



# MAINTENANCE AND PROMOTION OF COMPETITION ACT NO. 96 OF 1979

[ASSENTED TO 21 JUNE, 1979]

[DATE OF COMMENCEMENT: 1 JANUARY, 1980]

*(English text signed by the State President)*

## as amended by

Maintenance and Promotion of Competition Amendment Act, No. 58 of 1980  
 Maintenance and Promotion of Competition Amendment Act, No. 62 of 1983  
 Maintenance and Promotion of Competition Amendment Act, No. 12 of 1985  
 Maintenance and Promotion of Competition Amendment Act, No. 5 of 1986  
 Transfer of Powers and Duties of the State President Act, No. 97 of 1986  
 [with effect from 3 October, 1986—see title CONSTITUTIONAL LAW]  
 Maintenance and Promotion of Competition Amendment Act, No. 96 of 1987  
 Maintenance and Promotion of Competition Amendment Act, No. 88 of 1990  
 Transfer of Powers and Duties of the State President Act, No. 51 of 1991  
 [with effect from 29 April, 1991—see title CONSTITUTIONAL LAW]

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ACT

**To provide for the maintenance and promotion of competition in the economy, for the prevention or control of restrictive practices, acquisitions and monopoly situations, and for matters connected therewith.**

[Long title substituted by s. 10 of Act No. 12 of 1985 and by s. 8 of Act No. 88 of 1990.]

**1. Definitions.**—In this Act, unless the context otherwise indicates—

**“acquisition”** means the acquisition by the holder of a controlling interest in any business or undertaking involved in the production, manufacture, supply or distribution of any commodity, of such an interest—

- (a) in any other business or undertaking so involved; or
- (b) in any asset which is or may be utilized for or in connection with the production, manufacture, supply or distribution of any such commodity,

provided such acquisition has or is likely to have the effect of restricting competition directly or indirectly, and **“acquire”** has a corresponding meaning;

[Definition of “acquisition” amended by s. 1 (a) of Act No. 62 of 1983 and substituted by s. 1 (a) of Act No. 12 of 1985.]

**“board”** means the Competition Board established by section 3;

**“committee”** means a committee mentioned in section 4;

**“commodity”** includes any make or brand of any commodity, any book, periodical, newspaper or other publication, any building or structure and any service, whether personal, professional or otherwise, including any storage, transportation, insurance or banking service;

**“controlling interest”**, in relation to—

- (a) any business or undertaking, means any interest of whatever nature enabling the holder thereof to exercise, directly or indirectly, any control whatsoever over the activities or assets of the business or undertaking; and
- (b) any asset, means any interest of whatever nature enabling the holder thereof to exercise, directly or indirectly, any control whatsoever over the asset;

[Definition of “controlling interest” substituted by s. 1 (b) of Act No. 12 of 1985.]

**“co-operative society”** .....

[Definition of “co-operative society” deleted by s. 1 (c) of Act No. 12 of 1985.]

**“distribution”** includes the rendering of a service, irrespective of whether or not the rendering of such service is attended by the supply of a commodity, and storage, transportation, purchase and sale;

**“financial institution”** .....

[Definition of “financial institution” deleted by s. 1 (c) of Act No. 12 of 1985.]

**“Minister”** means the Minister for Administration and Economic Co-ordination;

[Definition of “Minister” substituted by s. 1 (b) of Act No. 62 of 1983, by s. 1 (a) of Act No. 5 of 1986, by s. 1 of Act No. 96 of 1987 and by s. 1 (a) of Act No. 88 of 1990.]

**“monopoly situation”** means a situation where any person, or two or more persons with a substantial economic connection, control in the Republic or any part thereof, wholly or to a large extent, the class of business in which he or they are engaged in respect of any commodity;

[Definition of “monopoly situation” inserted by s. 1 (b) of Act No. 5 of 1986.]

**“restrictive practice”** means—

- (a) any agreement, arrangement or understanding, whether legally enforceable or not, between two or more persons; or
- (b) any business practice or method of trading, including any method of fixing prices, whether by the supplier of any commodity or otherwise; or
- (c) any act or omission on the part of any person, whether acting independently or in concert with any other person; or

- (d) any situation arising out of the activities of any person or class or group of persons, which restricts competition directly or indirectly by having or being likely to have the effect of—
- (i) restricting the production or distribution of any commodity; or
  - (ii) limiting the facilities available for the production or distribution of any commodity; or
  - (iii) enhancing or maintaining the price of or any other consideration for any commodity; or  
[Para. (iii) substituted by s. 1 (c) of Act No. 5 of 1986.]
  - (iv) preventing the production or distribution of any commodity by the most efficient and economical means; or
  - (v) preventing or retarding the development or introduction of technical improvements or the expansion of existing markets or the opening up of new markets; or
  - (vi) preventing or restricting the entry of new producers or distributors into any branch of trade or industry; or
  - (vii) preventing or retarding the adjustment of any profession or branch of trade or industry to changing circumstances.  
[Definition of “restrictive practice” amended by s. 1 (c) of Act No. 62 of 1983 and by s. 1 (b) of Act No. 88 of 1990.]

## 2. Application of Act.—

- (1) The provisions of this Act shall not be construed so as to—
- (a) limit, subject to the provisions of subsection (2), any right acquired under—
    - (i) the Trade Marks Act, 1963 (Act No. 62 of 1963);
    - (ii) the Designs Act, 1967 (Act No. 57 of 1967);
    - (iii) the Plant Breeders’ Rights Act, 1976 (Act No. 15 of 1976);
    - (iv) the Patents Act, 1978 (Act No. 57 of 1978); or
    - (v) the Copyright Act, 1978 (Act No. 98 of 1978); or
  - (b) prevent organizations of employees from protecting the interests of their members by entering into agreements or arrangements with employers or associations of employers in regard to any matter which may form the subject of an agreement under the Industrial Conciliation Act, 1956 (Act No. 28 of 1956).
  - (c) .....  
[Para. (c) deleted by s. 2 (c) of Act No. 12 of 1985.]
- (2) The provisions of paragraph (a) of subsection (1) of this section shall not be so construed that any person shall thereunder retain or be granted any right of enhancing or maintaining prices or any other consideration in any manner contemplated in the definition of “restrictive practice” in section 1.  
[Sub-s. (2) substituted by s. 2 of Act No. 5 of 1986.]
- (3) Except in so far as criminal liability is concerned, the provisions of this Act shall bind the State in so far as the State is concerned in the manufacture and distribution of commodities.

## 3. Establishment of Competition Board.—

- (1) There is hereby established a board to be known as the Competition Board.
- (2) The board shall consist of—
- (a) the chairman of the Board of Trade and Industries established in terms of section 2 of the Board of Trade and Industries Act, 1944 (Act No. 19 of 1944);
  - (b) the Registrar of Financial Institutions mentioned in section 1 of the Limitation and Disclosure of Finance Charges Act, 1968 (Act No. 73 of 1968);
  - (c) the Governor of the South African Reserve Bank referred to in section 3 (1) of the South African Reserve Bank Act, 1944 (Act No. 29 of 1944), or any person designated by him;
  - (d) the chairman of the National Marketing Council referred to in section 2 (1) of the Marketing Act, 1968 (Act No. 59 of 1968);
  - (e) one member nominated by the Minister of Finance;

- (f) one member nominated by the Minister of Agricultural Economics and of Water Affairs;
- (g) not fewer than two and not more than seven other members appointed by the Minister on the grounds of having special knowledge of consumer affairs or knowledge of or experience in economics, industry, commerce, law or the conduct of public affairs,

[Para. (g) amended by s. 9 of Act No. 51 of 1991.]

of whom the Minister shall designate one as chairman and may designate one as vice-chairman.

[Sub-s. (2) amended by s. 2 of Act No. 62 of 1983 and substituted by s. 3 (a) of Act No. 12 of 1985.]

(3) The chairman of the board shall be a full-time member, and the Minister shall determine whether the other members appointed by the Minister shall be full-time or part-time members.

[Sub-s. (3) amended by s. 9 of Act No. 51 of 1991.]

(4) When for any reason the chairman is not able to perform his functions, or when there is a vacancy in the office of the chairman, the vice-chairman or, if he is not so able or if no vice-chairman has been designated, any member of the board designated by the Minister shall act as chairman.

[Sub-s. (4) substituted by s. 3 (b) of Act No. 12 of 1985.]

(5) A member of the board appointed by the Minister shall hold office for such period, but not exceeding five years, and on such conditions as the Minister may determine at the time of his appointment, but shall vacate his office if he resigns as a member or if the Minister at any time terminates his period of office as a member if in the opinion of the Minister there are good reasons for doing so.

[Sub-s. (5) substituted by s. 44 of Act No. 97 of 1986 and amended by s. 9 of Act No. 51 of 1991.]

(6) A member of the board shall on the expiry of his term of office by effluxion of time be eligible for reappointment.

(7) The Minister may if he sees fit, appoint, on such conditions and for such period as he may determine, a person as an additional member of the board for a particular purpose.

(8)

(a) The meetings of the board shall be held at such times and places as the chairman may determine.

(b) The person presiding at a meeting of the board shall determine the procedure at such meeting.

(c) The decision of a majority of the members of the board present at any meeting thereof shall constitute the decision of the board.

(d) No proceedings of the board shall be invalid by reason only of the fact that a vacancy existed in its membership or that any member was not present during such proceedings or any part thereof.

(9) Such officers and employees as are required for the proper performance of the board's functions shall be appointed in terms of the Public Service Act, 1957 (Act No. 54 of 1957).

#### **4. Committees of the board.—**

(1) The board may with the consent of the Minister establish committees to assist it in the performance of its functions.

(2) Any such committee shall consist of at least two members of the board, designated by the board, and such other persons as the Minister may appoint on the recommendation of the board.

(3) The board shall designate any member of the board, who is a member of any such committee, as chairman of the committee.

(4) The board may, subject to such conditions as it may deem fit, either generally or in relation to any particular matter, assign to any such committee any power conferred or duty imposed upon it in terms of this Act.

(5) No member of any such committee who is not a member of the board shall have access to the records of the board except with the approval of the chairman of the board.

### 5. Remuneration of members of board and committees.—

(1) A member of the board who is not in the full-time service of the State shall be appointed at such remuneration as the Minister may, with the concurrence of the Minister of Finance, determine.

[Sub-s. (1) substituted by s. 4 (a) of Act No. 12 of 1985.]

(2) A member of the board appointed under section 3 (7) and a member of any committee of the board shall, if he is not in the full-time service of the State, be paid such allowances as the Minister may, with the concurrence of the Minister of Finance, determine.

[Sub-s. (2) substituted by s. 4 (b) of Act No. 12 of 1985.]

(3) No full-time member of the board mentioned in section 3 (3) shall, without the consent of the Minister, perform work for anybody else for remuneration.

(4) Any person who contravenes the provisions of subsection (3) shall be guilty of an offence.

### 6. Functions of board.—

(1) The board—

(a) shall, subject to the directions of the Minister, make such investigations as it may consider necessary into, and advise the Minister in regard to—

(i) all aspects of economic competition policy, including the entrepreneurial activities in respect of institutions directly or indirectly controlled by the State;

(ii) the co-ordination of the official competition policy in a manner consistent with official economic objectives;

(iii) the implementation and administration of such competition policy;

(iv) new developments and trends in regard to the matters mentioned in subparagraphs (i), (ii) and (iii);

(b) shall undertake a continuous study of trends towards increased economic concentration, with a view to the investigation of monopoly situations which appear not to be justified in the public interest;

(c) may from time to time issue information on current policy in regard to restrictive practices, acquisitions and monopoly situations, to serve as general guidelines for the benefit of persons concerned therein;

(d) may consult with any interested party in connection with any restrictive practice or monopoly situation which exists or may come into existence, or any acquisition which has been or is being made or is proposed;

(e) may receive and dispose of representations relating to any matter with which it may deal in terms of this Act; and

(f) shall or may, as the case may be, perform any other function assigned to it by this Act.

[Sub-s. (1) amended by s. 5 of Act No. 12 of 1985 and substituted by s. 2 (a) of Act No. 88 of 1990.]

(2)

(a) On the written application of any person who proposes to enter into any transaction which will or is calculated to result in an acquisition, the board may, with the consent of the Minister, issue, subject to such conditions as the board may deem fit, a ruling to the effect that, on the facts and information included in such application or furnished by the applicant or any other person at the request of the board, in the opinion of the board circumstances exist which justify such acquisition in the public interest.

[Para. (a) substituted by s. 2 (b) of Act No. 88 of 1990.]

(b) Subject to the said conditions, if any, any such ruling shall preclude the Minister from issuing any notice under section 14 (1) (c) in respect of such acquisition on the basis of the said facts and information.

(3) .....

[Sub-s. (3) deleted by s. 2 (c) of Act No. 88 of 1990.]

(4) The board shall as soon as possible after 31 December in each year furnish the Minister with a report in respect of its work during the year ending on that date.

**7. Procedure at investigations.—**

(1) For the purposes of any investigation under this Act, the board or a committee may—

- (a) summon any person who is believed to be able to furnish any information on the subject of the investigation or to have in his possession or under his control any book, document or other object which has any bearing upon that subject, to appear before the board or committee at a time and place specified in the summons, to be interrogated or to produce such book, document or other object; and
- (b) interrogate any such person under oath or affirmation administered by the chairman, and examine or retain for examination any such book, document or other object: Provided that any person from whom any book, document or other object has been taken and retained in terms of this subsection shall, so long as such book, document or object is in the possession of the board or a committee, at his request be allowed, at his own expense and under the supervision of the investigating officer, to make copies thereof or to take extracts therefrom at any reasonable time.

(2) A summons for the attendance of any person before the board or a committee or for the production to the board or a committee of any book, document or other object shall be in the form prescribed by regulation under section 20 shall be signed by the chairman of the board or committee and shall be served in the manner so prescribed.

(3) Any person who has been summoned to attend before, or to produce any book, document or other object to, the board or a committee and who, without sufficient cause (the onus of proof of which shall rest upon him), fails to attend at the time and place specified in the summons or to retain in attendance until he is excused by the chairman from further attendance or, having attended, refuses to be sworn or to make an affirmation after he has been asked by the chairman to do so, or having been sworn or having made affirmation, fails to answer fully and satisfactorily any question lawfully put to him, or fails to produce any book, document or other object in his possession or under his control which he has been summoned to produce, shall be guilty of an offence.

(4) Any person who, after having been sworn or having made affirmation, gives false evidence before the board or a committee on any matter, knowing such evidence to be false or not knowing or not believing it to be true, shall be guilty of an offence.

(5) The law relating to privilege as applicable to a witness giving evidence before, or summoned to produce a book, document or other object to, a provincial division of the Supreme Court of South Africa shall apply in relation to any person summoned under this section.

(6) Nothing contained in this Act shall be deemed to compel the production by an attorney of a letter, report or other document containing a privileged communication made by or to him as an attorney, or to authorize the seizure or retention thereof.

(7) .....

[Sub-s. (7) deleted by s. 6 of Act No. 12 of 1985.]

**8. Board may require returns.—**

(1) To enable the board properly to perform its functions, it may by notice in writing require any person engaged in business or in any industry to furnish the board, within a period specified in the notice, or from time to time before such dates or within such periods as may be so specified, with a written return showing in detail such information with respect to the business or undertaking or activities of such person as may be specified in the notice, including information as to—

- (a) any business agreement which such person may at any time have entered into or intend to enter into with any other person, or in which he may at any time have been concerned;
- (b) any arrangement or understanding to which such person, or any business or undertaking in which he is or was concerned, may be, may become or may at any time have been a party; or
- (c) any interest which such person, or any business or undertaking in which he is or was concerned, may be engaged in acquiring, may intend to acquire or may at any time have acquired in any other business or undertaking or in any asset.

[Sub-s. (1) substituted by s. 3 of Act No. 62 of 1983 and by s. 3 of Act No. 88 of 1990.]

(2) No person shall in any notice under subsection (1) be required to furnish the board with any return specified in that notice within a period of less than 14 days after the date of such notice.

(3) Any person who fails to comply with any notice under subsection (1), or who in response to any such notice knowingly furnishes information which is false in any material particular, shall be guilty of an offence.

#### **9. Investigating officers.—**

(1) For the purposes of the application of this Act, the board may designate a member of the board, or an officer in its service whom it considers suitable, as an investigating officer.

(2) In order to ascertain whether any provision of this Act or any notice issued thereunder is being observed by any person to whom it applies, or to obtain any information required by the board in relation to any investigation by it as to restrictive practices, acquisitions or monopoly situations, any such investigating officer may at all reasonable times enter any premises on or in which any commodity, book, statement or other document connected with that observation or information is or is suspected to be, and may—

- (a) inspect or search such premises;
- (b) demand any information regarding the said commodity from the owner or person in charge of such premises;
- (c) examine or make copies of, or take extracts from, any book, statement or other document found in or upon such premises and which refers or is suspected to refer to any agreement, arrangement, understanding, business practice or method of trading which may be relevant at the said investigation by the board;
- (d) demand from the owner or any person in charge of such premises or from any person in whose possession or charge such book, statement or other document is, an explanation of any entry therein.

[Sub-s. (2) amended by s. 4 (a) of Act No. 88 of 1990.]

(3) Any person designated under subsection (1) shall be provided with a letter of authority signed by or on behalf of the chairman of the board and certifying that such person has been designated as an investigating officer in terms of this Act in relation to any specific alleged restrictive practice, acquisition or monopoly situation.

[Sub-s. (3) substituted by s. 4 (b) of Act No. 88 of 1990.]

(4) If an investigating officer referred to in subsection (1) intends to perform any function under this section, he shall first exhibit to any person to be affected thereby the written authority issued to him in terms of subsection (3).

(5) Any person who—

- (a) obstructs or hinders any such investigating officer in the performance of his functions under this section;
- (b) when any such investigating officer demands of him an explanation or information relating to a matter within his knowledge, refuses or fails to give such explanation or information or gives an explanation or information which is false or misleading, knowing it to be false or misleading; or
- (c) falsely represents himself to be any such investigating officer,

shall be guilty of an offence.

#### **10. Investigation by board in respect of restrictive practices, acquisitions and monopoly situations.—**

(1) Subject to the provisions of subsection (2), the board may on its own initiative, and shall at the request of the Minister, make such investigation as it may consider necessary—

- (a) into any restrictive practice which the board or the Minister, as the case may be, has reason to believe exists or may come into existence;
- (b) in order to ascertain—
  - (i) whether any acquisition has been, is being or is proposed to be made;

- (ii) the nature and extent of the controlling interest held and acquired, being acquired or proposed to be acquired;
  - (c) into any particular type of business agreement, arrangement, understanding, business practice or method of trading in general or in relation to any particular commodity or any class or kind of commodity or any particular business or undertaking or any class or type of business or undertaking or any particular area which in the opinion of the board or the Minister, as the case may be, is commonly adopted for the purpose of or in connection with the creation or maintenance of restrictive practices;
  - (d) into any monopoly situation which the board or the Minister, as the case may be, has reason to believe exists or may come into existence.
- (2) An investigation referred to in subsection (1) (a), (b), (c) or (d) shall not be made or proceeded with by the board on its own initiative, if in the opinion of the Minister such investigation is not in the public interest.
- (3) Where an investigation is made in terms of subsection (1) (a), (b) or (d), the board shall within three months from the date of the notice referred to in subsection (4), or within such further period as the Minister may at the request of the board determine, report to the Minister in terms of section 12 (1) as to the result of the investigation, or as to any arrangement which may have been made under section 11.
- (4) The board shall by notice in the *Gazette* make known, and furnish particulars of, any investigation which it proposes to make in terms of subsection (1), and further make known that any person may within 30 days from the date of the notice make such representations in writing regarding such investigation to the board as such person may consider necessary.
- (5) After any such notice relating to any investigation in terms of subsection (1) (a) or (b) has been published and before the relevant report is submitted to him, the Minister may, on the recommendation of the board, prescribe by notice in the *Gazette*, for such period as may be specified in the notice, but not exceeding the period or further period contemplated in subsection (3), such action as in the opinion of the Minister shall be taken to stay or prevent any restrictive practice which exists or may come into existence or any acquisition being made or proposed, as the case may be.
- (6) Any notice under subsection (5) may upon the recommendation of the board be amended or withdrawn by the Minister at any time, and shall not be subject to review by or appeal to any court of law.
- (7) Any person who contravenes or fails to comply with a notice under subsection (5) shall be guilty of an offence.

[S. 10 amended by s. 4 of Act No. 62 of 1983 and by s. 3 of Act No. 5 of 1986 and substituted by s. 5 of Act No. 88 of 1990.]

#### **11. Negotiations by board.—**

- (1) Whenever the board has issued any notice in terms of section 10 (4), it may at any time thereafter negotiate with any person or any body, corporate or unincorporate, with a view to making an arrangement which in the opinion of the board—
- (a) will ensure the discontinuance of any restrictive practice which exists or may come into existence and which is the subject of an investigation in terms of section 10 (1) (a);
  - (b) will do away with, terminate, prevent or alter any acquisition which has been or is being made or is proposed, or any monopoly situation which exists or may come into existence, as the case may be, and which is the subject of an investigation in terms of section 10 (1) (b) or (d),

[Para. (b) substituted by s. 4 of Act No. 5 of 1986.]

either wholly or to such extent as, in the opinion of the board, it is not justified in the public interest.

- (2) If the board has made any arrangement referred to in subsection (1), it shall make a report to the Minister thereon.

#### **12. Report by board.—**

- (1) The board shall report to the Minister as to the result of any investigation made by it in terms of section 10 (1).



- (2) If after investigation in terms of section 10 (1) (a), (b) or (d) the board—
- (a) is of the opinion that a restrictive practice or monopoly situation exists or was in existence or may come into existence at any time after the date of the notice in terms of section 10 (4), or that an acquisition has been made or is being made or is proposed;
- (b) is not satisfied that such restrictive practice or acquisition is justified in the public interest or is satisfied that such monopoly situation is not justified in the public interest; and  
[Para. (b) substituted by s. 6 (a) of Act No. 88 of 1990.]
- (c) has not made an arrangement with the parties concerned which has been confirmed by the Minister in terms of section 13 (2) (a),

the board shall recommend to the Minister that such action be taken under section 14 (1) as it may consider necessary in the circumstances.

[Sub-s. (2) amended by s. 5 (a) of Act No. 62 of 1983 and by s. 7 of Act No. 12 of 1985, and substituted by s. 5 (a) of Act No. 5 of 1986.]

(3) The Board shall not in any report made by it as to any investigation in terms of section 10 (1), mention the name or particulars of the business of any person whose business has been investigated, except where in its opinion such person is concerned in the existence of a restrictive practice or monopoly situation which exists or may come into existence or is a party to any acquisition which has been or is being made or is proposed.

[Sub-s. (3) substituted by s. 5 (b) of Act No. 5 of 1986.]

(4) Every such report which in the opinion of the Minister may be made known without detriment to the public interest—

- (a) shall as soon as practicable be laid upon the Tables of Parliament;
- (b) may at any time, either before or after it is or was laid upon the Tables of Parliament in terms of paragraph (a), be published by the Minister in the *Gazette* or be made known by the Minister in any other manner that the Minister may deem expedient.

[Sub-s. (4) substituted by s. 5 (b) of Act No. 62 of 1983 and by s. 6 (b) of Act No. 88 of 1990.]

### 13. Procedure after investigation.—

- (1) The Minister may after consideration of any recommendation in terms of section 12 (2)—
- (a) direct the board to undertake such negotiations as are mentioned in section 11 (1) and, if it has made any relevant arrangement, to report to the Minister thereon; and
- (b) if the board advises him that it has found it impracticable to negotiate with any relevant person or body or has not within a period determined by him, and which he may from time to time in his discretion extend, succeeded in making an arrangement with any such person or body, take such steps under section 14 (1) (c) as the board may recommend.
- (2) The Minister may after consideration of a report by the board on any arrangement mentioned in section 11 (2) or subsection (1) (a) of this section, if he considers it to be in the public interest—
- (a) confirm any such arrangement, either without modification or with such modifications, if any, as may be agreed to by the person concerned, and either unconditionally or subject to such conditions as may be agreed to by such person and as the Minister may on the recommendation of the board deem fit; or
- (b) set aside any such arrangement and give such directions or prescribe such requirements under section 14 (1) (c) as he may on the recommendation of the board consider necessary under the circumstances,

and any such arrangement or modified arrangement, together with the conditions, if any, subject to which it has been confirmed, shall be published by the Minister by notice in the *Gazette*, and shall thereupon have the same effect as a notice published under section 14 (1) (c).

(3) Any person who contravenes or fails to comply with any notice under subsection (2) shall be guilty of an offence.

**14. Manner of dealing with restrictive practices, acquisitions and monopoly situations.—**

(1) Whenever after consideration of a report by the board in terms of section 12 (1) as to the result of any investigation made by it in terms of section 10 (1) (a), (b) or (d), the Minister is of opinion that a restrictive practice exists or may come into existence or that an acquisition has been or is being made or is proposed and is not satisfied that such restrictive practice or acquisition is justified in the public interest, or is of opinion that a monopoly situation exists or may come into existence and is satisfied that such monopoly situation is not justified in the public interest, and has not confirmed any arrangement which may have been made in terms of section 11 (1) or 13 (1) (a) in respect of such restrictive practice, acquisition or monopoly situation—

- (a) the Minister of Finance may, at the request of the Minister, in terms of the Customs and Excise Act, 1964 (Act No. 91 of 1964), by notice in the *Gazette* suspend, as from the date of the publication of such notice, any duty to be paid upon imported goods of like nature to any goods affected by the operation of that restrictive practice, acquisition or monopoly situation, to the extent and for such period as he may deem fit;
  - (b) the Price Controller may at the request of the Minister fix, under the Price Control Act, 1964 (Act No. 25 of 1964), the maximum price at which any commodity, other than any insurance or banking service, affected by the operation of the said restrictive practice, acquisition or monopoly situation, may be sold by any person to any other person or at which any person may purchase such commodity from any other person;
  - (c) the Minister may by notice in the *Gazette*—
    - (i) declare the said restrictive practice, acquisition or monopoly situation to be unlawful, and require any person who in the opinion of the Minister is concerned in the said restrictive practice or monopoly situation or who in his opinion is or was a party to the said acquisition, to take such action, including steps for the dissolution of any body corporate or unincorporate, the severance of any connection or of any form of association between two or more persons, including any such bodies, the termination of the membership of a member of any body corporate or the application of any prohibition by the Minister on the exercise of any right to vote attached to the holding of any share in any such body, as the Minister may consider necessary to ensure the discontinuance or prevention of that restrictive practice or monopoly situation or the abolition or prevention of that acquisition or to eliminate any undesirable features thereof;
    - (ii) require any person who is or was a party to any agreement, arrangement, understanding or omission or applies or has applied any business practice or method of trading or commits or has committed any act or brings or has brought about any situation which may be specified in the notice, to terminate or to cease to be a party to such agreement, arrangement, understanding or omission or to refrain from applying such business practice or method of trading or to cease to commit that act or to bring about that situation or to refrain from at any time becoming a party to any agreement, arrangement, understanding or omission or applying any business practice or method of trading or committing any act or bringing about any situation of a nature specified in the notice which in the opinion of the Minister is likely to have the same effect.
- (2) After further investigation by the board and at the request of the Minister—
- (a) the Minister of Finance may withdraw any notice under subsection (1) (a) or amend it in such manner as he may deem fit;
  - (b) the Price Controller may under the Price Control Act, 1964, withdraw or amend any maximum price fixed as contemplated in subsection (1) (b).
- (3) Any notice under subsection (1) (c)—
- (a) shall not be published until after the relevant report of the board has in terms of section 12 (4) (b) been published by the Minister in the *Gazette* or made known by the Minister in any other manner;
  - (b) shall, subject to the provisions of subsection (4), come into operation upon a date fixed by the Minister and specified in such notice, not being less than six weeks after the date of publication thereof;

- (c) may prescribe such requirements as the Minister may consider necessary to achieve the objects of that notice and specify the persons by whom the terms of such notice or any such requirement shall be complied with, and the periods within which and the conditions subject to which those terms or that requirement shall be complied with by any such person;
- (d) may at any time after further investigation by the board be withdrawn by the Minister or be amended by him in such manner as he may deem fit.
- (4)
- (a) If an appeal is lodged with the Minister in terms of section 15 (5) in respect of a notice under subsection (1) (c) of this section, that notice shall, subject to the order of the special court hearing that appeal, come into operation on such date as the Minister may determine and make known by notice in the *Gazette*, but not earlier than six weeks after the date of the notice referred to in section 15 (14).
- (b) For the application of paragraph (a), the Minister shall as soon as practicable after the lodging of an appeal with him, give notice of that lodging in the *Gazette*.
- (5)
- (a) Whenever after consideration of a report by the board in terms of section 12 (1) as to the result of any investigation undertaken by it in terms of section 10 (1) (c), the Minister is of opinion that it is in the public interest, he may by notice in the *Gazette* declare any particular type of agreement, arrangement, understanding, business practice or method of trading which was the subject of the investigation to be unlawful, either generally or in respect of any particular area, according as to whether the investigation was of a general nature or was undertaken in relation to a particular area, and prohibit any person from entering into or being or continuing to be a party to any such agreement, arrangement or understanding or from applying any such business practice or method of trading either wholly or to the extent or subject to any exemption contemplated in paragraph (b), provided the Minister has not less than one month before the date of publication of the notice published the text of the proposed notice in the *Gazette*, together with a statement of his intention to publish such a notice in the *Gazette*.
- (b) The Minister may, on the recommendation of the board, in a particular case in writing grant exemption from any prohibition contemplated in paragraph (a) to such extent and subject to such conditions as may be specified in the exemption.
- (6) A notice under subsection (5) may at any time after further investigation by the board be withdrawn by the Minister or amended in such a manner as he may deem fit, provided, in the case of such amendment, he has not less than one month before the date of publication of the amending notice published the text of the proposed amending notice in the *Gazette*, together with a statement of his intention to publish such amending notice in the *Gazette*.
- (7) Any person who contravenes or fails to comply with any notice published under this section, shall be guilty of an offence.

[S. 14 amended by s. 6 of Act No. 62 of 1983, by s. 8 of Act No. 12 of 1985, by s. 6 of Act No. 5 of 1986 and by s. 2 of Act No. 96 of 1987 and substituted by s. 7 of Act No. 88 of 1990.]

#### **15. Appeals from Minister's decisions.—**

- (1) There shall be a right of appeal by any person affected by a notice under section 14 (1) (c), to a special court which shall be constituted as provided in this section.
- (2) A special court may be constituted by the State President by proclamation in the *Gazette*, with jurisdiction throughout the Republic or in one or more specified areas, for the hearing of all or any one or more appeals lodged in terms of subsection (5), as the State President may consider necessary.
- (3) Any such court shall consist of a judge of the Supreme Court of South Africa, who shall be the president of the court, and two other members, of whom—
  - (a) one shall be the holder of a university degree in economics who in the opinion of the State President has a thorough knowledge of economics; and

(b) one shall be a person who in the opinion of the State President has wide experience of industrial, commercial or financial matters or, where the State President in his discretion upon application by an appellant so directs, is a professional engineer as defined in the Professional Engineers' Act, 1968 (Act No. 81 of 1968).

(4) The members of a special court who are not in the full-time service of the State may be paid such remuneration and allowances as may in each case be determined by the Minister after consultation with the Minister of Justice.

(5) An appeal to a special court in terms of this section shall be lodged with the Minister in writing within six weeks after the date of publication of the notice to which the appeal relates, and shall set forth the grounds on which the appeal is based.

(6) The date, time and place for the hearing of any such appeal shall be fixed by the president of the special court concerned and shall be communicated in writing to the appellant through the Minister not less than 30 days before the date so fixed.

(7) The Minister may be represented at the hearing of any such appeal by any person designated by him, and the appellant may appear at such hearing in person or be represented thereat by his advocate, attorney or agent.

(8) Any such hearing may from time to time be adjourned by the president of the special court concerned to such date, time and place he may deem fit.

(9) The sittings of a special court shall be held in public, but the president of the court may exclude from being present thereat or require to withdraw therefrom any person whose attendance is not necessary.

(10) A special court may after consideration of any appeal, confirm or set aside the notice to which the appeal relates or amend it in such manner as it may deem equitable, and may make such orders as to costs as it may consider just.

(11) The decision of a majority of the members of a special court shall be the decision of the court: Provided that any matter of law arising for decision by that court and any question as to whether a matter for decision is a matter of fact or a matter of law, shall be decided by the president of the court and that no other member shall have any voice in the decision.

(12) An order as to costs made by a special court shall have effect and may be enforced as if it had been given in the course of proceedings before a division of the Supreme Court of South Africa having jurisdiction in the place where the sitting at which that order was made took place.

(13) The decision of a special court shall not be subject to appeal to or review by any court of law.

(14) An order of a special court confirming, setting aside or amending the notice to which the order relates, shall be made known by the Minister by notice in the *Gazette*, and any amendment made to a notice by such an order shall have effect as if it were an amendment made under section 14 (3) (d).

(15) The provisions of sections 84 and 85 of the Income Tax Act, 1962 (Act No. 58 of 1962), shall *mutatis mutandis* apply with reference to a special court constituted under this section.

## 16. ....

[S. 16 repealed by s. 9 of Act No. 12 of 1985.]

## 17. Preservation of secrecy.—

(1) No person shall, except for the purposes of the performance of his functions in terms of this Act or for the purposes of legal proceedings under this Act or when required to do so by any court of law or under any law, disclose to any other person any information acquired by him in the performance of his functions in terms of this Act and relating to the business or affairs of any other person.

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence.

**18. Prohibition of refusal on certain grounds to supply commodities.—**Any supplier of any commodity who, by reason of the fact, or because he suspects or believes, whether or not the suspicion or belief is justified or correct, that any person—

(a) has given evidence before the board or a committee at any investigation under this Act; or

- (b) has furnished the board or a committee with any information which by or under this Act he is required to furnish; or
- (c) has given evidence before a court of law,

fails or refuses to supply, under the usual conditions of supply, such person at his request with any such commodity, shall be guilty of an offence.

**19. Penalties.**—Any person shall be liable on conviction of—

- (a) any offence under section 5 (4), 7 (3) or (4), 9 (5) or 17 (2), to a fine not exceeding R2 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment;
- (b) any offence under section 8 (3), 10 (7) or 18, to a fine not exceeding R10 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment;
- (c) any offence under section 13 (3) or 14 (7), to a fine not exceeding R100 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

**20. Regulations.**—The Minister may make regulations in regard to any matter which he considers it necessary to prescribe in order to give effect to the objects of this Act, including regulations prescribing the procedure to be observed in the conduct and hearing of appeals under section 15, and regulations as to any matter which in terms of this Act is required or permitted to be prescribed by regulation.

**21. Repeal of Act 24 of 1955, Act 14 of 1958, Act 48 of 1975, Act 23 of 1976 and Act 75 of 1978.**—

(1) Subject to the provisions of subsection (2), the Regulation of Monopolistic Conditions Act, 1955, the Regulation of Monopolistic Conditions Amendment Act, 1958, the Regulation of Monopolistic Conditions Amendment Act, 1975, the Regulation of Monopolistic Conditions Amendment Act, 1976, and the Regulation of Monopolistic Conditions Amendment Act, 1978, are hereby repealed.

(2)

- (a) Any matter in connection with which anything has been done under any law mentioned in subsection (1) prior to the commencement of this Act or anything incidental to any such matter or which may be necessary to be done in connection with any such matter or which arises therefrom shall as from the said commencement be dealt or further dealt with in terms of the relevant provisions of this Act.
- (b) The provisions of Government Notice No. R.1038 of 25 June 1969, as construed by section 1 (a) of the Regulation of Monopolistic Conditions Amendment Act, 1978 (Act No. 75 of 1978), shall remain in force until that Government Notice is amended or withdrawn by the Minister.
- (c) Any arrangement in terms of section 3 (3) of the Regulation of Monopolistic Conditions Act, 1955 (Act No. 24 of 1955), shall be deemed to be an arrangement which was made between the board and the person or body concerned under section 11 (1) of this Act and which was published in terms of section 13 (2) of this Act.

[Sub-s. (2) substituted by s. 1 (1) of Act No. 58 of 1980.]

**22. Short title and commencement.**—This Act shall be called the Maintenance and Promotion of Competition Act, 1979, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.