

STATUTES OF THE REPUBLIC OF SOUTH AFRICA — TRADE AND INDUSTRY  
*Maintenance and Promotion of Competition Act,*

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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;

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- (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;

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- (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.

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(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.]

