

WORLD TRADE ORGANIZATION

ORGANISATION MONDIALE DU COMMERCE

ORGANIZACIÓN MUNDIAL DEL COMERCIO

IP/N/1/ZAF/O/1

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**Council for Trade-Related Aspects
of Intellectual Property Rights**

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**MAIN DEDICATED INTELLECTUAL PROPERTY LAWS AND REGULATIONS
NOTIFIED UNDER ARTICLE 63.2 OF THE AGREEMENT**

South Africa

The present document reproduces¹ the Maintenance and Promotion of Competition Act No. 96 of 1979 as amended, which South Africa has notified as a main dedicated intellectual property law with specific reference to Section 2 of the Act (see document IP/N/1/ZAF/1).

**Conseil des aspects des droits de propriété
intellectuelle qui touchent au commerce**

**PRINCIPALES LOIS ET REGLEMENTATIONS CONSACREES A LA
PROPRIETE INTELLECTUELLE NOTIFIEES AU TITRE
DE L'ARTICLE 63:2 DE L'ACCORD**

Afrique du Sud

Le présent document contient le texte de la Loi n° 96 de 1979 sur le maintien et la promotion de la concurrence, telle qu'elle a été modifiée¹, que l'Afrique du Sud a notifiée comme étant l'une des principales lois consacrées à la propriété intellectuelle, eu égard en particulier à son article 2 (voir le document IP/N/1/ZAF/1).

**Consejo de los Aspectos de los Derechos de Propiedad
Intelectual relacionados con el Comercio**

**PRINCIPALES LEYES Y REGLAMENTOS DEDICADOS A LA
PROPIEDAD INTELLECTUAL NOTIFICADOS EN VIRTUD
DEL PÁRRAFO 2 DEL ARTÍCULO 63 DEL ACUERDO**

Sudáfrica

En el presente documento¹ se reproduce la Ley de Mantenimiento y Promoción de la Competencia, N° 96 de 1979, modificada, que Sudáfrica ha notificado como principal Ley dedicada a la propiedad intelectual, con referencia específica al artículo 2 de la Ley (véase el documento IP/N/1/ZAF/1).

¹English only/anglais seulement/en inglés solamente.

STATUTES OF THE REPUBLIC OF SOUTH AFRICA — TRADE AND INDUSTRY

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]

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;

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“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

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- (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;

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- (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.

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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.