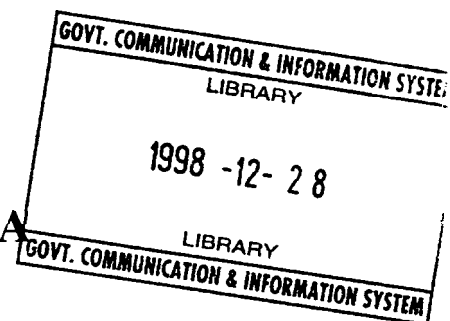




REPUBLIC OF SOUTH AFRICA



GOVERNMENT GAZETTE

STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

Registered at the Post *Office* as a Newspaper

As 'n *Nuusblad* by die *Poskantoor Geregistreer*

Vol. 400

CAPE TOWN, 30 OCTOBER 1998

No. 19412

KAAPSTAD, 30 OKTOBER 1998

OFFICE OF THE PRESIDENT

KANTOOR VAN DIE PRESIDENT

No. 1392.

30 October 1998

No. 1392.

30 Oktober 1998

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

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

No. 89 of 1998: Competition Act, 1998.

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

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

ACT

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

PREAMBLE

The people of South Africa recognise:

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

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

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

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

IN ORDER TO—

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

achieve a more effective and efficient economy in South Africa:

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

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

restrain particular trade practices which undermine a competitive economy:

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

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

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

TABLE OF CONTENTS

CHAPTER 1

1.	Definitions and interpretation	8	5
2.	Purpose of Act	10	
3.	Application of Act	10	

CHAPTER 2

4.	Restrictive horizontal practices prohibited	12	
5.	Restrictive vertical practices prohibited	12	10
6.	Restricted application of Part	14	
7.	Dominant firms	14	
8.	Abuse of dominance prohibited	14	
9.	Price discrimination by dominant firm prohibited	14	
10.	Exemption	16	15

CHAPTER 3

11.	Restricted application of Chapter	18	
12.	Merger defined	18	
13.	Notification of merger required	20	
14.	Competition Commission merger proceedings	20	20
15.	Competition Tribunal merger proceedings	22	
16.	Consideration of Mergers	23	
17.	Competition Appeal Court Merger Proceedings	24	
18.	Minister may participate in proceedings	24	

CHAPTER 4

19.	Establishment and constitution of Competition Commission	26	
20.	Independence of Competition Commission	26	
21.	Functions of Competition Commission	26	
22.	Appointment of Commissioner	28	
23.	Appointment of Deputy Commissioner	30	30
24.	Appointment of inspectors	30	
25.	Staff of Competition Commission	30	
26.	Establishment and constitution of Competition Tribunal	30	
27.	Functions of Competition Tribunal	32	
28.	Qualifications of members of Competition Tribunal	32	35
29.	Term of office of members of Competition Tribunal	32	
30.	Deputy Chairperson of Competition Tribunal	34	
31.	Competition Tribunal proceedings	34	
32.	Conflicts and disclosure of interest by members of Competition Tribunal	34	
33.	Acting by member of Competition Tribunal after expiry of term of office	34	40
34.	Remuneration and benefits of members of Competition Tribunal	34	
35.	Staff of Competition Tribunal	34	
36.	Establishment and constitution of Competition Appeal Court	36	
37.	Function of Competition Appeal Court	36	
38.	Business of Competition Appeal Court	36	45
39.	Terms of office of members of Competition Appeal Court	36	
40.	Finances	38	
41.	Annual Report	40	
42.	Rules applicable to Competition Tribunal	40	
43.	Liability	42	50

CHAPTER 5

44.	Initiating a complaint	42
45.	Investigation by Competition Commission	42
46.	Authority to enter and search under warrant	42
47.	Authority to enter and search without warrant	44 5
48.	Powers to enter and search	44
49.	Conduct of entry and search	46
50.	Outcome of complaint	46
51.	Referral to Competition Tribunal	48
52.	Hearings before Competition Tribunal	48 10
53.	Right to participate in hearing	48
54.	Powers of member presiding at hearing	48
55.	Rules of procedure	50
56.	Witnesses	50
57.	costs	50 15
58.	Appeals	50

CHAPTER 6

59.	Interim relief	50
60.	Orders of Competition Tribunal	52
61.	Administrative fines	52 20
62.	Divestiture	54
63.	Consent orders	54
64.	Status and enforcement of orders	54
65.	Civil actions and jurisdiction	54
66.	Variation of order	56 25
67.	Limitations of bringing action	58
68.	Standard of proof	58

CHAPTER 7

69.	Breach of confidence	58
70.	Hindering administration of Act	58 30
71.	Failure to attend when summoned	58
72.	Failure to answer fully or truthfully	58
73.	Failure to comply with Act	60
74.	Penalties	60
75.	Magistrate's Court jurisdiction to impose penalties	60 35
76.	Serving documents	60
77.	Proof of facts	60

CHAPTER 8

78.	Regulations	62
79.	Guidelines	62 40
80.	Official seal	62
81.	Act binds State	62
82.	Information exchange with foreign agencies	62
83.	Transitional arrangements and repeal of laws	62
84.	Short Title and commencement of Act	62 45

SCHEDULE 1	64
SCHEDULE 2	68
SCHEDULE 3	70

CHAPTER 1

DEFINITIONS, INTERPRETATION, PURPOSE AND APPLICATION OF ACT

Definitions and interpretation

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

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

Purpose of Act 15

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

Application of Act

3. (1) This Act applies to all economic activity within, or having an effect within, the Republic, except— 30
- (a) collective bargaining within the meaning of section 23 of the *Constitution*, and the Labour Relations Act, 1995 (Act No. 66 of 1995);
- (b) a collective agreement, as defined in section 213 of the Labour Relations Act, 1995;
- (c) the rules of a professional association to the extent that they are exempted in terms of Schedule 1; 35
- (d) acts subject to or authorised by *public regulation*; or
- (e) concerted conduct designed to achieve a non-commercial socio-economic objective or similar purpose.
- (2) For all purposes of *this Act*, a person is a historically disadvantaged person if that person— 40
- (a) is one of a category of individuals who, before the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), came into operation, were disadvantaged by unfair discrimination on the basis of race;
- (b) is an association, a majority of whose members are individuals referred to in paragraph (a); 45
- (c) is a juristic person other than an association, and individuals referred to in paragraph (a) own and control a majority of its issued share capital or members’ *interest* and are able to control a majority of its votes; or
- (d) is a juristic person or association, and persons referred to in paragraph (a), (b) or (c) own and control a majority of its issued share capital or members’ *interest* and are able to control a majority of its votes. 50

CHAPTER 2

PROHIBITED PRACTICES

PART A

RESTRICTIVE PRACTICES

Restrictive horizontal practices prohibited 5

4. (1) An *agreement* between, or concerted *practice* by, *firms*, or a decision by an association of *firms*, is prohibited if—
- (a) it is between parties in a horizontal relationship and it has the effect of substantially preventing or lessening competition in a market, unless a party to the agreement, concerted practice, or decision can prove that any technological, efficiency or other pro-competitive, gain resulting from it outweighs that effect; or
 - (b) it involves any of the following *restrictive* horizontal practices:
 - (i) directly or indirectly fixing a purchase or selling price or any other trading condition; 15
 - (ii) dividing markets by allocating customers, suppliers, territories, or specific types of goods or services; or
 - (iii) collusive tendering.
- (2) An agreement to engage in a restrictive *horizontal* practice referred to in subsection (1)(b) is presumed to exist between two or more *firms* if— 20
- (a) any one of those *firms* owns a substantial shareholding, *interest* or similar right in the other, or they have at least one director or substantial shareholder in common; and
 - (b) any combination of those *firms* engages in that restrictive *horizontal* practice.
- (3) A presumption contemplated in subsection (2) may be rebutted if a *firm*, director 25 or shareholder concerned establishes that a reasonable basis exists to conclude that the practice referred to in subsection (1)(b) was a normal commercial response to conditions prevailing in that market.
- (4) For the purposes of subsection (2), “director” means—
- (a) a director of a company as defined in the Companies Act, 1973 (Act No. 61 of 1973);
 - (b) a member of a close corporation as defined in the Close Corporations Act, 1984 (Act No. 69 of 1984);
 - (c) a trustee of a trust ; or
 - (d) a person holding an equivalent position in a *firm*. 35
- (5) The provisions of subsection (1) do not apply to an agreement between, or concerted practice engaged in by,—
- (a) a company, its wholly owned subsidiary as contemplated in section 1(5) of the Companies Act, 1973, a wholly owned subsidiary of that subsidiary or any combination of them; or 40
 - (b) the constituent firms within a single economic entity similar in structure to those referred to in paragraph (a).

Restrictive vertical practices prohibited

5. (1) An agreement between parties in a vertical relationship is prohibited if it has the effect of substantially preventing or lessening competition in a market, unless a party to 45 the agreement can prove that any technological, efficiency or other pro-competitive, gain resulting from that agreement outweighs that effect.
- (2) The practice of minimum resale price maintenance is prohibited.
- (3) Despite subsection (2), a supplier or producer may recommend a minimum resale price to the reseller of a good or service provided— 50
- (a) the supplier or producer makes it clear to the reseller that the recommendation is not binding; and
 - (b) if the product has its price stated on it, the words “recommended price” appear next to the stated price.

PART B

ABUSE OF A DOMINANT POSITION

Restricted application of Part

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

- (a) determine a threshold of annual turnover, or assets, in the Republic, either in general or in relation to specific industries, below which this Part does not apply to a *firm*; and
- (b) provide a method for the calculation of annual turnover or assets. 10

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

Dominant firms

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

- (a) it has at least 45% of that market; 15
- (b) it has at least 35%, but less than 45%, of that market, unless it can show that it does not have *market power*; or
- (c) it has less than 35% of that market, but has *market power*.

Abuse of dominance prohibited

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

- (a) charge an *excessive price* to the detriment of consumers;
- (b) refuse to give a competitor access to an *essential facility* when it is economically feasible to do so;
- (c) engage in an exclusionary act, other than an act listed in paragraph (d), if the anti-competitive effect of that act outweighs its technological, efficiency or 25 other pro-competitive, gain; or
- (d) engage in any of the following *exclusionary acts*, unless the *firm* concerned can show technological, efficiency or other pro-competitive, gains which outweigh the anti-competitive effect of its act:
 - (i) requiring or inducing a supplier or customer to not deal with a 30 competitor;
 - (ii) refusing to supply scarce goods to a competitor when supplying those goods is economically feasible;
 - (iii) selling *goods or services* on condition that the buyer purchases separate *goods or services* unrelated to the object of a contract, or forcing a buyer 35 to accept a condition unrelated to the object of a contract;
 - (iv) selling *goods or services* below their marginal or average variable cost; or
 - (v) buying-up a scarce supply of intermediate goods or resources required by a competitor, 40

Price discrimination by dominant firm prohibited

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

- (a) it is likely to have the effect of substantially preventing or lessening competition; 45
- (b) it relates to the sale, in equivalent transactions, of *goods or services* of like grade and quality to different purchasers; and
- (c) it involves discriminating between those purchasers in terms of—
 - (i) the price charged for the *goods or services*;

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

PART C

EXEMPTIONS FROM APPLICATION OF CHAPTER

Exemption

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

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

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

(a) the advice was given, or the exemption was granted, on the basis of false or incorrect information;

(b) a condition for the exemption is not fulfilled; or

(c) the reason for granting the exemption no longer exists.

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

(a) give notice in the *Gazette* of the application for an exemption, or of its intention to revoke that exemption; and

(b) allow interested parties 30 days from the date of that notice to make written representations as to why the exemption should not be granted or revoked.

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

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

CHAPTER 3

MERGER CONTROL

Restricted application of Chapter

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

(a) determine a threshold of combined annual turnover, or assets, in the Republic, either in general or in relation to specific industries, at or below which this Chapter does not apply to a merger;

(b) determine a second threshold of combined annual turnover, or assets, in the Republic, either in general or in relation to specific industries, higher than the threshold referred to in paragraph (a), for the purpose of determining categories of mergers in terms of subsection (3); and 30

(c) provide a method for the calculation of annual turnover and assets.

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

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

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

(b) “a large merger” means a merger or proposed merger with a value at or above the then current threshold established in terms of subsection (1)(b).

Merger defined

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

(u) purchase or lease of the shares, interest, or assets of that competitor, supplier, customer or other person;

(b) amalgamation or combination with that competitor, supplier, customer or other person; or 50

(c) any other means.

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

Notification of merger required 20

13. (1) Any party to an intermediate or large merger must notify the Competition Commission of that merger no more than seven days after the earlier of—
- (a) the conclusion of the merger *agreement*;
 - (b) the public announcement of a proposed merger bid; or
 - (c) the acquisition by any one of the parties to that merger, of a controlling *interest* 25 in another.
- (2) A party that is required in terms of subsection (1) to notify the Competition Commission of a merger must provide a copy of that notice to a representative trade union representing the employees of any of the merging *firms*, and, if there is no representative trade union in one of the merging *firms*, the notice in respect of that *firm*, 30 must be directed to—
- (a) any registered trade union that represents a substantial number of the employees of that *firm*; or
 - (b) if there are no registered trade unions in that *firm*, the employees concerned, 35 or representatives of the employees concerned.
- (3) The parties to an intermediate or large merger must not implement that merger until they have received approval from either the Competition Commission in terms of section 14(1), the Competition Tribunal in terms of section 15(2) or the Competition Appeal Court in terms of section 17.

Competition Commission merger proceedings 40

14. (1) Within 30 days after receiving notice of an intermediate merger, the Competition Commission must—
- (a) extend the period in which it has to consider the proposed merger by a period not exceeding 60 days, and in that case, issue an extension certificate to any party that notified it of the merger; or 45
 - (b) after considering the merger in terms of section 16-
 - (i) approve the merger by issuing a clearance certificate;
 - (ii) approve the merger subject to any conditions; or
 - (iii) prohibit implementation of the merger.
- (2) If, upon the expiry of the 30 day period provided for in subsection (1), the 50 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 Commission will be deemed to have approved the merger, subject to subsection (5).

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

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

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

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

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

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

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

Competition Tribunal merger proceedings

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

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

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

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

Consideration of Mergers 40

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

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

- is likely to result from the merger, and would not likely be obtained if the merger is prevented: and
- (ii) whether the merger can or cannot be justified on substantial public interest grounds by assessing the factors set out in subsection (3); and
- (b) otherwise, must determine whether the merger can or cannot be justified on substantial public interest grounds by assessing the factors set out in subsection (3). 5
- (2) When determining whether or not a merger is likely to substantially prevent or lessen competition, the Competition Commission or the Competition Tribunal must assess the strength of competition in the relevant market, and the probability that the *firms* in the market after the merger will behave competitively or co-operatively, taking into account any factor that is relevant to competition in that market, including— 10
- (i) the actual and potential level of import competition in the market;
- (ii) the ease of entry into the market, including tariff and regulatory barriers;
- (iii) the level, trends of concentration, and history of collusion, in the market: 15
- (iv) the degree of countervailing power in the market;
- (v) the likelihood that the acquisition would result in the merged *firm* having *market power*;
- (vi) the dynamic characteristics of the market, including growth, innovation, and product differentiation: 20
- (vii) the nature and extent of vertical integration in the market;
- (viii) whether the business or part of the business of a party to the merger or proposed merger has failed or is likely to fail; and
- (ix) whether the merger will result in the removal of an effective competitor.
- (3) When determining whether a merger can or cannot be justified on public interest grounds, the Competition Commission or the Competition Tribunal must consider the effect that the merger will have on— 25
- (i) a particular industrial sector or region;
- (ii) employment;
- (iii) the ability of small *businesses*, or *firms* controlled or owned by historically disadvantaged persons, to become competitive; and 30
- (iv) the ability of national industries to compete in international markets.

Competition Appeal Court Merger Proceedings

17. (1) Within 30 days after notice of a decision by the Competition Tribunal in terms of section 15(2), a party to the merger, or any other person who, in terms of section 13(2), is required to be given notice of the merger, may appeal to the Competition Appeal Court from that decision, and the Court must either— 35
- (a) set aside the decision of the Tribunal;
- (b) amend that decision by ordering restrictions or by including conditions: or
- (c) confirm that decision. 40

Minister may participate in proceedings

18. In order to make representations on any public interest ground referred to in section 16(3), the Minister may participate as a party in any merger proceedings before the Competition Commission, the Competition Tribunal or the Competition Appeal Court, in the manner provided for in rules made in terms of section 21 (4), 27(2) or 38(1)(c), respectively. 45

CHAPTER 4

COMPETITION COMMISSION, TRIBUNAL AND COURT

PART A

THE COMPETITION COMMISSION

Establishment and constitution of Competition Commission 5

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

- (a) has jurisdiction throughout the Republic;
- (b) is a juristic person; and
- (c) must exercise its functions in accordance with *this Act*. 10

(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*.

Independence of Competition Commission

20. (1) The Competition Commission— 15

- (u) is independent and subject only to the *Constitution* and the law; and
- (b) must be impartial and must perform its functions without fear, favour, or prejudice.

(2) The Commissioner, each Deputy Commissioner and each member of the staff of the Competition Commission, must not— 20

- (a) engage in any activity that may undermine the integrity of the Commission;
- (b) participate in any investigation, hearing or decision concerning a matter in respect of which that person has a direct financial interest or any similar personal interest;
- (c) make private use of, or profit from, any *confidential* information obtained as a result of performing that person's official functions in the Commission; or
- (d) divulge any information referred to in paragraph 2(c) to any third party, except as required as part of that person's official functions within the Commission. 25

(3) Each organ of state must assist the Commission to maintain its independence and impartiality, and to effectively carry out its powers and duties. 30

Functions of Competition Commission

21. (1) The Competition Commission is responsible to—

- (a) implement measures to increase market transparency;
- (b) implement measures to develop public awareness of the provisions of *this Act*;
- (c) investigate and evaluate alleged contravention of Chapter 2; 35
- (d) grant or refuse applications for exemption in terms of Chapter 2;
- (e) authorise, with or without conditions, prohibit or refer mergers of which it receives notice in terms of Chapter 3;
- (f) negotiate and conclude consent orders in terms of section 63;
- (g) refer matters to the Competition Tribunal, and appear before the Tribunal, as required by *this Act*; 40
- (h) negotiate agreements with any *regulatory authority* to co-ordinate and harmonise the exercise of jurisdiction over competition matters within the relevant industry or sector, and to ensure the consistent application of the principles of *this Act*; 45
- (i) participate in the proceedings of any *regulatory authority*;
- (j) advise, and receive advice from any *regulatory authority*;

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

Appointment of Commissioner

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

Appointment of Deputy Commissioner

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

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

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

Appointment of inspectors

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

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

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

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

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

Staff of Competition Commission

25. (1) The Commissioner may—

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

PART B**THE COMPETITION TRIBUNAL 35****Establishment and constitution of Competition Tribunal**

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

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

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

(3) The President must—

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

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

Functions of Competition Tribunal

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

- (a) grant an exemption from a relevant provision of *this Act*;
- (b) authorise a merger, with or without conditions, or prohibit a merger; 5
- (c) adjudicate in relation to any conduct prohibited in terms of Chapter 2 or 3, by determining whether prohibited conduct has occurred, and if so, impose a remedy provided for in Chapter 6; or
- (d) grant an order for costs in terms of section 57.

(2) Section 2 I (4), read with the changes required by the context, applies to the 10 Competition Tribunal.

Qualifications of members of Competition Tribunal

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

- (a) represent a broad cross-section of the population of the Republic; and 15
 - (b) comprise sufficient persons with legal training and experience to satisfy the requirements of section 31(2)(a).
- (2) Each member of the Competition Tribunal must—
- (a) be a citizen of South Africa, who is ordinarily resident in South Africa;
 - (b) have suitable qualifications and experience in economics, law, commerce, 20 industry or public affairs; and
 - (c) be committed to the purposes and principles enunciated in section 2.
- (3) A person may not be a member of the Competition Tribunal if that person—
- (a) is an office-bearer of any party, movement, organisation or body of a partisan 25 political nature;
 - (b) is an unrehabilitated insolvent;
 - (c) is subject to an order of a competent court holding that person to be mentally unfit or disordered; or
 - (d) has been convicted of an offence committed after the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), took effect, and 30 sentenced to imprisonment without the option of a fine.

Term of office of members of Competition Tribunal

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

(2) The President may re-appoint a member of the Competition Tribunal at the expiry 35 of that member's term of office, but no person may be appointed to the office of the Chairperson of the Tribunal for more than two consecutive terms.

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

- (a) resign from the Competition Tribunal; or
- (b) resign as Chairperson, but remain as a member of the Tribunal. 40

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

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

- (a) must remove the Chairperson or any other member of the Competition Tribunal from office if that person becomes subject to any of the disqualify- 45 cations referred to in section 28(3); and
- (b) other than as provided in subsection (a), may remove the Chairperson or a member from office only for—
 - (i) serious misconduct;
 - (ii) permanent incapacity; or 50
 - (iii) engaging in any activity that may undermine the integrity of the Tribunal.

Deputy Chairperson of Competition Tribunal

30. (1) The President must, on the recommendation of the *Minister*, designate a member of the Competition Tribunal as Deputy Chairperson of the Tribunal.
- (2) The Deputy Chairperson performs the functions of Chairperson whenever—
- (a) the office of Chairperson is vacant; or
 - (b) the Chairperson is for any other reason [temporarily unable to perform the functions of Chairperson.

Competition Tribunal proceedings

31. (1) The Chairperson is responsible to manage the caseload of the Competition Tribunal, and must assign each matter referred to the Tribunal to a panel composed of any three members of the Tribunal.
- (2) When assigning a matter in terms of subsection (1), the Chairperson must—
- (a) ensure that at least one member of the panel is a person who has legal training and experience; and
 - (b) designate a member of the panel to preside over the panel's proceedings.
- (3) If, because of withdrawal from a hearing in terms of section 32, resignation, illness or death, a member of the panel is unable to complete the proceedings in a matter assigned to that panel, the Chairperson must—
- (a) direct that the hearing of that matter proceed before any remaining members of the panel subject to the requirements of subsection (2)(u); or
 - (b) terminate the proceedings before that panel and constitute another panel, which may include any member of the original panel, and direct that panel to conduct a new hearing.
- (4) The decision of a panel on a matter referred to it must be in writing and include reasons for that decision.
- (5) A decision of a majority of the members of a panel is the decision of the Tribunal.

Conflicts and disclosure of interest by members of Competition Tribunal

32. (1) A member of the Tribunal may not represent any person before a panel of the Tribunal.
- (2) If, during a hearing, it appears to a member of the Competition Tribunal that a matter concerns a financial or other interest of that member contemplated in section 20(2)(b), that member must—
- (a) immediately and fully disclose the fact and nature of that interest to the Chairperson and to the presiding member at that hearing; and
 - (b) withdraw from any further involvement in that hearing.

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

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

Remuneration and benefits of members of Competition Tribunal

34. (1) The Minister may, in consultation with the Minister of Finance, determine the remuneration, allowances, and other benefits of the Chairperson, Deputy Chairperson and other members of the Competition Tribunal.
- (2) The *Minister* may not during the term of office of a member of the Competition Tribunal, reduce the member's salary, allowances or benefits.
- (3) The *Minister* may determine any other conditions of appointment not provided for in this section.

Staff of Competition Tribunal

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

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

PART C

THE COMPETITION APPEAL COURT

5

Establishment and constitution of Competition Appeal Court

36. (1) There is hereby established a court to be known as the Competition Appeal Court, which —
- (a) is a court contemplated in section 166(e) of the Constitution with a status similar to that of a High Court; 10
 - (b) has jurisdiction throughout the Republic; and
 - (c) is a court of record.
- (2) The Competition Appeal Court consists of members appointed by the President in accordance with section 174 of the Constitution, and comprises—
- (a) at least three members, each of whom is a judge of the High Court, and one of whom must be designated by the President to be Judge President of the Competition Appeal Court; and 15
 - (b) two other members, each of whom—
 - (i) is a citizen of South Africa, and is ordinarily resident in the Republic;
 - (ii) has suitable qualifications and experience in economics, law, commerce, 20 industry or public affairs; and
 - (iii) is committed to the purposes and principles mentioned in section 2.

Function of Competition Appeal Court

37. (1) The Competition Appeal Court may consider any appeal from, or review of, a decision of the Competition Tribunal. 25
- (2) The Competition Appeal Court may—
- (a) confirm, amend or set aside a decision or order that is the subject of an appeal or review from the Competition Tribunal; and
 - (b) give any judgment or make any order that the circumstances require.

Business of Competition Appeal Court

30

38. (1) The Judge President of the Competition Appeal Court—
- (a) is responsible to supervise and direct the work of the Court;
 - (b) must preside at proceedings of the Court; and
 - (c) by notice in the Gazette, may make rules for the proceedings of the Court.
- (2) A matter before the Competition Appeal Court must be heard by the full Court. 35
- (3) The decision of a majority of the members of the Competition Appeal Court is the decision of the Court.
- (4) Despite subsection (2) and (3), any matter of law arising for decision by the Competition Appeal Court, and any question as to whether a matter for decision is a matter of fact or a matter of law, must be decided only by the members appointed in 40 terms of section 36(2)(a), and a decision by a majority of them is the decision of the court.
- (5) A decision of the Competition Appeal Court must be in writing and include reasons for that decision.

Terms of office of members of Competition Appeal Court

45

39. (1) Subject to subsection (2)—
- (a) sections 26(3) and 33, each read with the changes required by the context, apply to the Competition Appeal Court; and

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

PART D

ADMINISTRATIVE MATTERS CONCERNING THE COMPETITION COMMISSION AND THE COMPETITION TRIBUNAL

Finances

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

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

Annual Report

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

Rules applicable to Competition Tribunal

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

Liability

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

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

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

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

Investigation by Competition Commission

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

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

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

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

(a) to appear before the Commissioner or a person authorised by the Commissioner, to be interrogated at a time and place specified in the summons; or 30

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

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

Authority to enter and search under warrant

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

(a) a *prohibited practice* has taken place, is taking place or is likely to take place on or in those premises; or

(b) that anything connected with an investigation into that prohibited *practice* is in the possession of or under the control of, a person who is on or in those premises. 50

(2) A warrant to enter and search may be issued at any time and must specifically —
(a) identify the premises that may be entered and searched; and

- (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 5 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 10 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— 15
- (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 20 in a prominent and visible place.

Authority to enter and search without warrant

47. (1) An inspector who is not authorised by a warrant in terms of section 46(2) may enter and search premises other than a private dwelling.
- (2) Immediately before entering and searching in terms of this section, the inspector 25 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 30 if applied for, and that the delay that would ensue by first obtaining a warrant would defeat the object or purpose of the entry and search.
- (3) An entry and search without a warrant may be carried out only during the day, unless doing it at night is justifiable and necessary in the circumstances.

Powers to enter and search

35

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 40 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 45 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.
- (2) Section 45(5) applies to an answer given or statement made to an inspector in terms of this section.
- (3) An inspector authorised to conduct an entry and search in terms of section 46 or 47 may be accompanied and assisted by a police officer.

Conduct of entry and search

49. (1) A person who enters and searches any premises under section 48 must conduct the entry and search with strict regard for decency and order, and with regard for each person's right to dignity, freedom, security and privacy. 15
- (2) During any search under section 48(1)(c), only a female inspector or police officer may search a female person, and only a male inspector or police officer may search a male person.
- (3) A person who enters and searches premises under section 48, must before questioning anyone— 20
- (a) advise that person of the right to be assisted at the time by an advocate or attorney; and
 - (b) allow that person to exercise that right.
- (4) A person who removes anything from premises being searched must— 25
- (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, 35 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 40 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. 45

Outcome of complaint

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

Referral to Competition Tribunal

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

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

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

(4) The notice published in terms of subsection (3) must include — 10
 (a) the name of the *firm* whose conduct is the subject of the referral; and
 (b) the nature of the conduct that is the subject of the referral.

Hearings before Competition Tribunal

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

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

(a) in an inquisitorial manner;

(b) as expeditiously as possible;

(c) as informally as possible; and

(d) in accordance with the principles of natural justice. 20

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

(a) if evidence to be presented is confidential information, but only to the extent that the information cannot otherwise be protected; 25

(b) if the proper conduct of the hearing requires it; or

(c) for any other reason that would be justifiable in civil proceedings in a High court.

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

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

Right to participate in hearing

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

(a) the Commissioner, or any person appointed by the Commissioner;

(b) the complainant;

(c) the *firm* whose conduct forms the basis of the hearing; and 40

(d) any other person who has a material interest in the hearing, unless, in the opinion of the presiding member of the Competition Tribunal, that interest is adequately represented by another participant.

Powers of member presiding at hearing

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

(a) direct or summon any person to appear at any specified time and place;

(b) question any person under oath or affirmation;

(c) summon or order any person—

(i) to produce any book, document or item necessary for the purposes of the hearing; or 50

(ii) to perform any other act in relation to *this* Act; and

(d) give directions prohibiting or restricting the publication of any evidence given to the Competition Tribunal.

Rules of procedure

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

Witnesses

5

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

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

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

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

costs

57. (1) Subject to subsection (2), each party participating in a hearing must bear its own costs. 15

(2) If the Competition Tribunal—

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

(b) has made a finding against a *respondent*, the Tribunal member presiding at a hearing may award costs against the *respondent*, and to a complainant who referred the complaint in terms of section 51 (1). 20

Appeals

58. (1) Subject to the rules of the Competition Appeal Court, a participant in a hearing referred to in section 53 may — 25

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

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

(2) The Competition Appeal Court may make an order for the payment of costs 30 against any party in the hearing, or against any person who represented a party in the hearing, according to the requirements of the law and fairness.

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

CHAPTER 6

35

REMEDIES AND ENFORCEMENT**Interim relief**

59. (1) At any time, whether or not a hearing has commenced into an alleged *prohibited* practice, a person referred to in section 44 may apply to the Competition Tribunal for an interim order in respect of that alleged practice, and the Tribunal may 40 grant such an order if—

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

(b) an interim order is reasonably necessary to—

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

(ii) to prevent the purposes of *this Act* being frustrated; 45

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

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

Orders of Competition Tribunal

60. (1) In addition to its other powers in terms of *this Act*, the Competition Tribunal may—

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

Administrative fines

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

- (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; 5
- (f) the degree to which the *respondent* has co-operated with the Competition Commission and the Tribunal; and
- (g) whether the respondent has previously been found in contravention of *this Act*.

(4) A fine payable in terms of this section must be paid into the National Revenue Fund referred to in section 213 of the Constitution. 10

Divestiture

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

- (a) order a party to the merger to sell any shares, interest or other assets it has acquired pursuant to the merger; or 15
- (b) declare void any provision of an *agreement* to which the merger was subject.

(2) The Competition Tribunal, in addition to or in lieu of making an order under section 60, may make an order directing any *firm*, or any other person to sell any shares, interest or assets of the *firm*— 20

- (a) it has contravened section 8, and
- (b) the prohibited *practice*—
 - (i) cannot adequately be remedied in terms of another provision of this Act; or
 - (ii) is substantially a repeat by that *firm* of conduct previously found by the Tribunal to be a prohibited practice. 25

(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. 30

Consent orders

63. (1) If a complaint of a prohibited practice has been investigated by the Competition Commission, and the Commission and the respondent agree on the terms of an appropriate order, the Competition Tribunal, without hearing any evidence, may confirm that *agreement* as a consent order in terms of section 60. 35

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

- (3) A consent order does not preclude a complainant applying for—
 - (u) a declaration in terms of section 60(1)(a)(v) or (vi); or 40
 - (b) an award of civil damages in terms of section 65, unless the consent order includes an award of damages to the complainant.

Status and enforcement of orders

64. (1) Any decision, judgment or order of the Competition Commission, Competition Tribunal or Competition Appeal Court may be served, executed and enforced as if it were an order of the High Court. 45

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

(3) A proceeding under subsection (2) may not be initiated more than three years after the imposition of the administrative penalty. 50

Civil actions and jurisdiction

65. (1) Nothing in *this Act* renders void a provision of an agreement that, in terms of this *Act*, is prohibited or may be declared void, unless the Competition Tribunal or Competition Appeal Court declares that provision to be void. 55

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

Variation of order

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

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

Limitations of bringing action 5

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

(2) A complaint may not be initiated against any *firm* that is. or has been. *arespondent* in proceedings under another section of *this Act* relating substantially to the same conduct. 10

Standard of proof

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

CHAPTER 7

OFFENCES 15

Breach of confidence

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

- (a) in carrying out any function in terms of *this Act*; or
- (b) as a result of initiating a complaint or participating in any proceedings in terms of *this Act*. 20

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

- (a) for the purpose of the proper administration or enforcement of *this Act*;
- (b) for the purpose of the administration of justice: or
- (c) at the request of an inspector, Commissioner, Deputy Commissioner or Competition Tribunal member entitled to receive the information. 25

Hindering administration of Act

70. It is an offence to hinder, oppose, obstruct or unduly influence any person who is exercising a power or performing a duty delegated, conferred or imposed on that person by *this Act*. 30

Failure to attend when summoned

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

- (a) fails without sufficient cause to appear at the time and place specified or to remain in attendance until excused; or 35
- (b) attends as required. but—
 - (i) refuses to be sworn in or to make an affirmation; or
 - (ii) fails to produce a book, document or other item as ordered, if it is in the possession of, or under the control of, that person.

Failure to answer fully or truthfully 40

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

- (a) subject to section 56. fails to answer any question fully and to the best of that person's ability: or
- (b) gives false evidence, knowing or believing it to be false. 45

Failure to comply with Act

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

(2) A person commits an offence who—

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

Penalties

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

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

Magistrate's Court jurisdiction to impose penalties 30

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

Serving documents

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

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

Proof of facts 40

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

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

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

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

CHAPTER 8

GENERAL PROVISIONS

Regulations

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

Guidelines

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

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

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

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

Official seal 20

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

Act binds State

81. *This Act* binds the State. 25

Information exchange with foreign agencies

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

Transitional arrangements and repeal of laws 30

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

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

Short Title and commencement of Act 35

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

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

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

SCHEDULE 1**EXEMPTION OF PROFESSIONAL RULES IN TERMS OF SECTION 2(c)****PART A**

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

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

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

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

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

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

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

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

6. In this Schedule —

‘*professional association*’ means an association referred to in Part B of this Schedule; ‘*professional rules*’ means rules regulating a *professional association* that are binding on its members;

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

PART B

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

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

Accountants and Auditors

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

Architects

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

Engineering

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

Estate Agents

Estate Agents Act. 1976 (Act No. 1 I 2 of 1976)

Attorneys and Advocates

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

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

Natural sciences

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

Quantity Surveyors

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

Surveyors

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

Town and Regional Planners

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

Valuers

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

Medical

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

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

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

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

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

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

Miscellaneous

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

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

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

SCHEDULE 3

Transitional Arrangements

1. A ruling issued in terms of section 6(1)(a) of the Maintenance and Promotion of Competition Act, 1979 (Act No. 86 of 1979), or notice issued in terms of section 14(1)(c) of that Act, in relation to an “acquisition” as defined in that Act, must be regarded for purposes of this Act to be a conditional approval of a merger as if it had been granted after *this Act* came into operation by the Competition Commission in terms of section 14(1)(b), or by the Competition Tribunal in terms of section 16(2)(b).
2. An arrangement entered into in terms of section 11(1) of the Maintenance and Promotion of Competition Act, 1979 (Act No. 86 of 1979), must be regarded as having been confirmed as a consent order in terms of section 63 of *this Act* and is valid for a period of 12 months from the date on which *this Act* comes into operation.
3. An exemption granted in terms of Section 14(5) of the Maintenance and Promotion of Competition Act, 1979 (Act No. 86 of 1979), must be regarded as having been granted in terms of section 10 of *this Act* and is valid for a period of 12 months from the date on which *this Act* comes into operation.
4. Any reference in any other statute to—
 - (a) the Maintenance and Promotion of Competition Act, 1979 (Act No. 86 of 1979), must be regarded as a reference to *this Act*;
 - (b) a “restrictive practice” or “monopoly situation” as defined in terms of section 1 of the Maintenance and Promotion of Competition Act, 1979 (Act No. 86 of 1979), must be regarded as a reference to a “prohibited practice” in terms of *this Act*;
 - (c) an “acquisition” as defined in terms of section 1 of the Maintenance and Promotion of Competition Act, 1979 (Act No. 86 of 1979), must be regarded as a reference to a “merger” in terms of *this Act*;
 - (d) the “Competition Board” as established in terms of section 3 of the Maintenance and Promotion of Competition Act, 1979 (Act No. 86 of 1979), must be regarded as a reference to the Competition Commission.
5. When this Act comes into operation an officer or employee appointed in terms of the Public Service Act, 1994, to serve the Competition Board established by the Maintenance and Promotion of Competition Act, 1979 (Act No. 86 of 1979), continues to be an officer or employee under the Public Service Act, subject to the direction of the Department of Trade and Industry.
6. If an officer or an employee referred to in item 5 is appointed as an officer or employee of the Competition Commission, the accumulated value of that person’s contributions to any pension fund, together with the accumulated value of the contributions made to that fund by that person’s employer, may be transferred to a pension fund established for the benefit of the staff of the Commission.