, in that case,

- verlengingsertikaat uitrek aan enige party wat hom van die same-smelting kennis gegee het; of
- (b) nadat die samesmelting ingevolge artikel 12A oorweeg is, moet die Mededingingskommissie 'n sertikaat in die voorgeskrewe vorm uitrek wat—
- 5 (i) die samesmelting goedkeur;
 - (ii) die samesmelting goedkeur behoudens enige voorwaardes;
 - (iii) die toepassing van die samesmelting verbied, indien dit nie toegepas is nie; of
 - 10 (iv) die samesmelting verbode verklaar.
- (6) Indien, by verstryking van die tydperk van 20 besigheidsdae in subartikel (5) bepaal, die Mededingingskommissie nie enige van die sertifikate in daardie subartikel bedoel uitgereik het nie of, by die verstryking van 'n verlengingstydperk in subartikel (5)(a) bedoel, die Kommissie nie 'n sertikaat in subartikel (5)(b) bedoel, uitgereik het nie, moet die samesmelting geag word goedgekeur te wees, behoudens artikel 15.
- (7) Die Mededingingskommissie moet—
- 20 (a) 'n kennisgewing van die besluit in die *Staatskoerant* publiseer; en
- (b) skriftelike redes vir die besluit verstrek indien—
- (i) dit die samesmelting verbied of voorwaardelik goedkeur; of
 - (ii) dit deur 'n party tot die samesmelting versoek word.

Aanmelding en toepassing van ander samesmeltings

- 13A.** (1) 'n Party tot 'n intermediére of 'n groot samesmelting moet die Mededingingskommissie op die voorgeskrewe wyse en in die voorgeskrewe vorm van daardie samesmelting in kennis stel.
- (2) In die geval van 'n intermediére of groot samesmelting, moet die primêre verkrygende firma en die primêre teikenfirma elkeen 'n afskrif van die kennisgewing in subartikel (1) beoog voorsien aan—
- 30 (a) enige geregistreerde vakbond wat 'n wesenlike getal van die werkne-mers van daardie firma verteenwoordig; of
- (b) indien daar geen sodanige geregistreerde vakbonde in daardie firma is nie, die betrokke werknemers, of verteenwoordigers van die betrokke werknemers.
- (3) Die partye tot 'n intermediére of groot samesmelting mag nie daardie samesmelting toepas nie alvorens dit, met of sonder voorwaardes, deur óf die Mededingingskommissie, ingevolge artikel 14(1)(b), óf die Mededingingstribunaal, ingevolge artikel 16(2), óf die Appèlhof vir Mededinging, ingevolge artikel 17, goedgekeur is.

Samesmeltingsondersoek

- 13B.** (1) Die Mededingingskommissie kan 'n inspekteur aansê om enige samesmelting te ondersoek, en kan een of meer persone aanwys om die inspekteur by te staan.
- (2) Die Mededingingskommissie kan van enige party tot 'n samesmelting verlang om bykomende inligting ten opsigte van die samesmelting te voorsien.
- (3) Enige persoon, hetsy 'n party tot, of 'n deelnemer in, same-smeltingsverrigtinge, kan uit vrye wil enige dokument, eedsverklaring, verklaring of ander tersaaklike inligting ten opsigte van die samesmelting indien.

Mededingingskommissie intermediére samesmeltingsverrigtinge

- 14.** (1) Binne 20 besigheidsdae nadat alle partye tot 'n intermediére samesmelting aan al hul aanmeldingsvereistes op die voorgeskrewe wyse en in die voorgeskrewe vorm voldoen het—
- 55 (a) kan die Mededingingskommissie die tydperk waarbinne dit die voorgestelde samesmelting moet oorweeg, verleng met 'n enkele tydperk van hoogtens 40 besigheidsdae, en in daardie geval, 'n

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- must issue an extension certificate to any party who notified it of the merger; or
- (b) after having considered the merger in terms of section 12A, must issue a certificate in the *prescribed* form—
- approving the merger;
 - approving the merger subject to any conditions; or
 - prohibiting implementation of the merger.
- (2) If, upon the expiry of the 20 business 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), the Commission has not issued a certificate referred to in subsection (1)(b), the merger must be regarded as having been approved, subject to section 15.
- (3) The Competition Commission must—
- (a) publish a notice of the decision in the *Gazette*; and
- (b) issue written reasons for the decision if—
- it prohibits or conditionally approves the merger; or
 - requested to do so by a party to the merger.

Competition Commission large merger proceedings

- 14A.** (1) After receiving notice of a large merger, the Competition Commission—
- (a) must refer the notice to the Competition Tribunal and to the *Minister*; and
- (b) within 40 business days after all parties to a large merger have fulfilled their *prescribed* notification requirements, must forward to the Competition Tribunal and the *Minister* a written recommendation, with reasons, whether or not implementation of the merger should be—
- approved;
 - approved subject to any conditions; or
 - prohibited.
- (2) The Competition Tribunal may extend the period for making a recommendation in respect of a particular merger upon an application by the Competition Commission, but the Tribunal may not grant an extension of more than 15 business days at a time.
- (3) If, upon the expiry of the period contemplated in subsection (1), or an extended period contemplated in subsection (2), the Competition Commission has neither applied for an extension or further extension, as the case may be, nor forwarded a recommendation to the Competition Tribunal, any party to the merger may apply to the Tribunal to begin the consideration of the merger without a recommendation from the Commission.
- (4) Upon receipt of an application by a party contemplated in subsection (3), the Tribunal must set a date for proceedings in respect of that merger.

Revocation of merger approval

- 15.** (1) The Competition Commission may revoke its own decision to approve or conditionally approve a small or intermediate merger if—
- (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.
- (2) If the Competition Commission revokes a decision to approve a

- verlengingsertifikaat uitreik aan enige party wat hom van die samesmelting in kennis gestel het; of
- (b) moet die Mededingingskommissie, na oorweging van die samesmelting ingevolge artikel 12A, 'n sertifikaat in die voorgeskrewe vorm uitreik—
- wat die samesmelting goedkeur;
 - wat die samesmelting goedkeur, behoudens enige voorwaardes; of
 - wat die toepassing van die samesmelting verbied.
- (2) Indien, by verstryking van die tydperk van 20 besigheidsdae, in subartikel (1) bepaal, die Mededingingskommissie nie enige van die sertifikate in daardie subartikel bedoel, uitgereik het nie, of by verstryking van 'n verlengingstydperk in subartikel 1(a) beoog, die Kommissie nie 'n sertifikaat in subartikel 1(b) bedoel, uitgereik het nie, moet die samesmelting geag word goedkeur te wees, behoudens subartikel 15.
- (3) Die Mededingingskommissie moet—
- 'n kennisgewing van die besluit in die *Staatskoerant* publiseer; en
 - skriftelike redes vir die besluit verstrek indien—
 - hy die samesmelting verbied of voorwaardelik goedkeur; of
 - hy deur 'n party tot die samesmelting versoek word om dit te doen.

Mededingingskommissie groot samesmeltingsverrigtinge

- 14A.** (1) Na ontvangs van 'n kennisgewing van 'n groot samesmelting, moet die Mededingingskommissie—
- (a) die kennisgewing na die Mededingingstribunaal en die Minister verwys; en
- (b) binne 40 besigheidsdae nadat alle partye tot 'n groot samesmelting aan hul voorgeskrewe aanmeldingsvereistes voldoen het, 'n skriftelike aanbeveling aan die Mededingingstribunaal en die Minister rig, saam met redes, oor of die toepassing van die samesmelting—
- goedgekeur moet word;
 - behoudens enige voorwaardes goedgekeur moet word; of
 - verbied moet word.
- (2) Die Mededingingstribunaal kan die tydperk waarbinne 'n aanbeveling ten opsigte van 'n besondere samesmelting gedoen moet word, uitstel op aansoek deur die Mededingingskommissie, maar die Tribunaal mag nie 'n verlenging van meer as 15 besigheidsdae per geleentheid verleen nie.
- (3) Indien, by verstryking van die tydperk in subartikel (1) beoog, of 'n verlengde tydperk in subartikel (2) beoog, die Mededingingskommissie nie om verlenging of verdere verlenging, na gelang van die geval, aansoek gedoen het nie, of 'n aanbeveling aan die Mededingingstribunaal deurgestuur het nie, kan enige party tot 'n samesmelting by die Tribunaal aansoek doen om die oorweging van die samesmelting te begin sonder 'n aanbeveling van die Kommissie.
- (4) By ontvangs van 'n aansoek deur 'n party in subartikel (3) beoog, moet die Tribunaal 'n datum vir verrigtinge ten opsigte van daardie samesmelting bepaal.

Intrekking van samesmeltingsgoedkeuring

- 15.** (1) Die Mededingingskommissie kan sy eie besluit om 'n klein of intermediêre samesmelting goed te keur of voorwaardelik goed te keur, intrek indien—
- die besluit gegrond was op verkeerde inligting waarvoor 'n party tot die samesmelting verantwoordelik is;
 - die goedkeuring deur misleiding verkry is; of
 - 'n firma wat betrokke is 'n verpligting wat aan die besluit gekoppel was, verbreek het.
- (2) Indien die Mededingingskommissie 'n besluit om 'n samesmelting kragtens subartikel (1) goed te keur, intrek, kan dit daardie samesmelting

merger under subsection (1), it may prohibit that merger even though any time limit set out in this Chapter may have elapsed.

Competition Tribunal merger proceedings

16. (1) If the Competition Commission approves—

- (a) a small or intermediate merger subject to any conditions, or prohibits such merger, any party to the merger, by written notice and in the *prescribed* form, may request the Competition Tribunal to consider the conditions or prohibited merger; or
- (b) an intermediate merger, or approves such merger subject to any conditions, a person who in terms of section 13A(2) is required to be given notice of the merger, by written notice and in the *prescribed* form, may request the Competition Tribunal to consider the approval or conditional approval, provided the person had been a participant in the proceedings of the Competition Commission.

(2) Upon receiving a referral of a large merger and recommendation from the Competition Commission in terms of section 14A(1), or a request in terms of subsection (1), the Competition Tribunal must consider the merger in terms of section 12A and the recommendation or request, as the case may be, and within the *prescribed* time—

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

(3) Upon application by the Competition Commission, the Competition Tribunal may revoke its own decision to approve or conditionally approve a merger, and section 15, read with the changes required by the context, applies to a revocation in terms of this subsection.

(4) The Competition Tribunal must—

- (a) publish a notice of a decision made in terms of subsection (2) or (3) in the *Gazette*; and
- (b) issue written reasons for any such decision.

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Competition Appeal Court merger proceedings

17. (1) Within 20 business days after notice of a decision by the Competition Tribunal in terms of section 16, an appeal from that decision may be made to the Competition Appeal Court, subject to its rules, by—

- (a) any party to the merger; or
- (b) a person who, in terms of section 13A(2), is required to be given notice of the merger, provided the person had been a participant in the proceedings of the Competition Tribunal.

(2) The Competition Appeal Court may—

- (a) set aside the decision of the Competition Tribunal;
- (b) amend the decision by ordering or removing restrictions, or by including or deleting conditions; or
- (c) confirm the decision.

(3) If the Competition Appeal Court sets aside a decision of the Competition Tribunal, the Court must—

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

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Intervention in merger proceedings

18. (1) In order to make representations on any public interest ground referred to in section 12A(3), the Minister may participate as a party in any intermediate or large merger proceedings before the Competition Commission, Competition Tribunal or Competition Appeal Court, in the *prescribed* manner.

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verbied, selfs al sou enige tydsbeperking in hierdie Hoofstuk uiteengesit | reeds verval het.

Mededingingstribunaal samesmeltingsverrigtinge

16. (1) Indien die Mededingingskommissie—

- (a) 'n klein of intermediêre samesmelting behoudens enige voorwaardes goedkeur, of so 'n samesmelting verbied, kan enige party tot die samesmelting, by skriftelike kennisgewing en in die voorgeskrewe vorm, die Mededingingstribunaal versoek om die voorwaardes of verbode samesmelting te oorweeg; of
- (b) 'n intermediêre samesmelting goedkeur, of so 'n samesmelting behoudens enige voorwaardes goedkeur, kan 'n persoon aan wie, ingevolge artikel 13A(2), kennis van die samesmelting gegee moet word, by skriftelike kennisgewing en in die voorgeskrewe vorm, die Mededingingstribunaal versoek om die goedkeuring of voorwaardelike goedkeuring te oorweeg, mits die persoon 'n deelnemer in die verrigtinge van die Mededingingskommissie was.,
- (2) By ontvangs van 'n verwysing van 'n groot samesmelting, en van 'n aanbeveling van die Mededingingskommissie ingevolge artikel 14A(1), of van 'n versoek ingevolge subartikel (1), moet die Mededingingstribunaal die samesmelting ingevolge artikel 12A, en ook die aanbeveling of versoek, na gelang van die geval, oorweeg en binne die voorgeskrewe tydperk—
 - (a) die samesmelting goedkeur;
 - (b) die samesmelting goedkeur, behoudens enige voorwaardes; of
 - (c) die toepassing van die samesmelting verbied.
- (3) Die Mededingingstribunaal kan, op aansoek deur die Mededingingskommissie, sy eie besluit om 'n samesmelting goed te keur of voorwaardelik goed te keur, intrek, en artikel 15, saamgelees met die veranderinge deur die konteks vereis, is van toepassing op 'n intrekking ingevolge hierdie subartikel.
- (4) Die Mededingingstribunaal moet—
 - (a) 'n kennisgewing in die *Staatskoerant* publiseer van 'n besluit ingevolge subartikel (2) of (3) geneem; en
 - (b) skriftelike redes vir enige sodanige besluit verstrek.

Appèlhof vir Mededinging samesmeltingsverrigtinge

17. (1) Binne 20 besigheidsdae na 'n kennisgewing van 'n besluit deur die Mededingingstribunaal ingevolge artikel 16, kan teen daardie besluit na die Appèlhof vir Mededinging appelleer word, behoudens sy reëls, deur—

- (a) enige party tot die samesmelting; of
- (b) 'n persoon aan wie, ingevolge artikel 13A(2), kennis van die samesmelting gegee moet word, mits die persoon 'n deelnemer in die verrigtinge van die Mededingingstribunaal was.
- (2) Die Appèlhof vir Mededinging kan—
 - (a) die besluit van die Mededingingstribunaal tersyde stel;
 - (b) die besluit wysig deur beperkings te beveel of te verwijder, of deur voorwaardes toe te voeg of te skrap; of
 - (c) die besluit bekragtig.
- (3) Indien die Appèlhof vir Mededinging 'n besluit van die Mededingingstribunaal tersyde stel, moet die Hof—
 - (a) die samesmelting goedkeur;
 - (b) die samesmelting behoudens enige voorwaardes goedkeur; of
 - (c) toepassing van die samesmelting verbied.

Ingryping in samesmeltingsverrigtinge

18. (1) Ten einde voorleggings te doen op enige gronde van openbare belang in artikel 12A(3) bedoel, kan die Minister, as 'n party, deelneem aan enige intermediêre of groot samesmeltingsverrigtinge voor die Mededingingskommissie, die Mededingingstribunaal of die Appèlhof vir Mededinging, op die voorgeskrewe wyse.

Act No. 39, 2000

COMPETITION SECOND AMENDMENT ACT, 2000

(2) Despite anything to the contrary in *this Act*, the Competition Commission may not make a decision in terms of section 13(5)(b) or 14(1)(b), and the Competition Tribunal may not make an order in terms of section 16(2), if the—

(a) merger constitutes—

- (i) an acquisition of shares for which permission is required in terms of section 37 of the Banks Act, 1990 (Act No. 94 of 1990); or
- (ii) a transaction for which consent is required in terms of section 54 of the Banks Act, 1990 (Act No. 94 of 1990); and

(b) Minister of Finance has, in the *prescribed* manner, issued a notice to the Commissioner specifying the names of the parties to the merger and certifying that—

- (i) the merger is a merger contemplated in paragraph (a)(i) or (ii); and
- (ii) it is in the public interest that the merger is subject to the jurisdiction of the Banks Act, 1990 (Act No. 94 of 1990), only.

(3) Sections 13(6) and 14(2) do not apply to a merger in respect of which the Minister of Finance has issued a certificate contemplated in subsection (2).".

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Amendment of section 19 of Act 89 of 1998

7. Section 19 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The Competition Commission consists of the Commissioner and one or more Deputy Commissioners, [as may be necessary] appointed by the *Minister* in terms of *this Act*.”. 25

Amendment of section 21 of Act 89 of 1998

8. Section 21 of the principal Act is hereby amended—

(a) by the substitution in subsection (3) for paragraphs (a) and (b) of the following paragraphs, respectively:

“(a) within [14] 10 business 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] then sitting, within [14] 10 business days after the commencement of the next [session] sitting.”; and

(b) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:

“The *Minister*, [may] in consultation with the [Competition Commission] Commissioner and by notice in the *Gazette*, may prescribe regulations for matters relating to the functions of the Commission, including—”. 35 40

Amendment of section 24 of Act 89 of 1998

9. Section 24 of the principal Act is hereby amended by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:

“When an inspector performs any function in terms of [Chapter 5] *this Act*, the inspector must—”. 45

Amendment of section 26 of Act 89 of 1998

10. Section 26 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(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

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- (2) Ondanks enigets tot die teendeel in hierdie Wet, mag die Mededingingskommisie nie 'n besluit ingevolge artikel 13(5)(b) of 14(1)(b) neem nie, en die Mededingingstribunaal mag nie 'n bevel ingevolge artikel 16(2) gee nie, indien die—
- 5 (a) samesmelting—
 (i) 'n verkryging van aandele uitmaak waarvoor toestemming ingevolge artikel 37 van die Bankwet, 1990 (Wet No. 94 van 1990), vereis word; of
 (ii) 'n transaksie uitmaak waarvoor toestemming ingevolge artikel 54 van die Bankwet, 1990 (Wet No. 94 van 1990), vereis word; en
- 10 (b) Minister van Finansies, op die voorgeskrewe wyse, 'n kennisgewing aan die Kommissaris uitgereik het wat die name van die partye tot die samesmelting bepaal en wat sertifiseer dat—
 (i) die samesmelting 'n samesmelting beoog in paragraaf (a)(i) of (ii) is; en
 (ii) dit in die openbare belang is dat die samesmelting slegs aan die jurisdiksie van die Bankwet, 1990 (Wet No. 94 van 1990), onderworpe is.
- 15 (3) Artikel 13(6) en 14(2) is nie van toepassing op 'n samesmelting ten opsigte waarvan die Minister van Finansies 'n sertifikaat in subartikel (2) beoog, uitgereik het nie.”.
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Wysiging van artikel 19 van Wet 89 van 1998

7. Artikel 19 van die Hoofwet word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:
- 25 “(2) Die Mededingingskommisie bestaan uit die Kommissaris, en een of meer Adjunkkommissarisse [wat nodig mag wees] deur die Minister, ingevolge hierdie Wet, aangestel.”.

Wysiging van artikel 21 van Wet 89 van 1998

8. Artikel 21 van die Hoofwet word hierby gewysig—
- 30 (a) deur in subartikel (3) paragrawe (a) en (b) onderskeidelik deur die volgende paragrawe te vervang:
 “(a) binne [14 dae] 10 besigheidsdae na ontvangs van die verslag van die Mededingingskommisie, [indien die Parlement dan in sitting is]; of
 35 (b) indien die Parlement nie dan in sitting is nie, binne [14 dae] 10 besigheidsdae na aanvang van die daaropvolgende [sessie] sitting”; en
- (b) deur in subartikel (4) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:
 40 “Die Minister kan, in oorleg met die [Mededingingskommisie] Kommissaris, en by kennisgewing in die Staatskoerant, regulasies uitvaardig vir aangeleenthede wat verband hou met die Kommissie, met inbegrip van—”.

Wysiging van artikel 24 van Wet 89 van 1998

- 45 9. Artikel 24 van die Hoofwet word hierby gewysig deur in subartikel (4) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:
 “Wanneer 'n inspekteur enige funksies ingevolge [Hoofstuk 5] hierdie Wet uitoefen, moet die inspekteur—”.

Wysiging van artikel 26 van Wet 89 van 1998

- 50 10. Artikel 26 van die Hoofwet word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:
 “(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
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public call for nominations [which must be published by the Minister in the Gazette].”.

Substitution of section 27 of Act 89 of 1998

11. The following section is hereby substituted for section 27 of the principal Act:

“Functions of Competition Tribunal

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

- (a) [grant an exemption from a relevant provision of *this Act*] adjudicate on any conduct prohibited in terms of Chapter 2, to determine whether prohibited conduct has occurred, and, if so, to impose any remedy provided for in *this Act*; 10
- (b) [authorise a merger, with or without conditions, or prohibit a merger] adjudicate on any other matter that may, in terms of *this Act*, be considered by it, and make any order provided for in *this Act*;
- (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] hear appeals from, or review any decision of, the Competition Commission that may in terms of *this Act* be referred to it; and 15
- (d) [grant an order for costs in terms of section 57] make any ruling or order necessary or incidental to the performance of its functions in terms of *this Act*. 20

(2) Section 21(4), read with the changes required by the context, applies to the Competition Tribunal, and the reference in that section to the Commissioner must be construed as a reference to the Chairperson of the Tribunal.”. 25

Amendment of section 31 of Act 89 of 1998

12. Section 31 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsections:

“(5) If the Competition Tribunal may extend or reduce a prescribed period in 30 terms of *this Act*, the Chairperson of the Tribunal or another member of the Tribunal assigned by the Chairperson, sitting alone, may make an order—

- (a) extending or reducing that period; or
- (b) condoning late performance of an act that is subject to that period.

(6) A decision of the Chairperson or other person contemplated in subsection (5), or of a majority of the members of a panel in any other matter, is the decision of the Tribunal.”. 35

Amendment of section 40 of Act 89 of 1998

13. Section 40 of the principal Act is hereby amended—

- (a) by the substitution for subsection (7) of the following subsection: 40
“(7) The Commissioner is the accounting authority of the Competition Commission for purposes of the Public Finance Management Act, 1999 (Act No. 1 of 1999).”; and
- (b) by the deletion of subsection (8).

Amendment of section 41 of Act 89 of 1998

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14. Section 41 of the principal Act is hereby amended by the substitution in subsection (2) for paragraphs (a) and (b) of the following paragraphs, respectively:

- “(a) within [14] 10 business days after receiving that report from the Competition Commission [if Parliament is in session at that time]; or

reaksie op 'n openbare oproep om nominasies[**, wat deur die Minister in die Staatskoerant gepubliseer moet word]**.”.

Vervanging van artikel 27 van Wet 89 van 1998

11. Artikel 27 van die Hoofwet word hierby deur die volgende artikel vervang:

5 **“Funksies van Mededingingstribunaal**

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

(a) [vrystelling van 'n relevante bepaling van hierdie Wet verleen enige optrede ingevolge Hoofstuk 2 verbied, bereg om te bepaal of verbode optrede plaasgevind het, en, indien wel, enige regshulp verleen waarvoor in hierdie Wet voorsiening gemaak word;

(b) ['n samesmelting magtig, met of sonder voorwaardes, of 'n samesmelting verbied] enige ander aangeleentheid bereg wat ingevolge hierdie Wet deur hom oorweeg kan word en enige bevel gee waarvoor in hierdie Wet voorsiening gemaak word;

(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 regsmiddel instel waarvoor in Hoofstuk 6 voorseening gemaak; of] appelle aanhoor, of enige besluit hersien, van die Mededingingskommissie wat ingevolge hierdie Wet na hom verwys kan word; en

(d) ['n bevel vir koste ingevolge artikel 57 toestaan.] enige reëeling maak of bevel gee wat nodig of bykomend tot die uitvoering van sy funksies ingevolge hierdie Wet is.

(2) Artikel 21(4), saamgelees met die veranderinge deur die konteks vereis, is op die Mededingingstribunaal van toepassing, en die verwysing in daardie artikel na die Kommissaris moet uitgelê word as 'n verwysing na die Voorsitter van die Tribunaal.”

Wysiging van artikel 31 van Wet 89 van 1998

30 12. Artikel 31 van die Hoofwet word hierby gewysig deur subartikel (5) deur die volgende subartikels te vervang:

“(5) Indien die Mededingingstribunaal 'n voorgeskrewe tydperk ingevolge hierdie Wet kan verleng of verminder, kan die Voorsitter van die Tribunaal of ander lid van die Tribunaal deur die Voorsitter aangewys, alleen sittende, 'n bevel gee—

(a) wat daardie tydperk verleng of verminder; of

(b) wat laat uitvoering van 'n handeling wat aan daardie tydperk onderhewig is, kondoneer.

(6) 'n Besluit van die Voorsitter of ander persoon in subartikel (5) beoog, of van die meerderheid van die lede van 'n paneel in enige ander aangeleentheid, is die besluit van die Tribunaal.”.

Wysiging van artikel 40 van Wet 89 van 1998

13. Artikel 40 van die Hoofwet word hierby gewysig—

(a) deur subartikel (7) deur die volgende subartikel te vervang:

“(7) Die Kommissaris is die rekenpligtige gesag van die Mededingingskommissie vir doeleinades van die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999).”; en

(b) deur subartikel (8) te skrap.

Wysiging van artikel 41 van Wet 89 van 1998

50 14. Artikel 41 van die Hoofwet word hierby gewysig deur in subartikel (2) paragrawe (a) en (b) deur onderskeidelik die volgende paragrawe te vervang:

“(a) binne [14 dae] 10 besigheidsdae na ontvangs van die verslag van die Mededingingskommissie, [indien die Nasionale Vergadering dan in sitting is]; of

- (b) if Parliament is not [in session] then sitting, within [14] 10 business days after the commencement of the next [session] sitting".

Substitution of Chapters 5 and 6 of Act 89 of 1998

15. The following Chapters are hereby substituted for Chapters 5 and 6 of the principal Act, respectively:

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“CHAPTER 5

INVESTIGATION AND ADJUDICATION PROCEDURES

PART A

Confidential information

Right of informants to claim confidentiality 10

44. (1) (a) A person, when submitting information to the Competition Commission or the Competition Tribunal, may identify information that the person claims to be *confidential information*.

(b) Any claim contemplated in paragraph (a) must be supported by a written statement in the *prescribed form*, explaining why the information is confidential.

(2) The Competition Commission is bound by a claim contemplated in subsection (1), but may at any time during its proceedings refer the claim to the Competition Tribunal to determine whether or not the information is *confidential information*.

(3) The Competition Tribunal may—

- (a) determine whether or not the information is confidential; and
- (b) if it finds that the information is confidential, make any appropriate order concerning access to that information.

Disclosure of information 25

45. (1) A person who seeks access to information that is subject to a claim that it is *confidential information* may apply to the Competition Tribunal in the *prescribed manner and form*, and the Competition Tribunal may—

(a) determine whether or not the information is *confidential information*; and

(b) if it finds that the information is confidential, make any appropriate order concerning access to that *confidential information*.

(2) Within 10 business days after an order of the Competition Tribunal is made in terms of section 44(3), a party concerned may appeal against that decision to the Competition Appeal Court, subject to its rules.

(3) From the time information comes into the possession of the Competition Commission or Competition Tribunal until a final determination has been made concerning it, the Commission and Tribunal must treat as confidential, any information that—

(a) the Competition Tribunal has determined is *confidential information*; or

(b) is the subject of a claim in terms of this section.

(4) Once a final determination has been made concerning any information, it is confidential only to the extent that it has been accepted to be *confidential information* by the Competition Tribunal or the Competition Appeal Court.

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Restricted use of information

45A. (1) (a) When making any decision in terms of *this Act*, the Competition Commission, subject to paragraph (b), may take *confidential information* into account in making its decision.

(b) If the Commission's reasons for the decision would reveal any *confidential information*, the Commission must provide a copy of the

- (b) indien die Nasionale Vergadering nie dan [in sitting is] sit nie, binne [14 dae] 10 besigheidsdae na aanvang van die daaropvolgende [sessie] sitting.".

Vervanging van Hoofstukke 5 en 6 van Wet 89 van 1998

15. Hoofstukke 5 en 6 van die Hoofwet word hierby onderskeidelik deur die 5 volgende Hoofstukke vervang:

“HOOFSTUK 5

ONDERSOEK EN BEREGTINGSROSEDURES

DEEL A

Vertroulike inligting

10 Reg van informante op aanspraak op vertroulikheid

44. (1) (a) Wanneer 'n persoon inligting aan die Mededingingskommissie of die Mededingingstribunaal voorlê, kan die persoon inligting identifiseer wat hy of sy ag vertroulike inligting te wees.

15 (b) Enige aanspraak in paragraaf (a) beoog, moet ondersteun word deur 'n skriftelike verklaring in die voorgeskrewe vorm wat verduidelik waarom die inligting vertroulik is.

20 (2) Die Mededingingskommissie is gebonde aan 'n aanspraak in subartikel (1) beoog, maar kan te eniger tyd tydens sy verrigtinge die aanspraak na die Mededingingstribunaal verwys om te bepaal of die inligting vertroulike inligting is of nie.

(3) Die Mededingingstribunaal kan—

- (a) bepaal of die inligting vertroulik is of nie; en
 (b) indien dit bevind dat die inligting vertroulik is, enige toepaslike bevel rakende toegang tot daardie inligting gee.

25 Bekendmaking van inligting

45. (1) 'n Persoon wat toegang tot inligting versoek wat onderhewig is aan 'n aanspraak dat dit vertroulike inligting is, kan op die voorgeskrewe wyse en in die voorgeskrewe vorm by die Mededingingstribunaal aansoek doen en die Mededingingstribunaal kan—

30 (a) bepaal of die inligting vertroulike inligting is of nie; en
 (b) indien hy bevind dat die inligting vertroulik is, enige toepaslike bevel gee rakende toegang tot daardie vertroulike inligting.

35 (2) Binne 10 besigheidsdae nadat 'n bevel van die Mededingingstribunaal ingevolge artikel 44(3) gegee is, kan 'n betrokke party teen daardie beslissing na die Appèlhof vir Mededinging appelleer, behoudens sy reëls.

40 (3) Vanaf die tydstip waarop inligting tot die beskikking van die Mededingingskommissie of Mededingingstribunaal kom totdat 'n finale beslissing met betrekking daartoe gemaak is, moet die Kommissie en die Tribunaal enige inligting as vertroulik hanteer wat—
 (a) deur die Mededingingstribunaal as vertroulike inligting bevind is; of
 (b) die onderwerp van 'n aanspraak ingevolge hierdie artikel is.

45 (4) Wanneer 'n finale beslissing rakende enige inligting gemaak is, is dit slegs vertroulik in die mate wat die Mededingingstribunaal of die Appèlhof vir Mededinging dit as vertroulike inligting aanvaar het.

Beperkte gebruik van inligting

45A. (1) (a) Wanneer enige besluit ingevolge hierdie Wet geneem word, kan die Mededingingskommissie, behoudens paragraaf (b), vertroulike inligting in ag neem in die neem van sy besluit.

50 (b) Indien die Kommissie se redes vir die besluit enige vertroulike inligting sou openbaar, moet die Kommissie 'n afskrif van die voorge-

proposed reasons to the party concerned at least 10 business days before publishing those reasons.

(2) A party may apply to the Competition Tribunal within the period contemplated in subsection (1)(b) after receiving a copy of the proposed reasons, subject to its rules, for an appropriate order to protect the confidentiality of the relevant information.

(3) A party concerned may appeal against a decision of the Competition Tribunal in terms of subsection (2) to the Competition Appeal Court, subject to its rules.

(4) If a party applies to the Competition Tribunal in terms of subsection (2), the Competition Commission may not publish the proposed reasons until the Tribunal or the Competition Appeal Court, as the case may be, has made an order regarding the matter.

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PART B

Powers of search and summons

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—

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

(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
- (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.

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stelde redes aan die betrokke party voorsien minstens 10 besigheidsdae voor publikasie van daardie redes.

(2) 'n Party kan by die Mededingingstribunaal aansoek doen binne die tydperk in subartikel (1)(b) beoog na ontvangs van 'n afskrif van die voorgestelde redes, behoudens sy reëls, vir 'n toepaslike bevel om die vertroulikheid van die tersaaklike inligting te beskerm.

(3) 'n Betrokke party kan teen 'n beslissing van die Mededingingstribunaal ingevolge subartikel (2) na die Appèlhof vir Mededinging appelleer, behoudens sy reëls.

(4) Indien 'n party by die Mededingingstribunaal ingevolge subartikel (2) aansoek doen, mag die Mededingingskommissie nie die voorgestelde redes publiseer nie totdat die Tribunaal of die Appèlhof vir Mededinging, na gelang van die geval, 'n bevel rakende die aangeleentheid gegee het nie.

DEEL B

15 Bevoegdhede van deursoeking en dagvaarding

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 uitrek om enige perseel te betree en te deursoek wat binne die regsvbeogdheid van daardie regter of landdros 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,] ingevolge hierdie Wet 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 eniger tyd uitgereik word en moet spesifiek—

- (a) die perseel wat betree en deursoek mag word, uitwys; en
- (b) 'n inspekteur of 'n polisiebeampte magtig om die perseel te betree en te deursoek, en om enigiets in artikel 48 gelys te doen.

(3) 'n Lasbrief om te betree en te deursoek, is geldig totdat een van die volgende gebeure plaasvind:

- (a) die lasbrief uitgevoer is;
- (b) die lasbrief deur die persoon wat dit uitgerek 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
- (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 uitrek, 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, 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—
 - (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
- (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.

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.

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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;
- (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
- (h) attach and, if necessary, remove from the *premises* for examination and safekeeping, anything that has a bearing on the investigation.

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(2) Section [45(5)] 49A(3) 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.

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:

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(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.

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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.

(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—

(a) toestemming van daardie persoon verkry om die perseel te betree en te deursoek; of

(b) op redelike gronde glo dat 'n lasbrief kragtens 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.

(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 kragtens artikel 46 of 47 gemagtig word om 'n perseel te 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 verband hou met die ondersoek;

(d) enige artikel of dokument ondersoek wat op of in daardie perseel is wat verband hou met die ondersoek;

(e) inligting rakende enige artikel of dokument versoek van die eienaar of 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;

(g) enige rekenaarstelsel op die perseel gebruik, of bystand vereis van enige persoon op die perseel om daardie rekenaarstelsel te gebruik, om—

(i) enige data vervat in of beskikbaar vir daardie rekenaarstelsel, te soek;

(ii) enige rekord van daardie data te reproducere; en

(iii) enige uitdruk van daardie rekenaar, vir ondersoek en kopiëring, te verwijder; en

(h) enigets wat met die ondersoek verband hou, in beslag neem en, indien nodig, vir ondersoek en veilige bewaring, vanaf die perseel verwijder.

(2) Artikel [45 (5)] 49A(3) is van toepassing op 'n antwoord gegee of verklaring gedoen aan '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 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 inspekteur of polisiebeampte 'n manlike persoon deursoek.

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

Summons

- 49A.** (1) At any time during an investigation in terms of *this Act*, 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
 (b) at a time and place specified in the summons, to deliver or produce to the Commissioner, or a person authorised by the Commissioner, any book, document or other object specified in the summons.
- (2) A person questioned by an inspector conducting an investigation, or by the Commissioner or other person in terms of subsection (1), must answer each question truthfully and to the best of that person's ability, but the person is not obliged to answer any question if the answer is self-incriminating.
- (3) No self-incriminating answer given or statement made to a person exercising any power in terms of this section is admissible as evidence against the person who gave the answer or made the statement in criminal proceedings, 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.

- (3) 'n Persoon wat 'n perseel kragtens artikel 48 betree en deursoek moet alvorens enigeen ondervra word—
- 5 (a) daardie persoon adviseer oor die reg om op daardie tydstip deur 'n advokaat of prokureur bygestaan te word; en
- (b) daardie persoon toelaat om daardie reg uit te oefen.
- (4) 'n Persoon wat enigiets verwyder van 'n perseel wat deursoek word, moet—
- 10 (a) 'n kwitansie daarvoor aan die eienaar of persoon in beheer van die perseel uitrek; en
- (b) dit so gou doenlik terugbesorg nadat die doel waarvoor dit verwyder is, 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 geprivelegieerde inligting is of behels.
- 15 (6) Indien die eienaar of persoon in beheer van die artikel of dokument, ingevolge 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.
- 20 (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.
- 25 (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.
- 30 (9) Die Mededingingskommissie kan enigeen vergoed wat skade ly as gevolg van gedwonge betreding gedurende 'n deursoeking waartydens niemand verantwoordelik vir die perseel, teenwoordig was nie.
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Dagvaarding

- 49A.** (1) Te eniger tyd gedurende 'n ondersoek ingevolge hierdie Wet, 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 verband hou met daardie onderwerp—
- 40 (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 vermeld; of
- (b) om enige boek, dokument of ander voorwerp in die dagvaarding 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 vermeld.
- 45 (2) 'n Persoon wat deur 'n inspekteur wat 'n ondersoek uitvoer, of deur die Kommissaris of ander persoon ingevolge subartikel (1), 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 selfinkriminerend is nie.
- 50 (3) Geen selfinkriminerende antwoord gegee of verklaring gedoen aan 'n persoon wat bevoegdhede ingevolge hierdie artikel uitoefen, is toelaatbaar as getuienis teen die persoon wat die antwoord gegee of die verklaring gedoen het in strafregtelike verrigtinge nie, behalwe in strafregtelike verrigtinge weens meineed, of waarin daardie persoon verhoor word weens 'n misdryf in artikel 72 of artikel 73 (2)(d) beoog, en dan slegs in die mate waarin die antwoord of verklaring relevant is om die misdryf waarvan die persoon aangekla is, te bewys.
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PART C**Complaint procedures****Initiating complaint**

49B. (1) The Commissioner may initiate a complaint against an alleged *prohibited practice*. 5

(2) Any person may—

- (a) submit information concerning an alleged *prohibited practice* to the Competition Commission, in any manner or form; or
- (b) submit a complaint against an alleged *prohibited practice* to the Competition Commission, in the *prescribed form*.

(3) Upon initiating or receiving a complaint in terms of this section, the Commissioner must direct an inspector to investigate the complaint as quickly as practicable. 10

(4) At any time during an investigation, the Commissioner may designate one or more persons to assist the inspector. 15

Interim relief

49C. (1) At any time, whether or not a hearing has commenced into an alleged *prohibited practice*, the *complainant* may apply to the Competition Tribunal for an interim order in respect of the alleged practice. 20

(2) The Competition Tribunal—

- (a) must give the *respondent* a reasonable opportunity to be heard, having regard to the urgency of the proceedings; and
- (b) may grant an interim order if it is reasonable and just to do so, having regard to the following factors:
 - (i) The evidence relating to the alleged *prohibited practice*;
 - (ii) the need to prevent serious or irreparable damage to the applicant; and
 - (iii) the balance of convenience.

(3) In any proceedings in terms of this section, the standard of proof is the same as the standard of proof in a High Court on a common law application for an interim interdict. 30

(4) An interim order in terms of this section may not extend beyond the earlier of the—

- (a) conclusion of a hearing into the alleged *prohibited practice*; or
- (b) date that is six months after the date of issue of the interim order.

(5) 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. 35

(6) Any party to an application may apply to the Competition Appeal Court to review a decision of the Competition Tribunal in terms of this section. 40

(7) The applicant may appeal to the Competition Appeal Court against a refusal by the Competition Tribunal to grant an interim order in terms of this section. 45

(8) The *respondent* may appeal to the Competition Appeal Court in terms of this section against any order of the Competition Tribunal that has a final or irreversible effect.

Consent orders

49D. (1) If, during, on or after the completion of the investigation of a complaint, the Competition 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 58(1)(b). 50

DEEL C**Klagteprosedures****Aanmelding van klagte**

- 49B.** (1) Die Kommissaris kan 'n klagte teen 'n beweerde verbode praktyk aanhangig maak.
 5 (2) Enige persoon kan—
 (a) inligting rakende 'n beweerde verbode praktyk aan die Mededingingskommissie voorlê, op enige wyse of in enige vorm; of
 10 (b) 'n klagte teen 'n beweerde verbode praktyk aan die Mededingingskommissie voorlê, in die voorgeskrewe vorm.
 (3) Die Kommissaris moet, wanneer 'n klagte ingevolge hierdie artikel aanhangig gemaak of ontvang word, 'n inspekteur aansê om die klagte so 15 gou doenlik te ondersoek.
 (4) Te eniger tyd gedurende 'n ondersoek, kan die Kommissaris een of meer persone aanwys om die inspekteur by te staan.

Tussentydse regshulp

- 49C.** (1) Te eniger tyd, het sy 'n verhoor na 'n beweerde verbode praktyk 'n aanvang geneem het of nie, kan die klaer by die Mededingingstribunaal aansoek doen om 'n tussentydse bevel ten opsigte van die beweerde praktyk.
 20 (2) Die Mededingingstribunaal—
 (a) moet die respondent 'n redelike geleentheid gun om aangehoor te word, met inagneming van die dringendheid van die verrigtinge; en
 25 (b) kan 'n tussentydse bevel verleen indien dit redelik en billik is om dit te doen, met inagneming van die volgende faktore:
 (i) Die getuienis in verband met die beweerde verbode praktyk;
 (ii) die nodigheid om ernstige of onherstelbare skade vir die applikant te voorkom; en
 (c) die oorwig van gerief.
 30 (3) By enige verrigtinge ingevolge hierdie artikel, is die bewyslas dieselfde as die bewyslas in 'n Hoë Hof in 'n gemeenregtlike aansoek om 'n tussentydse interdik.
 (4) 'n Tussentydse bevel ingevolge hierdie artikel mag nie langer duur nie as die vroegste van die—
 35 (a) afhandeling van 'n verhoor na die beweerde verbode praktyk; of
 (b) datum wat ses maande later is as die datum van die uitreiking van die tussentydse bevel.
 (5) Indien 'n tussentydse bevel verleen is, en 'n verhoor na daardie aangeleentheid nie binne ses maande na die datum van daardie bevel afgehandel is nie, kan die Mededingingstribunaal, op goeie grond aange- 40 toon, die tussentydse bevel verleng vir 'n verdere tydperk wat nie ses maande te bove gaan nie.
 (6) Enige party tot 'n aansoek kan by die Appèlhof vir Mededinging aansoek doen om 'n beslissing van die Mededingingstribunaal ingevolge hierdie artikel te hersien.
 45 (7) Die applikant kan na die Appèlhof vir Mededinging appelleer teen 'n weiering deur die Mededingingstribunaal om 'n tussentydse bevel ingevolge hierdie artikel te verleen.
 (8) Die respondent kan na die Appèlhof vir Mededinging ingevolge hierdie artikel appelleer teen enige bevel van die Mededingingstribunaal wat 'n finale of onomkeerbare uitwerking het.

Toestemmingsbevele

- 49D.** (1) Indien, gedurende, by of na die afhandeling van die ondersoek van 'n klagte, die Mededingingskommissie en die respondent saamstem oor die bepalings van 'n toepaslike bevel, kan die Mededingingstribunaal, sonder om enige getuienis aan te hoor, daardie ooreenkoms as 'n toestemmingsbevel ingevolge artikel 58(1)(b) bekragtig.

- (2) After hearing a motion for a consent order, the Competition Tribunal must—
- (a) make the order as agreed to and proposed by the Competition Commission and the *respondent*;
 - (b) indicate any changes that must be made in the draft order before it will make the order; or
 - (c) refuse to make the order.
- (3) With the consent of a *complainant*, a consent order may include an award of damages to the *complainant*.
- (4) A consent order does not preclude a *complainant* from applying for—
- (a) a declaration in terms of section 58(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*.

Outcome of complaint

- 50.** (1) At any time after initiating a complaint, the Competition Commission may refer the complaint to the Competition Tribunal.
- (2) Within one year after a complaint was submitted to it, the Commissioner must—
- (a) subject to subsection (3), refer the complaint 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 *prescribed form*.
- (3) When the Competition Commission refers a complaint to the Competition Tribunal in terms of subsection (2)(a), it—
- (a) may—
 - (i) refer all the particulars of the complaint as submitted by the *complainant*;
 - (ii) refer only some of the particulars of the complaint as submitted by the *complainant*; or
 - (iii) add particulars to the complaint as submitted by the *complainant*; and
 - (b) must issue a notice of non-referral as contemplated in subsection (2)(b) in respect of any particulars of the complaint not referred to the Competition Tribunal.
- (4) In a particular case—
- (a) the Competition Commission and the *complainant* may agree to extend the period allowed in subsection (2); or
 - (b) on application by the Competition Commission made before the end of the period contemplated in paragraph (a), the Competition Tribunal may extend that period.
- (5) If the Competition Commission has not referred a complaint to the Competition Tribunal, or issued a notice of non-referral, within the time contemplated in subsection (2) or the extended period contemplated in subsection (4), the Commission must be regarded as having issued a notice of non-referral on the expiry of the relevant period.

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] *complaint* directly to the Competition Tribunal, subject to its rules of procedure.

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

(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—

(2) Na aanhoor van 'n mosie vir 'n toestemmingsbevel, moet die Mededingingstribunaal—

- (a) die bevel gee soos ooreengeskou en voorgestel deur die Mededingingskommissie en die respondent;
- (b) enige veranderinge aantoon wat in die konsepbevel aangebring moet word alvorens die Mededingingstribunaal die bevel sal gee; of
- (c) weier om die bevel te gee.

(3) Met die toestemming van 'n klaer, mag 'n toestemmingsbevel 'n toekenning vir skadevergoeding aan die klaer insluit.

(4) 'n Toestemmingsbevel belet nie 'n klaer om aansoek te doen om—

- (a) 'n verklaring ingevolge artikel 58(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.

15 Uitslag van klagte

50. (1) Op enige tydstip na die klagte aanhangig gemaak is, kan die Mededingingskommissie die klagte na die Mededingingstribunaal verwys.

(2) Binne een jaar nadat 'n klagte aan hom voorgelê is, moet die Kommissaris—

- (a) behoudens subartikel (3), die klagte na die Mededingingstribunaal verwys, indien hy beslis dat 'n verbode praktyk bewys is; of
- (b) in enige ander geval, 'n kennisgewing van nie-verwysing, in die voorgeskrewe vorm, aan die klaer uitreik.

(3) Wanneer die Mededingingskommissie 'n klagte na die Mededingingstribunaal ingevolge subartikel (2)(a) verwys—

- (a) mag hy—
 - (i) al die besonderhede van die klagte soos deur die klaer voorgelê, verwys;
 - (ii) alleenlik 'n deel van die besonderhede van die klagte soos deur die klaer voorgelê, verwys; of
 - (iii) besonderhede voeg by die klagte soos deur die klaer voorgelê; en
- (b) moet hy 'n kennisgewing van nie-verwysing uitreik soos in subartikel (2)(b) beoog ten opsigte van enige besonderhede van die klagte wat nie na die Mededingingstribunaal verwys is nie.

(4) In 'n bepaalde geval—

- (a) kan die Mededingingskommissie en die klaer ooreenkou om die tydperk in subartikel (2) toegelaat, te verleng; of
- (b) op aansoek van die Mededingingskommissie wat gedoen is voor die einde van die tydperk in paragraaf (a) beoog, kan die Mededingingstribunaal die tydperk verleng.

(5) Indien die Mededingingskommissie nie 'n klagte na die Mededingingstribunaal verwys het nie, of nie 'n kennisgewing van nie-verwysing uitgereik het nie, binne die tydperk in subartikel (2) beoog of die verlengde tydperk in subartikel (4) beoog, word geag dat 'n kennisgewing van nie-verwysing by die verstryking van die tersaaklike tydperk, deur die Kommissie uitgereik is.

Verwysing na Mededingingstribunaal

51. (1) Indien die Mededingingskommissie 'n kennisgewing van nie-verwysing in reaksie op 'n klagte uitreik, kan die [betrokke] klaer die [aangeleentheid] klagte regstreeks na die Mededingingstribunaal verwys, behoudens sy reëls van prosedure.

(2) 'n Verwysing na die Mededingingstribunaal, hetsy deur die Mededingingskommissie ingevolge artikel [50(a)] 50(1), 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 publiseer.

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

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

PART D

Tribunal hearings and orders

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Hearings before Competition Tribunal

52. (1) The Competition Tribunal must conduct a hearing, subject to its rules, into every matter referred to it in terms of [section 50(a) or section 51(1)] *this Act*.

- (2) Subject to subsections (3) and (4), the Competition Tribunal—
- (a) must conduct its hearings in public, as expeditiously as possible, and in accordance with the principles of natural justice; and
 - (b) may conduct its hearings informally or in an inquisitorial manner.
- (2A) Despite subsection (2)(a), the Chairperson of the Tribunal may order that a matter be heard—
- (a) in chambers, if no oral evidence will be heard, or that oral submissions be made at the hearing; or
 - (b) by telephone or video conference, if it is in the interests of justice and expediency to do so.
- (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;
 - (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] *this Act*, and must issue written reasons for its decision.

(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

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

- (a) If the hearing is in terms of Part C—
- (i) the Commissioner, or any person appointed by the Commissioner;
 - [(b)] (ii) the complainant, if—
 - (aa) the complainant referred the complaint to the Competition Tribunal; or
 - (bb) in the opinion of the presiding member of the Competition Tribunal, the complainant's interest is not adequately represented by another participant, and then only to the extent required for the complainant's interest to be adequately represented;
 - [(c)] (iii) the [firm whose conduct forms the basis of the hearing] respondent; and
 - [(d)] (iv) any other person who has a material interest in the hearing, unless, in the opinion of the presiding member of the Competi-

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

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DEEL D**Tribunaalverhore en -bevele****Verhore voor Mededingingstribunaal**

- 52.** (1) Die Mededingingstribunaal moet behoudens sy reëls elke aangeleentheid wat na hom verwys word ingevolge [artikel 50(a) of artikel 51(1)] hierdie Wet verhoor.
 (2) Behoudens subartikel (3) en (4)—
 (a) moet die Mededingingstribunaal sy verhore in die openbaar hou, so spoedig moontlik, en ooreenkomsdig die beginsels van natuurlike geregtigheid; en
 (b) kan die Mededingingstribunaal sy verhore informeel of op inkwisiatoriiese wyse hou.
 (2A) Ondanks subartikel (2A) kan die Voorsitter van die Tribunaal beveel dat 'n aangeleentheid aangehoor word—
 (a) in kamers, indien geen mondelinge getuienis aangehoor sal word nie, of dat mondelinge voorleggings by die verhoor gedoen word; of
 (b) deur telefoon- of videokonferensie, indien dit in die belang van geregtigheid en bespoediging is om dit te doen.
 (3) Ondanks subartikel (2) kan die lid van die Tribunaal wat voortsit by 'n verhoor, lede van die publiek, of spesifieke persone of kategorieë persone, van bywoning van 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
 (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 uitrek ingevolge [Hoofstuk 6] hierdie Wet 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 om vertroulike inligting, ingevolge subartikel (3)(a) [verstrek] gegee, 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:
 (a) Indien die verhoor ingevolge Deel C is—
 (i) die Kommissaris, of enige persoon deur die Kommissaris aangestel;
 [(b)](ii) die klaer, indien—
 (aa) die klaer die klagte na die Mededingingstribunaal verwys het; of
 (bb) na die mening van die voorsittende lid van die Mededingingstribunaal, die klaer se belang nie genoegsaam deur 'n ander deelnemer verteenwoordig word nie, en dan alleenlik in die mate waarin dit nodig is om die klaer se belang voldoende te verteenwoordig;
 [(c)](iii) die [firma wie se optrede die grondslag van die verhoor vorm] respondent; en
 [(d)](iv) enige ander persoon wat 'n wesenlike belang by die verhoor het, tensy daardie belang, na die mening van die voorsittende lid van

- tion Tribunal, that interest is adequately represented by another participant, but only to the extent required for the complainant's interest to be adequately represented;
- (b) if the hearing is in terms of section 10 or Schedule 1—
- (i) the applicant for an exemption;
 - (ii) the Competition Commission;
 - (iii) the appellant, if the appellant is not the applicant for an exemption;
 - (iv) an interested person contemplated in section 10(8) who submitted a representation to the Competition Commission, unless, in the opinion of the presiding member of the Competition Tribunal, that person's interest is adequately represented by another participant, but only to the extent required for the person's interest to be adequately represented; and
 - (v) the Minister or member of the Executive Council if consulted in terms of Schedule 1;
- (c) if the hearing is in terms of Chapter 3—
- (i) any party to the merger;
 - (ii) the Competition Commission;
 - (iii) any person who was entitled to receive a notice in terms of section 13A(2), and who indicated to the Commission an intention to participate, in the *prescribed* form;
 - (iv) the Minister, if the Minister has indicated an intention to participate; and
 - (v) any other person whom the Tribunal recognised as a participant; and
- (d) if the hearing is in terms of Part A—
- (i) the person who owns the information that is the subject of the hearing;
 - (ii) any person who sought disclosure of the information that is the subject of the hearing;
 - (iii) the Competition Commission; and
 - (iv) any other person whom the Tribunal recognised as a participant.

Powers of member presiding at hearing

- 54.** The member of the Competition Tribunal presiding at a hearing may—
- (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
 - (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;
- (e) accept oral submissions from any participant; and
- (f) accept any other information that is submitted by a participant.

Rules of procedure

- 55.** (1) 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).

(2) The Tribunal may condone any technical irregularities arising in any of its proceedings.

(3) The Tribunal may—

die Mededingingstribunaal, genoegsaam deur 'n ander deelnemer verteenwoordig word, maar alleenlik in die mate waarin dit nodig is om die klaer se belang genoegsaam te verteenwoordig;

- (b) indien die verhoor ingevolge artikel 10 of Bylae 1 is—
 - (i) die applikant om 'n vrystelling;
 - (ii) die Mededingingskommissie;
 - (iii) die appellant, indien die appellant nie die applikant om 'n vrystelling is nie;
 - (iv) 'n belanghebbende persoon in artikel 10(8) beoog wat 'n voorlegging aan die Mededingingskommissie voorgelê het, tensy, na die mening van die voorsittende lid van die Mededingingstribunaal, daardie persoon se belang genoegsaam deur 'n ander deelnemer verteenwoordig word, maar alleenlik in die mate waarin dit nodig is om die persoon se belang genoegsaam te verteenwoordig; en
 - (v) die Minister of lid van die Uitvoerende Raad indien ingevolge Bylae 1 geraadpleeg;
- (c) indien die verhoor ingevolge Hoofstuk 3 is—
 - (i) enige party tot die samesmelting;
 - (ii) die Mededingingskommissie;
 - (iii) enige persoon wat geregtig was om 'n kennisgewing ingevolge artikel 13A(2) te ontvang, en wat by die Kommissie 'n voorneme om deel te neem, aangetoon het, in die voorgeskrewe vorm;
 - (iv) die Minister, indien die Minister 'n voorneme om deel te neem aangetoon het; en
 - (v) enige ander persoon wat deur die Tribunaal as 'n deelnemer erken word; en
- (d) indien die verhoor ingevolge Deel A is—
 - (i) die persoon wat beskik oor die inligting wat die onderwerp van die verhoor is;
 - (ii) enige persoon wat bekendmaking van die inligting wat die onderwerp van die verhoor is, aangevra het;
 - (iii) die Mededingingskommissie; en
 - (iv) enige ander persoon wat deur die Tribunaal as 'n deelnemer erken word.

Bevoegdhede 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;
- (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 Mededingingstribunaal gelewer, verbied of beperk;
- (e) mondelinge voorleggings van enige deelnemer aanvaar; en
- (f) enige ander inligting wat deur 'n deelnemer voorgelê word, aanvaar.

Reëls van prosedure

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

(2) Die Tribunaal kan enige tegniese onreëlmatighede voortspruitende uit enige van sy verrigtinge, kondoneer.

(3) Die Tribunaal kan—

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- (a) accept as evidence any relevant oral testimony, document or other thing, whether or not—
 (i) it is given or proven under oath or affirmation; or
 (ii) would be admissible as evidence in court; but
 (b) refuse to accept any oral testimony, document or other thing that is 5
unduly repetitious.

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)] 49A(3) applies to evidence given by a witness in terms of this section. 15

Costs

- 57.** (1) Subject to subsection (2) and the Competition Tribunal's rules of procedure, 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 25
 a *complainant* who referred the complaint in terms of section 51(1). 20

Orders of Competition Tribunal

- 58.** (1) In addition to its other powers in terms of *this Act*, the Competition Tribunal may—
 (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*;
 (iii) imposing an administrative penalty, in terms of section 59, with or without the addition of any other order in terms of this section;
 (iv) ordering divestiture, subject to section 60;
 (v) declaring conduct of a *firm* to be a *prohibited practice* in terms of *this Act*, for purposes of section 65;
 (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 49D as an order of the Tribunal; or
 (c) subject to sections 13(6) and 14(2), condone, on good cause shown, any non-compliance of—
 (i) the Competition Commission or Competition Tribunal rules; or
 (ii) a time limit set out in *this Act*. 30
 (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 35
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- 5 (a) enige tersaaklike mondelinge getuienis, dokument of iets anders, as getuienis aanvaar, hetsy dit—
 (i) onder eed of bevestiging gegee of bewys word of nie; of
 (ii) in 'n hof as getuienis toelaatbaar sal wees of nie; maar
 (b) weier om enige mondelinge getuienis, dokument of iets anders wat onbehoorlik herhalend is, te aanvaar.

Getuies

10 56. (1) Elke persoon wat by 'n verhoor van die Mededingingstribunaal getuienis lewer, moet enige relevante vraag beantwoord.

15 (2) Die reg met betrekking tot 'n getuie se privilegie in 'n strafsaak in 'n gereghof is ewencens van toepassing op 'n persoon wat inligting tydens 'n verhoor verskaf.

15 (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.

15 (4) Artikel [45(5)] 49A(3) is van toepassing op getuienis wat deur 'n getuie ingevolge hierdie artikel gelewer word.

Koste

20 57. (1) Behoudens subartikel (2) en die Mededingingstribunaal se prosedurereëls, moet elke party wat aan 'n verhoor deelneem, sy of haar eie koste dra.

20 (2) Indien die Mededingingstribunaal—

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

30 (b) 'n bevinding teen 'n respondent [gedoen] gemaak 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.

Bevele van Mededingingstribunaal

35 58. (1) Benewens sy ander bevoegdhede ingevolge hierdie Wet, kan die Mededingingstribunaal—

35 (a) 'n toepaslike bevel met betrekking tot 'n verbode praktyk gee, met inbegrip daarvan om—

40 (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 'n verbode praktyk te beëindig;

45 (iii) 'n administratiewe boete, ingevolge artikel 59, met of sonder die byvoeging van enige ander bevel ingevolge hierdie artikel, op te lê;

(iv) ontdoening, behoudens artikel 60, te beveel;
 (v) die optrede van 'n firma as 'n verbode praktyk ingevolge hierdie Wet te verklaar, vir die doeleindes van artikel 65;

45 (vi) die geheel of enige gedeelte van 'n ooreenkoms nietig te verklaar;
 (vii) toegang tot 'n noodsaklike fasiliteit op redelike voorwaardes, te beveel;

50 (b) 'n toestemmingsooreenkoms ingevolge artikel 49D as 'n bevel van die Tribunaal bekratig; of

50 (c) behoudens artikels 13(6) en 14(2), op goeie grond aangetoon, enige nie-voldoening aan—

55 (i) die Mededingingskommissie of Mededingingstribunaal se reëls kondoneer; of

(ii) 'n tydsbeperking in hierdie Wet uiteengesit, kondoneer.

55 (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

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.

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Administrative penalties

59. (1) The Competition Tribunal may impose an administrative penalty only—

- (a) for a *prohibited practice* in terms of section 4(1)(b), 5(2) or 8(a), (b) or (d);
- (b) for a *prohibited practice* in terms of section 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 Competition Tribunal to be a *prohibited practice*;
- (c) for contravention of, or failure to comply with, an interim or final order of the Competition Tribunal or the Competition Appeal Court; or
- (d) if the parties to a merger have—
 - (i) failed to give notice of the merger as required by Chapter 3;
 - (ii) proceeded to implement the merger in contravention of a decision by the Competition Commission or Competition Tribunal to prohibit that merger;
 - (iii) proceeded to implement the merger in a manner contrary to a condition for the approval of that merger imposed by the Competition Commission in terms of section 13 or 14, or the Competition Tribunal in terms of section 16; or
 - (iv) proceeded to implement the merger without the approval of the Competition Commission or Competition Tribunal, as required by *this Act*.

(2) An administrative penalty imposed in terms of subsection (1) may not exceed 10 per cent of the *firm's* annual turnover in the Republic and its exports from the Republic during the *firm's* preceding financial year.

(3) When determining an appropriate penalty, the Competition Tribunal must consider the following factors:

- (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 Competition 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

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60. (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 58, 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*—

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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, kan die respondent, gedurende daardie verdaging, ondanks enige ander bepaling van hierdie Wet, om vrystelling aansoek doen.

Administratiewe boetes

59. (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) of (d);
- (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;
- (c) vir verbreking van, of versuim om te voldoen aan, 'n tussentydse of finale bevel van die Mededingingstribunaal of Appèlhof vir Mededinging; of
- (d) indien die partye tot 'n samesmelting—
 - (i) versuim het om kennis te gee van die samesmelting soos deur Hoofstuk 3 vereis;
 - (ii) voortgegaan het om 'n samesmelting toe te pas in stryd met 'n beslissing van die Mededingingskommissie of die Mededingingstribunaal wat daardie samesmelting verbied;
 - (iii) voortgegaan het om die samesmelting toe te pas op 'n wyse strydig met 'n voorwaarde vir die goedkeuring van daardie samesmelting deur die Kommissie, ingevolge artikel 13 of 14, of deur die Mededingingstribunaal, ingevolge artikel 16, opgelê; of
 - (iv) voortgegaan het om die samesmelting toe te pas, sonder die Mededingingskommissie of die Mededingingstribunaal se goedkeuring, soos deur hierdie Wet vereis.

(2) 'n Administratiewe boete ingevolge subartikel (1) opgelê, mag nie 10 persent van die firma 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) Die aard, duur, erns en omvang van die oortreding;
- (b) enige verlies of skade gely as gevolg van die oortreding;
- (c) die gedrag van die respondent;
- (d) die markomstandighede waarin die oortreding plaasgevind het;
- (e) die vlak van wins uit die oortreding verkry;
- (f) die graad waarin die respondent met die Mededingingskommissie en die Mededingingstribunaal saamgewerk het; en
- (g) of voorheen bevind is dat die respondent hierdie Wet oortree het.

(4) 'n Boete betaalbaar ingevolge hierdie artikel, moet in die Nasionale Inkomstefonds, bedoel in artikel 213 van die Grondwet, inbetaal word.

Ontdoening

60. (1) Indien 'n samesmelting strydig met Hoofstuk 3 toegepas word, kan die Mededingingstribunaal—

- (a) 'n party tot die samesmelting beveel om enige aandele, belang of ander bates wat dié verkry het na aanleiding 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 gee van 'n bevel kragtens artikel 58, 'n bevel gee wat enige firma, of enige ander persoon, beveel om enige aandele, belang of bates van die firma te verkoop indien—

- (a) die firma artikel 8 oortree het; en
- (b) die verbode praktyk—

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- (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.

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Part E

Appeals and reviews to Competition Appeal Court

Appeals

61. (1) A person affected by a decision of the Competition Tribunal may appeal against, or apply to the Competition Appeal Court to review, that decision in accordance with the Rules of the Competition Appeal Court if, in terms of section 37, the Court has jurisdiction to consider that appeal or review that matter.

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(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.

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Appellate jurisdiction

62. (1) The Competition Tribunal and Competition Appeal Court share exclusive jurisdiction in respect of the following matters:

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- (a) Interpretation and application of Chapters 2, 3 and 5, other than—
 - (i) a question or matter referred to in subsection (2); or
 - (ii) a review of a certificate issued by the Minister of Finance in terms of section 18(2); and
- (b) the functions referred to in sections 21(1), 27(1) and 37, other than a question or matter referred to in subsection (2).

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(2) In addition to any other jurisdiction granted in *this Act* to the Competition Appeal Court, the Court has jurisdiction over—

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- (a) the question whether an action taken or proposed to be taken by the Competition Commission or the Competition Tribunal is within their respective jurisdictions in terms of *this Act*;
- (b) any constitutional matter arising in terms of *this Act*; and
- (c) the question whether a matter falls within the exclusive jurisdiction granted under subsection (1).

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- (3) The jurisdiction of the Competition Appeal Court—
- (a) is final over a matter within its exclusive jurisdiction in terms of subsection (1); and
 - (b) is neither exclusive nor final in respect of a matter within its jurisdiction in terms of subsection (2).

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(4) An appeal from a decision of the Competition Appeal Court in respect of a matter within its jurisdiction in terms of subsection (2) lies to the Supreme Court of Appeal or Constitutional Court, subject to section 63 and their respective rules.

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(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*.

- (i) nie genoegsaam ingevolge enige ander bepaling van die Wet goedgemaak 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.
- 5 (3) 'n Bevel deur die Mededingingstribunaal ingevolge subartikel (2) gegee, is van nul en gener waarde tensy dit deur die Appèlhof vir Mededinging bekragtig is.
- 10 (4) 'n Bevel ingevolge subartikel (1) of (2) gegee, kan 'n tyd vir nakoming stel, en enige ander voorwaardes wat die Mededingingstribunaal toepaslik vind, met inagneming van die handelsbelange van die betrokke party.

DEEL E

Appelle en hersienings na Appèlhof vir Mededinging

15 Appelle

61. (1) 'n Persoon wat deur 'n beslissing van die Mededingingstribunaal geraak word, kan na die Appèlhof vir Mededinging appelleer teen, of aansoek doen om hersiening, van daardie beslissing in ooreenstemming met die Reëls van die Appèlhof vir Mededinging indien, ingevolge artikel 37, die Hofregsbevoegdheid het om daardie appèl te oorweeg, of daardie aangeleentheid te hersien.

20 (2) Die Appèlhof vir Mededinging kan 'n bevel vir die betaling van koste gee 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.

25 Appèlregsbevoegdheid

62. (1) Die Mededingingstribunaal en die Appèlhof vir Mededinging deel uitsluitlikeregsbevoegdheid ten opsigte van die volgende aangeleenthede:

30 (a) Uitleg en toepassing van Hoofstukke 2, 3, en 5, behalwe—
 (i) 'n vraag of aangeleentheid in subartikel (2) bedoel; of
 (ii) 'n hersiening van 'n sertifikaat deur die Minister van Finansies ingevolge artikel 18(2) uitgereik; en

(b) die funksies in artikels 21(1), 27(1) en 37 bedoel, behalwe 'n vraag of aangeleentheid in subartikel (2) bedoel.

35 (2) Bykomend tot enige anderregsbevoegdheid wat in hierdie Wet aan die Appèlhof vir Mededinging verleen word, het die Hofregsbevoegdheid oor—

40 (a) die vraag of 'n stap deur die Mededingingskommissie of die Mededingingstribunaal gedoen of wat hulle voornemens is om te doen, binne hul onderskeieregsbevoegdhede ingevolge hierdie Wet ressorteer;
 (b) enige grondwetlike aangeleentheid wat uit hierdie Wet voortspruit; en
 (c) die vraag of 'n aangeleentheid ressorteer binne die uitsluitlikeregsbevoegdheid kragtens subartikel (1) verleen.

45 (3) Dieregsbevoegdheid van die Appèlhof vir Mededinging—
 (a) is finaal oor 'n aangeleentheid binne sy uitsluitlikeregsbevoegdheid ingevolge subartikel (1); en
 (b) is nóg uitsluitlik nóg finaal ten opsigte van 'n aangeleentheid binne syregsbevoegdheid ingevolge subartikel (2).

50 (4) 'n Appèl teen 'n beslissing van die Appèlhof vir Mededinging ten opsigte van 'n aangeleentheid binne syregsbevoegdheid ingevolge subartikel (2), berus by die Hoogste Hof van Appèl of Konstitusionele Hof, behoudens artikel 63 en hul onderskeie reëls.

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

Leave to appeal

63. (1) The right to an appeal in terms of section 62(4)—

- (a) is subject to any law that—
 - (i) specifically limits the right of appeal set out in that section; or
 - (ii) specifically grants, limits or excludes any right of appeal;
 - (b) is not limited by monetary value of the matter in dispute; and
 - (c) exists even if the matter in dispute is incapable of being valued in money.
- (2) An appeal in terms of section 62(4) may be brought to the Supreme Court of Appeal or, if it concerns a constitutional matter, to the Constitutional Court, only—
- (a) with leave of the Competition Appeal Court; or
 - (b) if the Competition Appeal Court refuses leave, with leave of the Supreme Court of Appeal or the Constitutional Court, as the case may be.
- (3) A court granting leave to appeal in terms of this section may attach any appropriate conditions, including a condition that the applicant provide security for the costs of the appeal.
- (4) If the Competition Appeal Court, when refusing leave to appeal, made an order of costs against the applicant, the Supreme Court of Appeal or the Constitutional Court may vary that order on granting leave to appeal.
- (5) An application to the Competition Appeal Court for leave to appeal must be made in the manner and form required by the Competition Appeal Court Rules.
- (6) An application to the Constitutional Court for leave to appeal must be made in the manner and form required by its Rules.
- (7) Section 21(1A) to (3)(e) of the Supreme Court Act, 1959 (Act No. 59 of 1959), read with the changes required by the context, applies to an application to the Supreme Court of Appeal for leave to appeal in terms of *this Act*.
- (8) A person applying to the Supreme Court of Appeal for leave to appeal under *this Act* must give notice of the application to the registrar of the Competition Appeal Court.

CHAPTER 6**ENFORCEMENT**

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

Civil actions and jurisdiction

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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.

(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—

Verlof tot appèl

63 (1) Die reg tot 'n appèl ingevolge artikel 62(4)—

- (a) is onderhewig aan enige wet wat—
 - (i) spesifiek die reg van appèl in daardie artikel uiteengesit, beperk; of
 - (ii) spesifiek enige reg van appèl verleen, beperk of uitsluit;
 - (b) word nie beperk deur die monetêre waarde van die aangeleentheid in disputuut nie; en
 - (c) bestaan selfs indien die aangeleentheid in disputuut nie ontvanklik is om in geld gewaardeer te word nie.
- (2) 'n Appèl ingevolge artikel 62(4) kan by die Hoogste Hof van Appèl aanhangig gemaak word of, indien dit met 'n grondwetlike aangeleentheid verband hou, by die Konstitusionele Hof, alleenlik—
- (a) met verlof van die Appèlhof vir Mededinging; of
 - (b) indien die Appèlhof vir Mededinging verlof weier, met verlof van die Hoogste Hof van Appèl of die Konstitusionele Hof, na gelang van die geval.
- (3) 'n Hof wat verlof om te appelleer ingevolge hierdie artikel verleen, kan enige toepaslike voorwaardes toevoeg, met inbegrip van 'n voorwaarde dat die applikant sekuriteit vir die koste van die appèl stel.
- (4) Indien die Appèlhof vir Mededinging, wanneer verlof tot appèl geweier word, 'n kostebevel teen die applikant gegee het, kan die Hoogste Hof van Appèl of die Konstitusionele Hof daardie bevel wysig by verlening van verlof tot appèl.
- (5) 'n Aansoek na die Appèlhof vir Mededinging om verlof tot appèl moet gedoen word op die wyse en in die vorm deur die Reëls van die Appèlhof vir Mededinging vereis.
- (6) 'n Aansoek na die Konstitusionele Hof om verlof tot appèl moet gedoen word op die wyse en in die vorm deur sy Reëls vereis.
- (7) Artikel 21(1A) tot (3e) van die Hooggereghofwet, 1959 (Wet No. 59 van 1959), saamgelees met die veranderinge deur die konteks vereis, is van toepassing op 'n aansoek na die Hoogste Hof van Appèl om verlof tot appèl ingevolge hierdie Wet.
- (8) 'n Persoon wat na die Hoogste Hof van Appèl aansoek doen om verlof tot appèl kragtens hierdie Wet moet kennis van die aansoek aan die registrateur van die Appèlhof vir Mededinging gee.

HOOFTUK 6**AFDWINGING****Status en afdwinging van bevele**

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.

(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 Mededingingstribunaal of Appèlhof vir Mededinging daardie bepaling nietig verklaar.

(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—

- (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.

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[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).

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(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.]

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(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)] 49D(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 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*; 35
 (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.

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(7) A certificate referred to in subsection (6)(b) is conclusive proof of its contents, and is binding on a *civil court*.

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(8) An appeal or application for review against an order made by the Competition Tribunal in terms of section [60] 58 suspends any right to commence an action in a *civil court* with respect to the same matter.

(9) A person's right to bring a claim for damages arising out of a *prohibited practice* comes into existence—

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- (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.

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(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

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66. 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) 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—
- (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 uitsluitlikeregsbevoegdheid 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 finaleregsbevoegdheid ten opsigte van enige aangeleentheid in subartikel (3) vermeld, waарoor na hom geappelleer, of wat deur hom hersien kan word.
- (5) Vir groter sekerheid, het die Mededingingstribunaal en die Appèlhof vir Mededinging geenregsbevoegdheid oor die vasstel van die bedrag en toekenning vir skadevergoeding wat uit 'n verbode praktyk voortspruit nie.]
- (6) 'n Persoon wat verlies of skade gely het as gevolg van 'n verbode praktyk—
- (a) mag nie 'n aksie in 'n sivielehof 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)] 49D(1) bekragtig; of
- (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—
- (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
- (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 Sertificaat in subartikel (6)(b) vermeld, is afdoende bewys van die inhoud daarvan, en is bindend op 'n sivielehof.
- (8) 'n Appèl of 'n aansoek om hersiening teen 'n bevel uitgereik deur die Mededingingstribunaal ingevolge artikel [60] 58, skort enige reg op om te begin met 'n aksie in 'n sivielehof met betrekking tot dieselfde aangeleentheid.
- (9) 'n Persoon se reg [tot] om 'n eis in te stel vir 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
- (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 sertificaat 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—

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- (a) erroneously sought or granted in the absence of a party affected by it;
- (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 proceedings.

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Limitations of bringing action

- 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] referred to the Competition Tribunal against any firm that [is, or] has been a *respondent* in completed proceedings before the Tribunal under the same or 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**] *this Act*, other than proceedings in terms of section 49C or criminal proceedings, the standard of proof is on a balance of probabilities.”.

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Amendment of section 71 of Act 89 of 1998

- 16.** Section 71 of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of the following words:
- “A person commits an offence who, having been summoned in terms of section 49A, or directed or summoned to attend a hearing—”.

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Amendment of section 72 of Act 89 of 1998

- 17.** Section 72 of the principal Act is hereby amended by the substitution for paragraph (a) of the following paragraph:
- “(a) subject to section 49A(3) or 56, fails to answer any question fully and to the best of that person’s ability; or”.

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Amendment of section 73 of Act 89 of 1998

- 18.** Section 73 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:
- “(1) A person commits an offence who contravenes or fails to comply with an interim or final order of the Competition Tribunal or the Competition Appeal Court.”.

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Repeal of section 76 of Act 89 of 1998

- 19.** Section 76 of the principal Act is hereby repealed.

Substitution of section 82 of Act 89 of 1998

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- 20.** The following section is hereby substituted for section 82 of the principal Act:

“Relationship with other agencies

- 82.** (1) A *regulatory authority* which, in terms of any *public regulation*, has jurisdiction in respect of conduct regulated in terms of Chapter 2 or 3 within a particular sector—

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- (a) must negotiate *agreements* with the Competition Commission, as anticipated in section 21(1)(h); and
- (b) in respect of a particular matter within its jurisdiction, may exercise its jurisdiction by way of such an *agreement*.

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- (2) Subsection (1)(a) and (b), read with the changes required by the context, applies to the Competition Commission.

- 5 (a) wat foutiewelik verkry is, of foutiewelik toegestaan is, in die afwesigheid van 'n party wat daardeur geraak word;
- (b) waarin dubbelsinnigheid, of 'n ooglopende fout of versuim voorkom, slegs in die mate waarin die dubbelsinnigheid, fout of versuim reggestel word; of
- (c) wat uitgerek of toegestaan is as gevolg van 'n fout gemeenskaplik tot al die partye tot die verrigtinge.

Beperkings op instel van aksie

10 **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 afgehandelde verrigtinge voor die Tribunaal kragtens dieselfde of 'n ander artikel van hierdie Wet wat wesenlik betrekking het op dieselfde optrede, [**ingestel**] na die Mededingingstribunaal verwys word nie.

15 **Bewyslas**

68. In enige verrigtinge ingevolge [**Hoofstuk 3, of kragtens hierdie Hoofstuk**] hierdie Wet, behalwe verrigtinge ingevolge artikel 49C of strafregtelike verrigtinge, berus die bewyslas op die oorwig van waarskynlikhede.”.

20 Wysiging van artikel 71 van Wet 89 van 1998

16. Artikel 71 van die Hoofwet word hierby gewysig deur die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:

“'n Persoon pleeg 'n misdryf, wat, ná dagvaarding ingevolge artikel 49A of opdrag of dagvaarding om by 'n verhoor te verskyn—”.

25 Wysiging van artikel 72 van Wet 89 van 1998

17. Artikel 72 van die Hoofwet word hierby gewysig deur paragraaf (a) deur die volgende paragraaf te vervang:

“(a) behoudens artikel 49A(3), of 56, versuim om enige vraag ten volle en na daardie persoon se beste vermoë te beantwoord; of”.

30 Wysiging van artikel 73 van Wet 89 van 1998

18. Artikel 73 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

“(1) 'n Persoon pleeg 'n misdryf, wat 'n tussentydse of finale bevel van die Mededingingstribunaal of Appèlhof vir Mededinging oortree of versu om daaraan te voldoen.”.

Herroeping van artikel 76 van Wet 89 van 1998

19. Artikel 76 van die Hoofwet word hierby herroep.

Vervanging van artikel 82 van Wet 89 van 1998

20. Artikel 82 van die Hoofwet word hierby deur die volgende artikel vervang:

40 **“Verhouding met ander agentskappe**

82. (1) 'n Regulerende owerheid wat, ingevolge enige openbare regulasie, regsbevoegdheid het ten aansien van optrede wat ingevolge Hoofstuk 2 of 3 gereguleer word, binne 'n bepaalde sektor—

45 (a) moet ooreenkomste met die Mededingingskommissie onderhandel, soos in artikel 21(1)(h) voorsien; en

 (b) ten opsigte van 'n bepaalde aangeleenthed binne syregsbevoegdheid, kan syregsbevoegdheid by wyse van sodanige ooreenkoms uitoefen.

50 (2) Subartikel (1)(a) en (b), saamgelees met die veranderinge deur die konteks vereis, is op die Mededingingskommissie van toepassing.

(3) In addition to the matters contemplated in section 21(1)(h), an agreement in terms of subsection (1) must—	
(a) identify and establish procedures for the management of areas of concurrent jurisdiction;	5
(b) promote co-operation between the <i>regulatory authority</i> and the Competition Commission;	
(c) provide for the exchange of information and the protection of <i>confidential information</i> ; and	
(d) be published in the <i>Gazette</i> .	
(4) The President may assign to the Competition Commission any duty of the Republic, in terms of an international <i>agreement</i> relating to the purpose of <i>this Act</i> , to exchange information with a similar foreign agency.”.	10
Amendment of Schedule 1 to Act 89 of 1998	
21. Schedule 1 to the principal Act is hereby amended—	15
(a) by the substitution for the heading of the following heading:	
“ <u>EXEMPTION OF PROFESSIONAL RULES</u> ”; and	
(b) by the substitution for Part A of the following Part:	
“PART A	
1. A professional association whose rules contain a restriction that has the effect of substantially preventing or lessening competition in a market may apply in the <i>prescribed</i> manner to the Competition Commission for an exemption in terms of item 2.	20
2. The Competition Commission may exempt all or part of the rules of a professional association from the provisions of Part A of Chapter 2 of <i>this Act</i> for a specified period if, having regard to internationally applied norms, any restriction contained in those rules that has the effect of substantially preventing or lessening competition in a market is reasonably required to maintain—	25
(a) professional standards; or	30
(b) the ordinary function of the profession.	
3. Upon receiving an application in terms of item 1, the Competition Commission must—	
(a) publish a notice of the application in the <i>Gazette</i> ;	
(b) allow interested parties 20 business days from the date of that notice to make representations concerning the application; and	35
(c) consult the responsible Minister, or member of the Executive Council concerning the application.	
4. After considering the application and any submissions or other information received in relation to the application, and consulting with the responsible Minister or member of the Executive Council, the Commission must—	40
(a) either grant an exemption or reject the application by issuing a notice in the <i>prescribed</i> form to the applicant,	
(b) give written reasons for its decision; and	45
(c) publish a notice of that decision in the <i>Gazette</i> .	
5. The Competition Commission, in the <i>prescribed</i> manner, may revoke an exemption granted under item 4 on good cause shown, at any time after it has—	
(a) given notice in the <i>Gazette</i> of its intention to revoke the exemption;	50
(b) allowed interested parties 20 business 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.	
6. A professional rule is exempt, or its exemption revoked, only as of the date on which notice of the exemption or revocation, as the case may be, is published in the <i>Gazette</i> .	55

- (3) 'n Ooreenkoms ingevolge subartikel (1) moet, bykomend tot die aangeleenthede in artikel 21(1)(h) beoog—
 (a) verrigtinge identifiseer en instel vir die hantering van konkurrante regsgebiede;
 5 (b) samewerking tussen regulerende owerhede en die Mededingingskommissie bevorder;
 (c) voorsiening maak vir die uitruil van inligting en die beskerming van vertroulike inligting; en
 (d) in die *Staatskoerant* gepubliseer word.
- 10 (4) Die President kan enige plig van die Republiek ingevolge 'n internasionale ooreenkoms wat met die doel van hierdie Wet verband hou, om inligting met 'n soortgelyke buitelandse agentskap uit te ruil, aan die Mededingingskommissie opdra.".

Wysiging van Bylae 1 by Wet 89 van 1998

- 15 21. Bylae 1 by die Hoofwet word hierby gewysig—
 (a) deur die opskrif deur die volgende opskrif te vervang:
 "VRYSTELLING VAN PROFESSIONELE REËLS"; en
 (b) deur Deel A deur die volgende Deel te vervang:
- "Deel A
- 20 1. 'n Professionele liggaam wie se reëls 'n beperking bevat wat in effek mededinging in 'n mark wesenlik voorkom, of verminder, mag op die voorgeskrewe wyse by die Mededingingskommissie aansoek doen om 'n vrystelling ingevolge item 2.
- 25 2. Die Mededingingskommissie mag al, of 'n gedeelte van, die reëls van 'n professionele liggaam van die bepalings van Deel A van Hoofstuk 2 van hierdie Wet vir 'n spesifieke tydperk vrystel indien, met inagneming van internasional toegepaste norme, enige beperking in daardie reëls vervat, wat in effek mededinging in 'n mark wesenlik voorkom, of verminder, redelikewyse vereis word om—
 (a) professionele standaarde; of
 (b) die normale funksie van die beroep,
 te handhaaf.
- 30 3. By ontvangs van 'n aansoek ingevolge item 1, moet die Mededingingskommissie—
 (a) kennis van die aansoek in die *Staatskoerant* publiseer;
 (b) belanghebbende partye 20 besigheidsdae vanaf die datum van daardie kennisgewing toelaat om vertoë aangaande die aansoek te rig; en
 (c) die verantwoordelike Minister, of lid van die Uitvoerende Raad, aangaande die aansoek raadpleeg.
- 35 4. Na oorweging van die aansoek en enige voorleggings of ander inligting met betrekking tot die aansoek ontvang, en raadpleging met die verantwoordelike Minister, of lid van die Uitvoerende Raad, moet die Mededingingskommissie—
 (a) die vrystelling verleen of die aansoek verwerp deur die uitreiking van 'n kennisgewing in die voorgeskrewe vorm aan die applikant,
 (b) skriftelike redes vir sy besluit gee; en
 (c) kennis van daardie besluit in die *Staatskoerant* publiseer.
- 40 5. Die Mededingingskommissie kan, op die voorgeskrewe wyse, 'n vrystelling kragtens item 4 toegestaan, terugtrek indien goeie redes aangetoon word, te eniger tyd nadat hy—
 (a) in die *Staatskoerant*, kennis gegee het van die voorneme om die vrystelling terug te trek;
 (b) belanghebbende partye 20 besigheidsdae vanaf die datum van daardie kennisgewing, toegelaat het om vertoë aangaande die vrystelling te rig; en
 (c) die verantwoordelike Minister, of lid van die Uitvoerende Raad, geraadpleeg het.
- 45 6. '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.

<p>7. 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.</p> <p>8. A professional association, or any other person with a substantial interest affected by a decision of the Competition Commission in terms of item 4 may appeal against that decision to the Competition Tribunal in the <i>prescribed</i> manner and form.</p> <p>9. In this Schedule—</p> <p>'professional association' means an association referred to in Part B of this Schedule;</p> <p>'professional rules' means rules regulating a professional association that are binding on its members;</p> <p>'rules' includes <i>public regulations</i>, codes of practice and statements of principle.”.</p>	5 10 15 20 25 30 35 40 45 50 55
Amendment of Preamble to Act 89 of 1998	15
22. The Preamble to the principal Act is hereby amended by the substitution for the first paragraph of the following paragraph:	
“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] <u>inadequate restraints against</u> anti-competitive trade practices, and unjust restrictions on full and free participation in the economy by all South Africans.”.	20
Transitional provisions	
23. (1) In this section—	
(a) “ principal Act ” means the Competition Act, 1998 (Act No. 89 of 1998), as it existed immediately before the commencement of this Act; and	25
(b) “ principal Act as amended ” means the principal Act as amended by this Act.	
(2) Despite section 6(3) and (4), and section 11(3) and (4), of the principal Act as amended, the Minister of Trade and Industry may at the commencement of this Act publish in the <i>Gazette</i> a notice determining a new threshold and method of calculation under each of those sections, respectively.	30
(3) A determination in terms of subsection (2) takes effect on the date of commencement of this Act, and if it is a determination under—	
(a) section 6 of the principal Act as amended, applies to any proceedings that were pending before the Competition Commission, Competition Tribunal or Competition Appeal Court immediately before the date of commencement of this Act; or	35
(b) section 11 of the principal Act as amended, applies to any proceedings that were pending before the Competition Commission immediately before the date of commencement of this Act.	40
(4) A recommendation made by the Competition Commission in terms of section 14(3) of the principal Act must be regarded as having been a decision made under section 14(1)(b) of the principal Act as amended, if—	
(a) as a result of subsection (3)(b), the merger is classified as an intermediate merger; and	45
(b) the Competition Tribunal had not made an order in respect of the merger at the date of commencement of this Act.	
(5) Any proceedings that were pending before the Competition Commission, Competition Tribunal or Competition Appeal Court before the date of commencement of this Act must be proceeded with in terms of the principal Act as amended, except to the extent that a regulation under section 21(4) or 27(2) of the principal Act as amended, or a rule of the Competition Appeal Court, provides otherwise.	50
(6) For greater clarity, section 18(2) and (3) of the principal Act as amended applies to a merger that was pending before the Competition Commission or the Competition Tribunal immediately before the date of commencement of this Act.	55

7. 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.
8. 'n Professionele liggaam, of enige ander persoon met 'n wesenlike belang wat geraak word deur 'n besluit van die Mededingingskommissie ingevolge item 4, mag teen daardie besluit na die Mededingingstribunaal op die voorgeskrewe wyse en in die voorgeskrewe vorm appelleer.
9. 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 sy lede;
'reëls' ook openbare regulasies, praktykskodes en beginselverklarings.”.

15 Wysiging van Aanhef by Wet 89 van 1998

22. Die Aanhef by die Hoofwet word hierby gewysig deur die eerste paragraaf deur die volgende paragraaf te vervang:

“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]** onvoldoende beperkinge teen anti-mededingende handelspraktyke, en onregverdigte beperkings op volkome en vrye deelname aan die ekonomie deur alle Suid-Afrikaners.”.

Oorgangsbeplings

23. (1) In hierdie artikel beteken—

- (a) “**Hoofwet**” die Wet op Mededinging, 1998 (Wet No. 89 van 1998), soos dit bestaan het onmiddellik voor die inwerkingtreding van hierdie Wet; en
(b) “**Hoofwet soos gewysig**” die Hoofwet soos deur hierdie Wet gewysig.
- (2) Ondanks artikel 6(3) en (4) en artikel 11(3) en (4), van die Hoofwet soos gewysig, mag die Minister van Handel en Nywerheid by die inwerkingtreding van hierdie Wet 'n kennisgewing in die *Staatskoerant* publiseer wat 'n nuwe drempel en metode van berekening kragtens onderskeidelik elkeen van daardie artikels bepaal.
- (3) 'n Bepaling ingevolge subartikel (2) neem 'n aanvang op die datum van inwerkingtreding van hierdie Wet, en indien dit 'n bepaling is kragtens—
(a) artikel 6 van die Hoofwet soos gewysig, is dit van toepassing op enige verrigtinge wat hangende was voor die Mededingingskommissie, Mededingingstribunaal of Appèlhof vir Mededinging, onmiddellik voor die datum van inwerkingtreding van hierdie Wet; of
(b) artikel 11 van die Hoofwet soos gewysig, is dit van toepassing op enige verrigtinge wat hangende was voor die Mededingingskommissie onmiddellik voor die datum van inwerkingtreding van hierdie Wet.
- (4) 'n Aanbeveling deur die Mededingingskommissie ingevolge artikel 14(3) van die Hoofwet gedoen, moet geag word 'n besluit te wees wat kragtens artikel 14(1)(b) van die Hoofwet soos gewysig geneem is, indien—
(a) as gevolg van subartikel (3)(b), die samesmelting as 'n intermediêre samesmelting geklassifiseer is; en
(b) die Mededingingstribunaal nie 'n bevel ten opsigte van die samesmelting op die datum van inwerkingtreding van hierdie Wet gegee het nie.
- (5) Enige verrigtinge wat hangende was voor die Mededingingskommissie, Mededingingstribunaal of Appèlhof vir Mededinging voor die datum van inwerkingtreding van hierdie Wet, moet voortgesit word ingevolge die Hoofwet soos gewysig, behalwe in die mate wat 'n regulasie kragtens artikel 21(4) of 27(2) van die Hoofwet soos gewysig, of 'n reël van die Appèlhof vir Mededinging, anders bepaal.
- (6) Vir groter sekerheid, is artikel 18(2) en (3) van die Hoofwet soos gewysig van toepassing op 'n samesmelting wat hangende was voor die Mededingingskommissie of die Mededingingstribunaal onmiddellik voor die datum van inwerkingtreding van hierdie Wet.

Act No. 39, 2000**COMPETITION SECOND AMENDMENT ACT, 2000****Short title and commencement**

24. This Act is called the Competition Second Amendment Act, 2000, and takes effect on a date fixed by the President by proclamation in the *Gazette*.

Kort titel en inwerkingtreding

24. Hierdie Wet heet die Tweede Wysigingswet op Mededinging, 2000, en tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* bepaal.

