REPUBLIC OF SOUTH AFRICA

COMPETITION ACT

(Date of commencement of sections 1-3, 6,11,19-43,78,79 & 84 on 30 November 1998. The remaining sections of the Act commenced on 1 September 1999)

as amended by

Competition Amendment Act, No 35 of 1999

(Date of commencement 1 September 1999)

Competition Amendment Act, No. 15 of 2000

(Date of commencement 1 September 2000)

Competition Second Amendment Act, No. 39 of 2000

(Date of commencement 1 February 2001)

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,

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inadequate restraints against anti-competitive trade practices, and unjust restrictions on full and free participation in the economy by all South Africans.

This paragraph was amended to its present form by section 22 of The Competition Second Amendment Act, 2000

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 :

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CHAPTER 1

DEFINITIONS, INTERPRETATION, PURPOSE AND APPLICATION OF ACT

1. Definitions and interpretation

(1) In *this Act* -

(i) **'*acquiring firm*'** means a *firm* –

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

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

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

Paragraph (i) was added by section 1 (a) of The Competition Second Amendment Act, 2000

(ii) '***agreement***', when used in relation to a *prohibited practice*, includes a contract, arrangement or understanding, whether or not legally enforceable;

Paragraph (ii) was amended to its present form by section 1 (b) of The Competition Second Amendment Act, 2000.

(i) **'*civil court*'** means a High Court or Magistrates Court, as referred to in sections 166(c) and (d) of the *Constitution*;

(ii) **'*complainant*'** means a person who has submitted a complaint in terms of section 49B(2)(b);

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Paragraph (iv) was added by section 1 (c) of The Competition Second Amendment Act, 2000.

(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;

(iv) ‘***concerted practice***’ means co-operative, or co-ordinated conduct between *firm*s, achieved through direct or indirect contact, that replaces their independent action, but which does not amount to an *agreement*;

(v) ‘***Constitution***’ means the *Constitution* of the Republic of South Africa, 1996 (Act No. 108 of 1996);

(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;

(vii) ‘***excessive price***’ means a price for a good or service which –

(aa) bears no reasonable relation to the economic value of that good or service; and

(bb) is higher than the value referred to in subparagraph (aa);

(viii) ‘***exclusionary act***’ means an act that impedes or prevents a *firm* entering into, or expanding within, a market;

(ix) ‘***firm***’ includes a person, partnership or a trust;

(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;

(xi) ‘***horizontal relationship***’ means a relationship between competitors;

*the former definition of **interest** was deleted section 1 (d) of The Competition Second Amendment Act, 2000*

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(xii) ‘***market power***’ means the power of a *firm* to control prices, or to exclude competition or to behave to an appreciable extent independently of its competitors, customers or suppliers;

(xiii) ‘***member's interest***’ has the meaning set out in the Close Corporations Act, 1984 (Act No. 69 of 1984);

Paragraph (xv) was added by section 1 (e) of The Competition Second Amendment Act, 2000

(xiv) ‘***Minister***’ means the *Minister* of Trade and Industry;

(xv) ‘***organ of state***’ has the meaning set out in section 239 of the *Constitution*;

(xvi) ‘***party to a merger***’ means an *acquiring firm* or a *target firm*;

Paragraph (xviii) was added by section 1 (f) of The Competition Second Amendment Act, 2000

(xvii) ‘***premises***’ includes land, or any building, structure, vehicle, ship, boat, vessel, aircraft or container;

(xviii) ‘***prescribed***’ means *prescribed* by *regulation*;

Paragraph (xx) was amended to its present form by section 1 (g) of The Competition Second Amendment Act, 2000

(xix) ‘***primary acquiring firm***’ means any *firm* contemplated in paragraph (a) of the definition of *acquiring firm*;

Paragraph (xxi) was added by section 1 (h) of The Competition Second Amendment Act, 2000

(xx) ‘***primary target firm***’ means any *firm* contemplated in paragraph (a) or (b) of the definition of *target firm*;

Paragraph (xxii) was added by section 1 (h) of The Competition Second Amendment Act, 2000

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(xxi) '***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;

(xxii) '***prohibited practice***' means a practice prohibited in terms of Chapter 2;

(xxiii) '***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;

(xxiv) '***registered trade union***' means a trade union registered in terms of section 96 of the Labour Relations Act, 1995 (Act No. 66 of 1995);

Paragraph (xxvi) was added by section 1 (i) of The Competition Second Amendment Act, 2000

(xxv) '***regulation***' means a *regulation* made under *this Act*;

(xxvi) '***regulatory authority***' means an entity established in terms of national or provincial legislation responsible for regulating an industry, or sector of an industry;

(xxvii) '***respondent***' means a *firm* against whom a complaint of a *prohibited practice* has been initiated in terms of *this Act*;

(xxviii) '***restrictive horizontal practice***' means any practice listed in section 4;

(xxix) '***restrictive vertical practice***' means any practice listed in section 5;

(xxx) '***small business***' has the meaning set out in the National *Small business* Act, 1996 (Act No. 102 of 1996);

(xxxi) '***target firm***' means a *firm* –

(a) the whole or part of whose business would be directly or indirectly controlled by an *acquiring firm* as a result of a transaction in any circumstances set out in section 12;

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(b) that, as a result of a transaction in any circumstances set out in section 12, would directly or indirectly transfer direct or indirect control of the whole or part of, its business to an *acquiring firm*; or

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

Paragraph (xxxiii) was added by section 1 (j) of The Competition Second Amendment Act, 2000

(i) '***this Act***' includes the *regulation*s and Schedules;

(ii) '***vertical relationship***' means the relationship between a *firm* and its suppliers, its customers, or both.

(1A) When a particular number of business days is provided for performing an act, the number of days must be calculated by –

(a) excluding the first day, any public holiday, Saturday and Sunday; and

(b) including the last day.

Subsection (1A) was added by section 1 (k) of The Competition Second Amendment Act, 2000

(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

(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.

2. Purpose of Act

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

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(a) to promote the efficiency, adaptability and development of the economy;

(b) to provide consumers with competitive prices and product choices;

(c) to promote employment and advance the social and economic welfare of South Africans;

(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

(f) to promote a greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged persons.

3. Application of Act

(1) *This Act* applies to all economic activity within, or having an effect within, the Republic, except –

(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; and

(c) . . .

Paragraph (c) was deleted by section 2 (a) of The Competition Second Amendment Act, 2000.

(d) . . .

Paragraph (d) was deleted by section 2 (a) of The Competition Second Amendment Act, 2000.

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(e) concerted conduct designed to achieve a non-commercial socio-economic objective or similar purpose.

(1A) (a) In so far as *this Act* applies to an industry, or sector of an industry, that is subject to the jurisdiction of another *regulatory authority*, which authority has jurisdiction in respect of conduct regulated in terms of Chapter 2 or 3 of *this Act*, *this Act* must be construed as establishing concurrent jurisdiction in respect of that conduct.

(b) The manner in which the concurrent jurisdiction is exercised in terms of *this Act* and any other *public regulation*, must be managed, to the extent possible, in accordance with any applicable *agreement* concluded in terms of sections 21(1)(h) and 82(1) and (2).

Subsection (1A) was added by section 2 (b) of The Competition Second Amendment Act, 2000

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

(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);

(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.

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CHAPTER 2

*PROHIBITED PRACTICE*S

PART A

RESTRICTIVE PRACTICES

4. Restrictive horizontal practices prohibited

(1) An *agreement* between, or *concerted practice* by, *firms*, or a decision by an association of *firms,* is prohibited if it is between parties in a *horizontal relationship* and if –

(a) 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;

(ii) dividing markets by allocating customers, suppliers, territories, or specific types of *goods or services;* or

(iii) collusive tendering.

Subsection (1) was amended to its present form by section 3(a) and (b) of The Competition Second Amendment Act, 2000.

(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 –

(a) any one of those *firm*s owns a significant interest in the other, or they have at least one director or substantial shareholder in common; and

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(b) any combination of those *firm*s engages in that *restrictive horizontal practice*.

Subsection (2) was amended to its present form by section 3(c) of The Competition Second Amendment Act, 2000.

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

(4) For purposes of subsections (2) and (3), “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*.

Subsection (4) was amended to its present form by section 3(d) of The Competition Second Amendment Act, 2000.

(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

(b) the constituent *firm*s within a single economic entity similar in structure to those referred to in paragraph (a).

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5. Restrictive vertical practices prohibited

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

(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 –

(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

6. Restricted application of Part

Section 6 was amended to its present form by section 4 of The Competition Second Amendment Act, 2000.

(1) The *Minister*, in consultation with the Competition Commission, must determine –

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

(b) a method for the calculation of annual turnover or assets to be applied in relation to that threshold.

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

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

(a) setting out the proposed threshold and method of calculation for purposes of this section; and

(b) inviting written submissions on that proposal.

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

(a) Setting out the threshold and method of calculation for purposes of this section; and

(b) the effective date of that threshold.

7. Dominant firms

A *firm* is dominant in a market if –

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

(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*.

8. Abuse of dominance prohibited

It is prohibited for a dominant *firm* to -

(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;

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

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

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

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

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

(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.

9. Price discrimination by dominant firm prohibited

(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;

(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 –

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(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.

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PART C

EXEMPTIONS FROM APPLICATION OF CHAPTER

10. Exemption

Section 10 was amended to its present form by section 5 of The Competition Second Amendment Act, 2000.

(1) A *firm* may apply to the Competition Commission to exempt from the application of this Chapter. -

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

(b) or category of *agreements* or practices, if that category of *agreement*s or practices meets the requirements of subsection (3).

(2) Upon receiving an application in terms of subsection (1), the Competition Commission must –

(a) grant a conditional or unconditional exemption for a specified term, if the *agreement* or practice concerned, or category of *agreements* or practices concerned, meets the requirements of subsection (3); or

(b) refuse to grant an exemption, if -

(i) the *agreement* or practice concerned, or category of *agreements* or practices concerned, does not meet the requirements of subsection (3); or

(ii) the *agreement* or practice, or category of *agreements* or practices does not constitute a *prohibited practice* in terms of this Chapter.

(3) The Competition Commission may grant an exemption in terms of subsection (2)(a) only if –

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(a) any restriction imposed on the *firm*s concerned by the *agreement* or practice concerned, or category of either *agreements* or practices concerned, is required to attain an objective mentioned in paragraph (b); and

(b) the *agreement* or practice concerned, or category of *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) A *firm* may apply to the Competition Commission to exempt from the application of this Chapter an *agreement* or practice, or category of *agreements* or practices, that relates to the exercise of intellectual property rights, including a right acquired or protected in terms of the Performers' Protection Act, 1967 (Act No. 11 of 1967), the Plant 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).

(4A) Upon receiving an application in terms of subsection (4), the Competition Commission may grant an exemption for a specified term.

(5) The Competition Commission may revoke an exemption granted in terms of subsection (2)(a) or subsection (4A) if –

(a) 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.

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

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

(b) must allow interested parties 20 business days from the date of that notice to make written representations as to why the exemption should not be granted or revoked; and

(c) may conduct an investigation into the *agreement* or practice concerned, or category of *agreement*s or practices concerned.

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

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

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

(a) may withdraw its notice of refusal to grant the exemption, in the *prescribed* manner; and

(b) if it does withdraw its notice of refusal, must reconsider the application for exemption.

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CHAPTER 3

MERGER CONTROL

CHAPTER 3 WAS AMENDED TO ITS PRESENT FORM BY SECTION 6 OF THE COMPETITION SECOND AMENDMENT ACT, 2000.

11. Thresholds and categories of mergers

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

(a) A lower and a higher threshold of combined annual turnover or assets, or a lower and a higher threshold of combinations of turnover and assets, in the Republic, in general or in relation to specific industries, for purposes of determining categories of mergers contemplated in subsection (5); and

(b) a method for the calculation of annual turnover or assets to be applied in relation to each of those thresholds.

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

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

(a) setting out the proposed threshold and method of calculation for purposes of this section; and

(b) inviting written submissions on that proposal.

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

(a) setting out the new threshold and method of calculation for purposes of this section; and

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(b) the effective date of that threshold.

(5) For purposes of this Chapter—

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

(b) "**an intermediate merger**" means a merger or proposed merger with a value between the lower and higher thresholds established in terms of subsection (1)(a*)*; and

(c) "**a large merger**" means a merger or proposed merger with a value at or above the higher threshold established in terms of subsection (1)(a).

12. Merger defined

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

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

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

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

(2) A person controls a *firm* if that person—

(a) beneficially owns more than one half of the issued share capital of the *firm*;

(b) is entitled to vote a majority of the votes that may be cast at a general meeting of the *firm*, or has the ability to control the voting of a majority of those votes, either directly or through a controlled entity of that person;

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(c) is able to appoint or to veto the appointment of a majority of the directors of the *firm*;

(d) is a holding company, and the *firm* is a subsidiary of that company as contemplated in section 1(3)(a) of the Companies Act, 1973 (Act No. 61 of 1973);

(e) in the case of a *firm* that is a trust, has the ability to control the majority of the votes of the trustees, to appoint the majority of the trustees or to appoint or change the majority of the beneficiaries of the trust;

(f) in the case of a close corporation, owns the majority of members' *interest* or controls directly or has the right to control the majority of members' votes in the close corporation; or

(g) has the ability to materially influence the policy of the *firm* in a manner comparable to a person who, in ordinary commercial practice, can exercise an element of control referred to in paragraphs (a) to (f).

12A. Consideration of Mergers

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

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

(i) whether or not the merger is likely to result in any technological, efficiency or other pro-competitive gain which will be greater than, and offset, the effects of any prevention or lessening of competition, that may result or is likely to result from the merger, and would not likely be obtained if the merger is prevented; and

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(ii) whether the merger can or cannot be justified on substantial public interest grounds by assessing the factors set out in subsection (3); or

(b) otherwise, determine whether the merger can or cannot be justified on substantial public interest grounds by assessing the factors set out in subsection (3).

(2) When determining whether or not a merger is likely to substantially prevent or lessen competition, the Competition Commission or Competition Tribunal must assess the strength of competition in the relevant market, and the probability that the *firms* in the market after the merger will behave competitively or co-operatively, taking into account any factor that is relevant to competition in that market, including—

(a) the actual and potential level of import competition in the market;

(b) the ease of entry into the market, including tariff and regulatory barriers;

(c) the level and trends of concentration, and history of collusion, in the market;

(d) the degree of countervailing power in the market;

(e) the dynamic characteristics of the market, including growth, innovation, and product differentiation;

(f) the nature and extent of vertical integration in the market;

(g) whether the business or part of the business of a party to the merger or proposed merger has failed or is likely to fail; and

(h) whether the merger will result in the removal of an effective competitor.

(3) When determining whether a merger can or cannot be justified on public interest grounds, the Competition Commission or the Competition Tribunal must consider the effect that the merger will have on—

(a) a particular industrial sector or region;

(b) employment;

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(c) the ability of *small businesses*, or *firms* controlled or owned by historically disadvantaged persons, to become competitive; and

(d) the ability of national industries to compete in international markets.

13. Small merger notification and implementation

(1) A party to a small merger—

(a) is not required to notify the Competition Commission of that merger unless the Commission requires it to do so in terms of subsection (3); and

(b) may implement that merger without approval, unless required to notify the Competition Commission in terms of subsection (3).

(2) A party to a small merger may voluntarily notify the Competition Commission of that merger at any time.

(3) Within 6 months after a small merger is implemented, the Competition Commission may require the parties to that merger to notify the Commission of that merger in the *prescribed* manner and form if, in the opinion of the Commission, having regard to the provisions of section 12A, the merger—

(a) may substantially prevent or lessen competition; or

(b) cannot be justified on public interest grounds.

(4) A *party to a merger* contemplated in subsection (3) may take no further steps to implement that merger until the merger has been approved or conditionally approved.

(5) Within 20 business days after all parties to a small merger have fulfilled all their notification requirements in the *prescribed* manner and form, the Competition Commission —

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(a) may extend the period in which it has to consider the proposed merger by a single period not exceeding 40 business days and, in that case, must issue an extension certificate to any party who notified it of the merger; or

(b) after having considered the merger in terms of section 12A, must issue a certificate in the *prescribed* form —

(i) approving the merger;

(ii) approving the merger subject to any conditions;

(iii) prohibiting implementation of the merger, if it has not been implemented; or

(iv) declaring the merger to be prohibited.

(6) If, upon the expiry of the 20 business day period provided for in subsection (5), the Competition Commission has not issued any of the certificates referred to in that subsection or, upon the expiry of an extension period contemplated in subsection (5)(a), the Commission has not issued a certificate referred to in subsection (5)(b), the merger must be regarded as having been approved, subject to section 15.

(7) The Competition Commission must—

(a) publish a notice of the decision in the *Gazette*; and

(b) issue written reasons for the decision if-

(i) it prohibits or conditionally approves the merger; or

(ii) requested to do so by a party to the merger.

13A. Notification and implementation of other mergers

(1) A party to an intermediate or a large merger must notify the Competition Commission of that merger in the *prescribed* manner and form.

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(2) In the case of an intermediate or a large merger, the *primary acquiring firm* and the *primary target firm* must each provide a copy of the notice contemplated in subsection (1) to -

(a) any *registered trade union* that represents a substantial number of its employees; or

(b) the employees concerned or representatives of the employees concerned, if there are no such *registered trade unions*.

(3) The parties to an intermediate or large merger may not implement that merger until it has been approved, with or without conditions, by the Competition Commission in terms of section 14(1)(b), the Competition Tribunal in terms of section 16 (2) or the Competition Appeal Court in terms of section 17.

13B. Merger investigations

(1) The Competition Commission may direct an inspector to investigate any merger, and may designate one or more persons to assist the inspector.

(2) The Competition Commission may require any *party to a merger* to provide additional information in respect of the merger.

(3) Any person, whether or not a party to or a participant in merger proceedings, may voluntarily file any document, affidavit, statement or other relevant information in respect of that merger.

14. Competition Commission intermediate merger proceedings

(1) Within 20 business days after all parties to an intermediate merger have fulfilled all their notification requirements in the *prescribed* manner and form, the Competition Commission —

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(a) may extend the period in which it has to consider the proposed merger by a single period not exceeding 40 business days and, in that case, must issue an extension certificate to any party who notified it of the merger; or

(b) after having considered the merger in terms of section 12A, must issue a certificate in the *prescribed* form —

(i) approving the merger;

(ii) approving the merger subject to any conditions; or

(iii) prohibiting implementation of the merger.

(2) If, upon the expiry of the 20 business day period provided for in subsection (1), the Competition Commission has not issued any of the certificates referred to in that subsection or, upon the expiry of an extension period contemplated in subsection (1)(a), the Commission has not issued a certificate referred to in subsection (1)(b), the merger must be regarded as having been approved, subject to section 15.

(3) The Competition Commission must—

(a) publish a notice of the decision in the *Gazette*; and

(b) issue written reasons for the decision if

(i) it prohibits or conditionally approves the merger; or

(ii) requested to do so by a party to the merger.

14A. Competition Commission large merger proceedings

(1) After receiving notice of a large merger, the Competition Commission -

(a) must refer the notice to the Competition Tribunal and to the *Minister;* and

(b) within 40 business days after all parties to a large merger have fulfilled all their *prescribed* notification requirements, must forward to the Competition

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Tribunal and the *Minister* a written recommendation, with reasons, whether or not implementation of the merger should be—

(i) approved;

(ii) approved subject to any conditions; or

(iii) prohibited.

(2) The Competition Tribunal may extend the period for making a recommendation in respect of a particular merger upon an application by the Competition Commission, but the Tribunal may not grant an extension of more than 15 business days at a time.

(3) If, upon the expiry of the period contemplated in subsection (1), or an extended time contemplated in subsection (2), the Competition Commission has neither applied for an extension or a further extension as the case may be, nor forwarded a recommendation to the Competition Tribunal, any party to the merger may apply to the Tribunal to begin the consideration of the merger without a recommendation from the Commission.

(4) Upon receipt of an application by a party contemplated in subsection (3), the Tribunal must set a date for proceedings in respect of that merger.

15. Revocation of merger approval

(1) The Competition Commission may revoke its own decision to approve or conditionally approve a small or intermediate merger if—

(a) the decision was based on incorrect information for which a party to the merger is responsible;

(b) the approval was obtained by deceit; or

(c) a *firm* concerned has breached an obligation attached to the decision.

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(2) If the Competition Commission revokes a decision to approve a merger under subsection (1), it may prohibit that merger even though any time limit set out in this Chapter may have elapsed.

16. Competition Tribunal merger proceedings

(1) If the Competition Commission approves -

(a) a small or intermediate merger subject to any conditions, or prohibits such merger, any party to the merger, by written notice and in the *prescribed* form, may request the Competition Tribunal to consider the conditions or prohibited merger; or

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

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

(a) approve the merger;

(b) approve the merger subject to any conditions; or

(c) prohibit implementation of the merger.

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

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(4) The Competition Tribunal must—

(a) publish a notice of the decision made in terms of subsection (2) or (3) in the *Gazette*; and

(b) issue written reasons for any such decision.

17. Competition Appeal Court merger proceedings

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

(a) any party to the merger; or

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

(2) The Competition Appeal Court may—

(a) set aside the decision of the Competition Tribunal;

(b) amend the decision by ordering or removing restrictions, or by including or deleting conditions; or

(c) confirm the decision.

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

(a) approve the merger;

(b) approve the merger subject to any conditions; or

(c) prohibit implementation of the merger.

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18. Intervention in merger proceedings

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

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

(a) merger constitutes—

(i) an acquisition of shares for which permission is required in terms of section 37 of the Banks Act, 1990 (Act No. 94 of 1990); or

(ii) a transaction for which consent is required in terms of section 54 of the Banks Act, 1990 (Act No. 94 of 1990); and

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

(i) the merger is a merger contemplated in paragraph (a)(i) or (ii); and

(ii) it is in the public interest that the merger is subject to the jurisdiction of the Banks Act, 1990 (Act No. 94 of 1990) only.

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

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CHAPTER 4

COMPETITION COMMISSION, TRIBUNAL, AND COURT

PART A - THE COMPETITION COMMISSION

19. Establishment and Constitution of Competition Commission

(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*.

(2) The Competition Commission consists of the Commissioner, and one or more Deputy Commissioners, appointed by the *Minister* in terms of *this Act*.

Subsection (2) was amended to its present form by section 7 of The Competition Second Amendment Act, 2000.

20. Independence of Competition Commission

(1) The Competition Commission –

(a) 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 –

(a) engage in any activity that may undermine the integrity of the Commission;

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(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.

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

21. Functions of Competition Commission

(1) The Competition Commission is responsible to –

(a) implement measures to increase market transparency;
(a) implement measures to develop public awareness of the provisions of *this Act*;
(b) investigate and evaluate alleged contravention's of Chapter 2;
(c) grant or refuse applications for exemption in terms of Chapter 2;
(d) authorise, with or without conditions, prohibit or refer mergers of which it receives notice in terms of Chapter 3;
(e) negotiate and conclude consent orders in terms of section 63;
(f) refer matters to the Competition Tribunal, and appear before the Tribunal, as required by *this Act*;
(g) negotiate *agreement*s with any *regulatory authority* to co-ordinate and harmonize 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*;
(h) participate in the proceedings of any *regulatory authority*;
(i) advise, and receive advice from, any *regulatory authority*;
(j) over time, review legislation and *public regulations*, and report to the *Minister* concerning any provision that permits uncompetitive behaviour; and
(k) deal with any other matter referred to it by the Tribunal.

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(2) In addition to the functions listed in subsection (1), the Competition Commission may –

(b) report to the *Minister* on any matter relating to the application of *this Act*;

(a) enquire into and report to the *Minister* on any matter concerning the purposes of *this Act*; and

(b) perform any other function assigned to it in terms of this or any other Act.

(3) The *Minister* must table in the National Assembly any report submitted in terms of subsection (1)(k), and any report submitted in terms of subsection (2) if that report deals with a substantial matter relating to the purposes of *this Act* –

(c) within 10 business days after receiving that report from the Competition Commission; or

(a) if Parliament is not then sitting, within 10 business days after the commencement of the next sitting.

Subsection (3) was amended to its present form by section 8(a) of The Competition Second Amendment Act, 2000.

(4) The *Minister*, in consultation with the Commissioner, and by notice in the *Gazette*, may *prescribe regulations* for matters relating to the functions of the Commission, including -

(d) forms;

(a) time periods;

(b) information required;

(c) additional definitions;

(d) filing fees;

(e) access to *confidential information*;

(f) manner and form of participation in Commission procedures; and

(g) procedures.

Subsection (4) was amended to its present form by section 8 (b) of The Competition Second Amendment Act, 2000.

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22. Appointment of Commissioner

(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 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 disqualification's referred to in section 28(3)(a) – (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

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(iii) engaging in any activity that may undermine the integrity of the Competition Commission.

23. Appointment of Deputy Commissioner

(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.

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

(a) the Commissioner is unable for any reason to perform the functions of the Commissioner; or

(b) the office of Commissioner is vacant.

24. Appointment of inspectors

(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.

(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 *this Act*, the inspector must –

(a) be in possession of a certificate of appointment issued to that inspector in terms of subsection (3); and

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(b) show that certificate to any person who –

(i) is affected by the exercise of the functions of the inspector; and

(ii) requests to see the certificate.

Subsection (4) was amended to its present form by section 9 of The Competition Second Amendment Act, 2000.

25. Staff of Competition Commission

(1) The Commissioner may –

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

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

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Part B - The Competition Tribunal

26. Establishment and Constitution of Competition Tribunal

(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;

(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 public call for nominations.

Subsection (2) was amended to its present form by section 10 of The Competition Second Amendment Act, 2000.

(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

(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.

27. Functions of Competition Tribunal

(1) The Competition Tribunal may –

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(a) adjudicate on any conduct prohibited in terms of Chapter 2, to determine whether prohibited conduct has occurred, and if so, to impose any remedy provided for in *this Act*;

(b) adjudicate on any other matter that may, in terms of *this Act*, be considered by it, and make any order provided for in *this Act*;

(c) hear appeals from, or review any decision of, the Competition Commission that may, in terms of *this Act*, be referred to it; and

(d) make any ruling or order necessary or incidental to the performance of its functions in terms of *this Act*.

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

Section 27 was amended to its present form by section 11 of The Competition Second Amendment Act, 2000.

28. Qualifications of members of Competition Tribunal

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

(e) represent a broad cross-section of the population of the Republic; and
(a) 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 –
(f) be a citizen of South Africa, who is ordinarily resident in South Africa;
(a) have suitable qualifications and experience in economics, law, commerce, industry or public affairs**;** and
(b) 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 –
(g) is an office-bearer of any party, movement, organisation or body of a partisan political nature;

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(a) is an unrehabilitated insolvent;

(b) is subject to an order of a competent court holding that person to be mentally unfit or disordered; or

(c) has been convicted of an offence committed after the *Constitution* of the Republic of South Africa, 1993 (Act No. 200 of 1993), took effect, and sentenced to imprisonment without the option of a fine.

29. Term of office of members of Competition Tribunal

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

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

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

(a) resign from the Competition Tribunal; or

(b) resign as Chairperson, but remain as a member of the Tribunal.

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

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

(a) must remove the Chairperson or any other member of the Competition Tribunal from office if that person becomes subject to any of the disqualification's 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

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(iii) engaging in any activity that may undermine the integrity of the Tribunal.

30. Deputy Chairperson of Competition Tribunal

(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.

31. Competition Tribunal proceedings

(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 –

(h) ensure that at least one member of the panel is a person who has legal training and experience; and

(a) 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 –

(i) direct that the hearing of that matter proceed before any remaining member of the panel subject to the requirements of subsection (2)(a)**;** or

(a) 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.

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

(a) extending or reducing that period; or

(b) condoning late performance of an act that is subject to that period.

Subsection (5) was added by section 12 of The Competition Second Amendment Act, 2000.

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

Subsection (6), formerly (5), was amended to its present form by section 12 of The Competition Second Amendment Act, 2000.

32. Conflicts and disclosure of interest by members of Competition Tribunal

(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)**,** the member must –

(j) immediately and fully disclose the fact and nature of that interest to the Chairperson and to the presiding member at that hearing; and

(a) withdraw from any further involvement in that hearing.

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

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.

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34. Remuneration and benefits of members of Competition Tribunal

(1) The *Minister*, in consultation with the Minister of Finance, may 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.

35. Staff of Competition Tribunal

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.

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Part C - The Competition Appeal Court

36. Establishment and *Constitution* of Competition Appeal Court

(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;

(b) has jurisdiction throughout the Republic; and

(c) is a court of record.

(2) The Competition Appeal Court consists of at least three judges, appointed by the President on the advice of the Judicial Services Commission, each of whom must be a judge of the High Court.

Subsection (2) was amended to its present form by section 1 of The Competition Amendment Act, 2000.

(3) The President must designate one of the judges of the Competition Appeal Court to be Judge President of the Court.

Subsection (3) was added by section 1 (b) of The Competition Amendment Act, 2000.

(4) The Minister of Justice, after consulting the Judge President of the Competition Appeal Court, may second any number of judges of the High Court to serve as acting judges of the Competition Appeal Court.

Subsection (4) was added by section 1 (b) of The Competition Amendment Act, 2000.

(5) When the office of Judge President of the Competition Appeal Court is vacant, or when the Judge President is temporarily unable to perform the functions of that office for any reason, the senior judge of the Court must perform the functions of Judge President.

Subsection (5) was added by section 1 (b) of The Competition Amendment Act, 2000.

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37. Functions of Competition Appeal Court

(1) The Competition Appeal Court may -

(a) review any decision of the Competition Tribunal; or

(b) consider an appeal arising from the Competition Tribunal in respect of -

(i) any of its final decisions, other than a consent order made in terms of section 63; or

(ii) any of its interim or interlocutory decisions that may, in terms of *this Act*, be taken on appeal.

(2) The Competition Appeal Court may give any judgement or make any order, including an order to –

(a) confirm, amend or set aside a decision or order of the Competition Tribunal; or

(b) remit a matter to the Competition Tribunal for a further hearing on any appropriate terms.

Section 37 was amended to its present form by section 2 of The Competition Amendment Act, 2000.

38. Business of Competition Appeal Court

(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 or designate another judge of the Competition Appeal Court to preside at particular proceedings of the Court; and

Paragraph (b) was amended to its present form by section 3(a) of The Competition Amendment Act, 2000.

(c) by notice in the *Gazette*, may make rules for the proceedings of the Court.

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(2) Subject to subsection (2A), the Judge President must assign each matter before the Court to a bench composed of three judges of the Court.

Subsection (2) was amended to its present form by section 3(b) of The Competition Amendment Act, 2000.

(2A) The Judge President, or any other judge of the Competition Appeal Court designated by the Judge President, may sit alone to consider an -

(a) appeal against a decision of an interlocutory nature, as *prescribed* by the rules of the Competition Appeal Court;

(b) application concerning the determination or use of *confidential information*;

(c) application for leave to appeal, as *prescribed* by the rules of the Competition Appeal Court;

(d) application to suspend the operation and execution of an order that is the subject of a review or appeal; or

(e) application for procedural directions.

Subsection (2A) was added by section 3(c) of The Competition Amendment Act, 2000.

(3) The decision of a judge sitting alone in terms of subsection (2A), or of a majority of the bench hearing a particular matter, is the decision of the Competition Appeal Court.

Subsection (3) was amended to its present form by section 3(d) of The Competition Amendment Act, 2000.

(4) If a judge, or any of the judges hearing a matter assigned in terms of subsection (2) is unable to complete the proceedings in that matter, the Judge President must -

(a) direct that the hearing of that matter proceed before the remaining judge or judges to whom it was assigned; or

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(b) terminate the proceedings before that bench and constitute another bench, which may include a judge to whom the matter was originally assigned, and direct that bench to hear the matter afresh.

Subsection (4) was amended to its present form by section 3(e) of The Competition Amendment Act, 2000.

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

39. Term of office

(1) The Judge President and any other judge of the Competition Appeal Court is appointed for a fixed term determined by the President at the time of appointment and holds office until -

(a) the expiry of the term;

(b) the date the judge ceases to be a judge of the High Court; or

(b) the judge resigns from the Court by giving written notice to the President.

(2) Section 33, read with the changes required by the context, applies to the Judge President and other judges of the Competition Appeal Court.

(3) The tenure of office, the remuneration, and the terms and conditions of service 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 the appointment and concurrent tenure of office of that judge who is appointed as a judge of the Competition Appeal Court.

Section 39 was amended to its present form by section 4 of The Competition Amendment Act, 2000.

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Part D - Administrative Matters Concerning the Competition Commission and the Competition Tribunal

40. Finances

(1) The Competition Commission is financed from –

(k) money that is appropriated by Parliament for the Commission;
(a) fees payable to the Commission in terms of *this Act*;
(b) income derived by the Commission from its investment and deposit of surplus money in terms of subsection (6); and
(c) 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 to 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 –

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(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 is the accounting authority of the Competition Commission for the purposes of the Public Finance Management Act, 1999 (Act No. 1 of 1999).

Subsection (7) was amended to its present form by section 13 (a) of The Competition Second Amendment Act, 2000.

(8) . . .

Subsection (8) was deleted by section 13 (b) of The Competition Second Amendment Act, 2000.

(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.

41. Annual Report

(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 –

(l) the audited financial statements prepared in terms of section 40(9);

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(a) the auditor's report, prepared in terms of section 40**(**10**)**;

(b) a report of activities undertaken in terms of its functions set out in *this Act;*

(c) a statement of the progress achieved during the preceding year towards realization of the purposes of *this Act;* and

(d) 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) –

(m) within 10 business days after receiving that report from the Competition Commission; or

(a) if Parliament is not then sitting, within 10 business days after the commencement of the next sitting.

Subsection (2) was amended to its present form by section 14 of The Competition Second Amendment Act, 2000.

42. Rules applicable to Competition Tribunal

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.

43. Liability

(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.

(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*.

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CHAPTER 5

INVESTIGATION AND ADJUDICATION PROCEDURES

Chapter 5 was amended to its present form by section 15 of The Competition Second Amendment Act, 2000

Part A - Confidential information

44. Right of informants to claim confidentiality

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

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

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

(3) The Competition Tribunal may—

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

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

45. Disclosure of information

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

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

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

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

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

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

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

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

45A. Restricted use of information

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

(b) If the Commission's reasons for the decision would reveal any *confidential information*, the Commission must provide a copy of the proposed reasons to the party concerned at least 10 business days before publishing those reasons.

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

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

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

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Part B - Powers of Search and Summons

46. Authority to enter and search under warrant

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

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

(a) anything connected with an investigation in terms of *this Act* is in the possession of, or under the control of, a person who is on or in those *premises*.

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

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

(a) 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;

(a) the warrant is cancelled by the person who issued it or, in that person's absence, by a person with similar authority;

(b) the purpose for issuing it has lapsed; or

(c) the expiry of one month after the date it was issued.

(4) A warrant to enter and search may be executed only during the day, unless the judge, regional magistrate or magistrate who issued it authorises that it may be executed at night at a time that is reasonable in the circumstances.

(5) A person authorised by warrant issued in terms of subsection (2) may enter and search *premises* named in that warrant.

(6) Immediately before commencing with the execution of a warrant, a person executing that warrant must either-

(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

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(b) if none of those persons is present, affix a copy of the warrant to the *premises* in a prominent and visible place.

47. Authority to enter and search without warrant

(1) An inspector who is not authorised by a warrant in terms of section 46(2) may enter and search *premises* other than a *private dwelling.*

(2) Immediately before entering and searching in terms of this section, the inspector conducting the search must provide identification to the owner or person in control of the *premises* and explain to that person the authority by which the search is being conducted, and must -

(a) get permission from that person to enter and search the *premises*; or

(a) believe on reasonable grounds that a warrant would be issued under section 46 if applied for, and that the delay that would ensue by first obtaining a warrant would defeat the object or purpose of the entry and search.

(3) An entry and search without a warrant may be carried out only during the day, unless doing it at night is justifiable and necessary in the circumstances.

48. Powers to enter and search

(1) A person who is authorised under section 46 or 47 to enter and search *premises* may –

(a) enter upon or into those *premises*;

(a) search those *premises*;

(b) search any person on those *premises* if there are reasonable grounds for believing that the person has personal possession of an article or document that has a bearing on the investigation;

(c) examine any article or document that is on or in those *premises* that has a bearing on the investigation;

(d) request information about any article or document from the owner of, or person in control of, the *premises* or from any person who has control of the article or document, or from any other person who may have the information;

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(e) 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;

(f) 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

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

(2) Section 49A(3) applies to an answer given or statement made to an inspector in terms of this section.

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

49. Conduct of entry and search

(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.

(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 -

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

(a) allow that person to exercise that right.

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

(a) issue a receipt for it to the owner of, or person in control of, the *premises*; and

(a) return it as soon as practicable after achieving the purpose for which it was removed.

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

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

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

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

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

49A. Summons

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

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

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

(2) A person questioned by an inspector conducting an investigation, or by the Commissioner or other person in terms of subsection (1), must answer each question truthfully and to the best of that person's ability, but the person is not obliged to answer any question if the answer is self-incriminating.

(3) No self-incriminating answer given or statement made to a person exercising any power in terms of this section is admissible as evidence against the person who gave the answer or made the statement in criminal proceedings, except in criminal proceedings for perjury or in which that person is tried for an offence contemplated in section 72 or section 73(2)(d), and then only to the extent that the answer or statement is relevant to prove the offence charged.

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Part C - Complaint Procedures

49B. Initiating a complaint

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

(2) Any person may -

(a) submit information concerning an alleged *prohibited practice* to the Competition Commission, in any manner or form; or

(b) submit a complaint against an alleged *prohibited practice* to the Competition Commission in the *prescribed* form.

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

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

49C. Interim relief

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

(2) The Competition Tribunal -

(a) must give the *respondent* a reasonable opportunity to be heard, having regard to the urgency of the proceedings; and

(b) may grant an interim order if it is reasonable and just to do so, having regard to the following factors:

(i) The evidence relating to the alleged *prohibited practice*;

(ii) the need to prevent serious or irreparable damage to the applicant; and

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(iii) the balance of convenience.

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

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

(a) conclusion of a hearing into the alleged *prohibited practice*; or

(b) date that is six months after the date of issue of the interim order.

(5) If an interim order has been granted, and a hearing into that matter has not been concluded within six months after the date of that order, the Competition Tribunal, on good cause shown, may extend the interim order for a further period not exceeding six months.

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

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

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

49D. Consent Orders

(1) If, during, on or after completion of the investigation of a complaint, the Competition Commission and the *respondent* agree on the terms of an appropriate order, the Competition Tribunal, without hearing any evidence, may confirm that agreement as a consent order in terms of section 58(1)(b).

(2) After hearing a motion for a consent order, the Competition Tribunal must —

(a) make the order as agreed to and proposed by the Competition Commission and the *respondent*;

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(b) indicate any changes that must be made in the draft order before it will make the order; or

(c) refuse to make the order.

(3) With the consent of a *complainant*, a consent order may include an award of damages to the *complainant*.

(4) A consent order does not preclude a *complainant* from applying for—

(a) a declaration in terms of section 58(1)*(a)*(v) or (vi); or

(b) an award of civil damages in terms of section 65, unless the consent order includes an award of damages to the *complainant*.

50. Outcome of complaint

(1) At any time after initiating a complaint, the Competition Commission may refer the complaint to the Competition Tribunal.

(2) Within one year after a complaint was submitted to it, the Commissioner must -

(a) subject to subsection (3), refer the complaint to the Competition Tribunal, if it determines that a *prohibited practice* has been established; or

(b) in any other case, issue a notice of non-referral to the *complainant* in the *prescribed* form.

(3) When the Competition Commission refers a complaint to the Competition Tribunal in terms of subsection (2)(a), it –

(a) may -

(i) refer all the particulars of the complaint as submitted by the *complainant*;

(ii) refer only some of the particulars of the complaint as submitted by the *complainant*; or

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(iii) add particulars to the complaint as submitted by the *complainant*; and

(b) must issue a notice of non-referral as contemplated in subsection (2)(b) in respect of any particulars of the complaint not referred to the Competition Tribunal.

(4) In a particular case -

(a) the Competition Commission and the *complainant* may agree to extend the period allowed in subsection (2); or

(b) on application by the Competition Commission made before the end of the period contemplated in paragraph (a), the Competition Tribunal may extend that period.

(5) If the Competition Commission has not referred a complaint to the Competition Tribunal, or issued a notice of non-referral, within the time contemplated in subsection (2), or the extended period contemplated in subsection (4), the Commission must be regarded as having issued a notice of non-referral on the expiry of the relevant period.

51. Referral to Competition Tribunal

(1) If the Competition Commission issues a notice of non-referral in response to a complaint, the *complainant* may refer the complaint directly to the Competition Tribunal, subject to its rules of procedure.

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

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

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

(a) the name of the *respondent*; and

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(b) the nature of the conduct that is the subject of the referral.

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Part D - Tribunal Hearings and Orders

52. Hearings before Competition Tribunal

(1) The Competition Tribunal must conduct a hearing, subject to its rules, into every matter referred to it in terms of *this Act*.

(2) Subject to subsections (3) and (4), the Competition Tribunal -

(a) must conduct its hearings in public, as expeditiously as possible, and in accordance with the principles of natural justice; and

(b) may conduct its hearings informally or in an inquisitorial manner.

(2A) Despite subsection (2)(a), the Chairperson of the Tribunal may order that a matter be heard -

(a) in chambers, if no oral evidence will be heard, or that oral submissions be made at the hearing; or

(b) by telephone or video conference, if it is the interests of justice and expediency to do so.

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

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

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

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

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

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(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).

53. Right to participate in hearing

(1) The following persons may participate in a hearing, in person or through a representative, and may put questions to witnesses and inspect any books, documents or items presented at the hearing:

(a) If the hearing is in terms of Part C—

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

(ii) the *complainant*, if -

(aa) the *complainant* referred the complaint to the Competition Tribunal; or

(bb) in the opinion of the presiding member of the Competition Tribunal, the *complainant*'s interest is not adequately represented by another participant, and then only to the extent required for the *complainant*'s interest to be adequately represented;

(iii) the *respondent*; and

(iv) 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, but only to the extent required for the *complainant*'s interest to be adequately represented;

(b) If the hearing is in terms of section 10 or Schedule 1—

(i) the applicant for an exemption;

(ii) the Competition Commission;

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(iii) the appellant, if the appellant is not the applicant for an exemption;

(iv) an interested person contemplated in section 10(8) who submitted a represention to the Competition Commission, unless, in the opinion of the presiding member of the Competition Tribunal, that person's interest is adequately represented by another participant, but only to the extent required for the person's interest to be adequately represented; and

(v) the *Minister* or member of the Executive Council if consulted in terms of Schedule 1;

(c) if the hearing is in terms of Chapter 3—

(i) any party to the merger;

(ii) the Competition Commission;

(iii) any person who was entitled to receive a notice in terms of section 13A (2) and who indicated to the Commission an intention to participate, in the *prescribed* form;

(iv) the *Minister*, if the *Minister* has indicated an intention to participate; and

(v) any other person whom the Competition Tribunal recognised as a participant; and

(d) if the hearing is in terms of Part A—

(i) the person who owns the information that is the subject of the hearing;

(ii) any person who sought disclosure of any information that is the subject of the hearing;

(iii) the Competition Commission; and

(iv) any other person whom the Tribunal recognised as a participant.

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54. Powers of member presiding at hearing

The member of the Competition Tribunal presiding at a hearing may-

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

(b) question any person under oath or affirmation;

(c) summon or order any person-

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

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

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

(e) accept oral submissions from any participant; and

(f) accept any other information that is submitted by a participant.

55. Rules of procedure

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

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

(3) The Tribunal may—

(a) accept as evidence any relevant oral testimony, document or other thing, whether or not—

(i) it is given or proven under oath or affirmation; or

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(ii) would be admissible as evidence in court; but

(b) refuse to accept any oral testimony, document or other thing that is unduly repetitious.

56. Witnesses

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

57. Costs

(1) Subject to subsection (2), and the Competition Tribunal's rules of procedure, each party participating in a hearing must bear its own costs.

(2) If the Competition Tribunal –

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

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

58. Orders of Competition Tribunal

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

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(a) make an appropriate order in relation to a *prohibited practice*, including -

(i) interdicting any *prohibited practice*;

(ii) ordering a party to supply or distribute *goods or services* to another party on terms reasonably required to end a *prohibited practice*;

(iii) imposing an administrative penalty, in terms of section 59, with or without the addition of any other order in terms of this section;

(iv) ordering divestiture, subject to section 60;

(v) declaring conduct of a *firm* to be a *prohibited practice* in terms of *this Act*, for the purposes of section 65;

(vi) declaring the whole or any part of an *agreement* to be void;

(vii) ordering access to an *essential facility* on terms reasonably required;

(b) con*firm* a consent *agreement* in terms of section 49D as an order of the Tribunal; or

(c) subject to sections 13(6) and 14(2), condone, on good cause shown, any non-compliance of -

(i) the Competition Commission or Competition Tribunal rules; or

(ii) a time limit set out in *this Act*.

(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.

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59. Administrative penalties

(1) The Competition Tribunal may impose an administrative penalty only -

(a) for a *prohibited practice* in terms of section 4(1)(b)**,** 5(2) or 8(a), (b) or (d)**;**

(b) for a *prohibited practice* in terms of section 4(1)(a)**,** 5(1)**,** 8(c) or 9(1)**,** if the conduct is substantially a repeat by the same *firm* of conduct previously found by the Competition Tribunal to be a *prohibited practice*;

(c) for contravention of, or failure to comply with, an interim or final order of the Competition Tribunal or the Competition Appeal Court; or

(d) if the parties to a merger have -

(i) failed to give notice of the merger as required by Chapter 3;

(ii) proceeded to implement the merger in contravention of a decision by the Competition Commission or Competition Tribunal to prohibit that merger;

(iii) proceeded to implement the merger in a manner contrary to a condition for the approval of that merger imposed by the Competition Commission in terms of section 13 or 14, or the Competition Tribunal in terms of section 16; or

(iv) proceeded to implement the merger without the approval of the Competition Commission or Competition Tribunal, as required by *this Act*.

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

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

(a) the nature, duration, gravity and extent of the contravention;

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(b) any loss or damage suffered as a result of the contravention;

(c) the behaviour of the *respondent*;

(d) the market circumstances in which the contravention took place;

(e) the level of profit derived from the contravention;

(f) the degree to which the *respondent* has co-operated with the Competition Commission and the Competition Tribunal; and

(g) whether the *respondent* has previously been found in contravention of *this Act*.

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

60. Divestiture

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

(a) order a party to the merger to sell any shares, *interest* or other assets it has acquired pursuant to the merger; or

(b) declare void any provision of an *agreement* to which the merger was subject.

(2) The Competition Tribunal, in addition to or in lieu of making an order under section 58, may make an order directing any *firm*, or any other person to sell any shares, *interest* or assets of the *firm* if -

(a) it has contravened section 8, and

(b) the *prohibited practice* –

(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*.

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

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

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Part E - Appeals and reviews to Competition Appeal Court

61. Appeals

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

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

62. Appellate jurisdiction

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

(a) Interpretation and application of Chapters 2, 3 and 5, other than—

(i) a question or matter referred to in subsection (2); or

(ii) a review of a certificate issued by the Minister of Finance in terms of section 18(2); and

(b) the functions referred to in sections 21(1), 27(1) and 37, other than a question or matter referred to in subsection (2).

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

(a) the question whether an action taken or proposed to be taken by the Competition Commission or the Competition Tribunal is within their respective jurisdictions in terms of *this Act*;

(b) any constitutional matter arising in terms of *this Act*;

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(c) the question whether a matter falls within the exclusive jurisdiction granted under subsection (1).

(3) The jurisdiction of the Competition Appeal Court—

(a) is final over a matter within its exclusive jurisdiction in terms of subsection (1); and

(b) is neither exclusive nor final in respect of a matter within its jurisdiction in terms of subsection (2).

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

(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*.

63. Leave to appeal

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

(a) is subject to any law that—

(i) specifically limits the right of appeal set out in that section; or

(ii) specifically grants, limits or excludes any right of appeal;

(b) is not limited by monetary value of the matter in dispute; and

(c) exists even if the matter in dispute is incapable of being valued in money.

(2) An appeal in terms of section 62(4) may be brought to the Supreme Court of Appeal, or, if it concerns a Constitutional matter, to the Constitutional Court, only—

(a) with leave of the Competition Appeal Court; or

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(b) if the Competition Appeal Court refuses leave, with leave of the Supreme Court of Appeal or the Constitutional Court, as the case may be.

(3) A court granting leave to appeal in terms of this section may attach any appropriate conditions, including a condition that the applicant provide security for the costs of the appeal.

(4) If the Competition Appeal Court, when refusing leave to appeal, made an order of costs against the applicant, the Supreme Court of Appeal or the Constitutional Court may vary that order on granting leave to appeal.

(5) An application to the Competition Appeal Court for leave to appeal must be made in the manner and form required by the Competition Appeal Court Rules.

(6) An application to the Constitutional Court for leave to appeal must be made in the manner and form required by its Rules.

(7) Section 21(1A) to (3)(e) of the Supreme Court Act, 1959 (Act No. 59 of 1959), read with the changes required by the context, applies to an application to the Supreme Court of Appeal for leave to appeal under *this Act*.

(8) A person applying to the Supreme Court of Appeal for leave to appeal under *this Act* must give notice of the application to the registrar of the Competition Appeal Court.

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CHAPTER 6

ENFORCEMENT

Chapter 6 was amended to its present form by section 15 of The Competition Second Amendment Act, 2000

64. Status and enforcement of orders

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

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

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

65. Civil actions and jurisdiction

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

(2) If, in any action in a *civil court*, a party raises an issue concerning conduct that is prohibited in terms of *this Act*, that court must not consider that issue on its merits, and -

(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 -

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(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) . . .

Subsection (3) was deleted section 15 of The Competition Second Amendment Act, 2000

(4) . . .

Subsection (4) was deleted section 15 of The Competition Second Amendment Act, 2000

(5) . . .

Subsection (5) was deleted section 15 of The Competition Second Amendment Act, 2000

(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 49D(1)**;** or

(b) if entitled to commence an action referred to in paragraph (a), when instituting proceedings, must file with the Registrar or Clerk of the Court a notice from the Chairperson of the Competition Tribunal, or the Judge President of the Competition Appeal Court, in the *prescribed* form -

(i) certifying that the conduct constituting the basis for the action has been found to be a *prohibited practice* in terms of *this Act*;

(ii) stating the date of the Tribunal or Competition Appeal Court finding; and

(iii) setting out the section of *this Act* in terms of which the Tribunal or the Competition Appeal Court made its finding.

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

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

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

(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).

66. Variation of order

(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 granted in the absence of a party affected by it;

(b) in which there is ambiguity, or an obvious error or omission, but only to the extent of correcting that ambiguity, error or omission; or

(c) made or granted as a result of a mistake common to all of the parties to the proceeding.

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67. Limitations of bringing action

(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 referred to the Competition Tribunal against any *firm* that has been a *respondent* in completed proceedings before the Tribunal under the same or another section of *this Act* relating substantially to the same conduct.

68. Standard of proof

In any proceedings in terms of *this Act*, other than proceedings in terms of section 49C or criminal proceedings, the standard of proof is on a balance of probabilities.

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CHAPTER 7

OFFENCES

69. Breach of confidence

(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.*

(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.

70. Hindering administration of Act

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*.

71. Failure to attend when summoned

A person commits an offence who, having been summoned in terms of section 49A, or 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

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(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.

Section 71 was amended to its present form by section 16 of The Competition Second Amendment Act, 2000

72. Failure to answer fully or truthfully

A person commits an offence who, having been sworn in or having made an affirmation -

(a) subject to section 49A(3) or 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.

Section 72 was amended to its present form by section 17 of The Competition Second Amendment Act, 2000

73. Failure to comply with Act

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

Subsection (2) was amended to its present form by section 18 of The Competition Second Amendment Act, 2000

(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;

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(b) anticipates any findings of the Tribunal or Commission concerning an investigation in a way that is calculated to influence the proceedings or findings;

(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;

(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 -

(i) enters or searches *premises*; or

(ii) attaches or removes an article or document.

74. Penalties

(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

(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.

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75. Magistrate's Court jurisdiction to impose penalties

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*.

76. Repealed

Section 76 was repealed by section 19 of The Competition Second Amendment Act, 2000

77. Proof of facts

(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

(c) an order certified by the Chairperson of the Competition Tribunal or 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.

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CHAPTER 8

GENERAL PROVISIONS

78. ***Regulation*s**

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

79. Guidelines

(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) -

(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*.

80. Official seal

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.

81. Act binds State

This Act binds the State.

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82. Relationships with other agencies

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

(a) must negotiate agreements with the Competition Commission, as anticipated in section 21(1)(h); and

(b) in respect of a particular matter within its jurisdiction, may exercise its jurisdiction by way of such an agreement.

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

(3) In addition to the matters contemplated in section 21(1)(h), an agreement in terms of subsection (1) must -

(a) identify and establish procedures for the management of areas of concurrent jurisdiction;

(b) promote co-operation between the *regulatory authority* and the Competition Commission;

(c) provide for the exchange of information and the protection of *confidential information*; and

(d) be published in the *Gazette*.

Subsections (1), (2) and (3) were added by section 20 of The Competition Second Amendment Act, 2000

(4) 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.

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83. Transitional arrangements and repeal of laws

(1) Subject to Schedule 3, the laws specified in Schedule 2, and all proclamations, *regulation*s 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.

84. Short Title and commencement of Act

(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.

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SCHEDULE 1

EXEMPTION OF PROFESSIONAL RULES

PART A

Part A was amended to its present form by section 21 of The Competition Second Amendment Act, 2000

(1) A professional association whose rules contain a restriction that has the effect of substantially preventing or lessening competition in a market may apply in the *prescribed* manner to the Competition Commission for an exemption in terms of item 2.

(2) The Competition Commission may exempt all or part of the rules of a professional association from the provisions of Part A of Chapter 2 of *this Act* for a specified period if, having regard to internationally applied norms, any restriction contained in those rules that has the effect of substantially preventing or lessening competition in a market is reasonably required to maintain—

(a) professional standards; or

(b) the ordinary function of the profession.

(3) Upon receiving an application in terms of item 1, the Competition Commission must —

(a) publish a notice of the application in the *Gazette*;

(b) allow interested parties 20 business days from the date of that notice to make representations concerning the application; and

(c) consult the responsible Minister, or member of the Executive Council concerning the application.

(4) After considering the application and any submissions or other information received in relation to the application, and consulting with the responsible Minister or member of the Executive Council, the Commission must—

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(a) either grant an exemption or reject the application by issuing a notice in the *prescribed* form to the applicant;

(b) give written reasons for its decision; and

(c) publish a notice of that decision in the Gazette.

(5) The Competition Commission, in the *prescribed* manner, may revoke an exemption granted under item 4 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 20 business days from the date of that notice to make representations concerning the exemption; and

(c) consulted the responsible Minister, or member of the Executive Council.

(6) A professional rule is exempt, or its exemption revoked, only as of the date on which notice of the exemption or revocation, as the case may be, is published in the *Gazette*.

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

(8) A professional association, or any other person with a substantial interest affected by a decision of the Competition Commission in terms of item 4 may appeal against that decision to the Competition Tribunal in the *prescribed* manner and form.

(9) 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;

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'**rules**' includes *public 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. 112 of 1976)

Attorneys and Advocates

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

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

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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 Professional 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*.

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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

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SCHEDULE 3

Transitional Arrangements

SCHEDULE 3 WAS AMENDED TO ITS PRESENT FORM BY SECTION 1 OF THE COMPETITION AMENDMENT ACT, 1999

(1) A ruling issued in terms of section 6(2)(a) of the Maintenance and Promotion of Competition Act, 1979 (Act No. 96 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,* depending on the context, to be either -

(a) 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)(ii) or by the Competition Tribunal in terms of section 15(2)(b)**;** or

(b) a prohibition of a merger as if it had been prohibited after *this Act* came into operation, by the Competition Commission in terms of section 14(1)(b)(iii) or by the Competition Tribunal in terms of section 15(2)(c).

(2) An arrangement entered into in terms of section 11(1) of the Maintenance and Promotion of Competition Act, 1979 (Act No. 96 of 1979), must be regarded as having been con*firm*ed 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. 96 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.

(3A) A notice issued by the *Minister* in terms of section 14(1)(c) of the Maintenance and Promotion of Competition Act, 1979 (Act No. 96 of 1979), in relation to a "restrictive practice" or a "monopoly situation" as defined in that Act, must be regarded as an order in terms of section 60(1)(a) of *this Act* and is valid for a period of 12 months from the date on which *this Act* comes into operation.

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(4) Any reference in any other statute to –

(a) the Maintenance and Promotion of Competition Act, 1979 (Act No. 96 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. 96 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. 96 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. 96 of 1979), must be regarded as a reference to the Competition Commission.

(e) The Chairperson of the Competition Board contemplated in section 3 of the Maintenance and Promotion of Competition Act, 1979 (Act No. 96 of 1979), must be regarded as a reference to either the Competition Commissioner contmplated in section 22 of *this Act*, or the chairperson of the Competition Tribunal contemplated in section 26 of *this Act*, as determined by the *Minister*.

(4A) Any transaction that takes place between the date on which *this Act* is published and the date on which *this Act* comes into operation, and which would constitute an intermediate or large merger if it had taken place after *this Act* came into operation, is regarded for a period of 12 months after the date on which *this Act* comes into operation as a merger in contravention of Chapter 3 and is subject to the provisions of section 62 (1), unless -

(a) the transaction has been approved by the Competition Board in terms of the Maintenance and Promotion of Competition Act, 1979 (Act No. 96 of 1979); or

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(b) the transaction has been notified in terms of item 4B.

(4B) Any party to a transaction contemplated in item 4A may, within three months after the date on which *this Act* comes into operation, notify the Competition Commission of the transaction in terms of section 13 as if it were an intermediate or large merger.

(4C) The provisions of Chapter 3, with the changes required by the context, apply to a transaction that is notified under item 4B.

(4D) After *this Act* comes into operation, any appeal pending before a special court contemplated in section 15 of the Maintenance and Promotion of Competition Act, 1979 (Act No. 96 of 1979), must be regarded as an appeal to the Competition Appeal Court contemplated in section 36 of *this Act* in the manner *prescribed*.

(4E) Subject to items 1 to 3A, the Competition Appeal Court may, after hearing any appeal contemplated in item 4D, make any decision that the special court could have made in terms of section 15 (10) of the Maintenance and Promotion of Competition Act, 1979 (Act No. 96 of 1979), and the provisions of *this Act* otherwise apply to that decision, as if it were a decision of the Competition Appeal Court in terms of *this Act*.

(4F) (1) Notwithstanding sections 6 and 11, the first determinations of thresholds made by the *Minister* in terms of those sections must be made before the date on which *this Act* comes into operation.

(2) Notwithstanding sections 6 (2) and 11 (2), the first determinations contemplated in subsection (1) take effect on the date on which *this Act* comes into operation.

(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. 96 of 1979),

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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 persons contributions to any pension fund, together with the accumulated value of the contributions made to that fund by the person's employer, may be transferred to a pension fund established for the benefit of the staff of the Commission.

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APPENDIX

(EXPLANATORY NOTE: Extracts from the transitional provisions of the Competition Amendment Act No. 15 of 2000 and the Competition Second Amendment Act No. 39 of 2000 are repeated below for easy reference.)

1. Competition Amendment Act , No. 15 of 2000

Competition Appeal Court

(1) The Competition Amendment Act, 2000 provides:

" Anyone serving as Judge President or as a judge of the Competition Appeal Court immediately before *this Act* comes into operation continues to serve in that office after *this Act* comes into operation, subject to section 39 of the principal Act."

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

Transitional Provisions

(1) In this section—

(a) **"principal Act"** means the Competition Act, 1998 (Act No. 89 of 1998), as it existed immediately before the commencement of *this Act*; and

(b) **"principal Act as amended"** means the principal Act as amended by *this Act*.

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(2) Despite section 6(3) and (4), and section 11(3) and (4), of the principal Act as amended, the Minister of Trade and Industry may at the commencement of *this Act* publish in the *Gazette* a notice determining a new threshold and method of calculation under each of those sections, respectively.

(3) A determination in terms of subsection (2) takes effect on the date of commencement of *this Act*, and if it is a determination under—

(a) section 6 of the principal Act as amended, applies to any proceedings that were pending before the Competition Commission, Competition Tribunal or Competition Appeal Court immediately before the date of commencement of *this Act*; or

(b) section 11 of the principal Act as amended, applies to any proceedings that were pending before the Competition Commission immediately before the date of commencement of *this Act*.

(4) A recommendation made by the Competition Commission in terms of section 14(3) of the principal Act must be regarded as having been a decision made under section 14 (1)(b) of the principal Act as amended, if—

(a) as a result of subsection (3)(b), the merger is classified as an intermediate merger; and

(b) the Competition Tribunal had not made an order in respect of the merger at the date of commencement of *this Act*.

(5) Any proceedings that were pending before the Competition Commission, Competition Tribunal or Competition Appeal Court before the date of commencement of *this Act* must be preceded with in terms of the principal Act as amended, except to the extent that a *regulation* under section 21(4) or 27(2) of the principal Act as amended, or a rule of the Competition Appeal Court, provides otherwise.

(6) For greater clarity, section 18(2) and (3) of the principal Act as amended applies to a merger that was pending before the Competition Commission or the Competition

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Tribunal immediately before the date of commencement of *this Act*.