

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

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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- (a) shall not be published until after the relevant report of the board has in terms of section 12 (4) (b) been published by the Minister in the *Gazette* or made known by the Minister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).

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(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.

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(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

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(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*.

STATUTES OF THE REPUBLIC OF SOUTH AFRICA — TRADE AND INDUSTRY

MAINTENANCE AND PROMOTION OF
COMPETITION AMENDMENT ACT
NO. 58 OF 1980

[ASSENTED TO 5 MAY, 1980]

[DATE OF COMMENCEMENT: 23 MAY, 1980]
(Unless otherwise indicated)

(English text signed by the State President)

ACT

To amend the Maintenance and Promotion of Competition Act, 1979, so as to further regulate certain matters in relation to certain repealed laws.

1. (1) Amends section 21 of the Maintenance and Promotion of Competition Act, No. 96 of 1979, by substituting subsection (2) (date of commencement 1 January, 1980).

(2) Subsection (1) shall be deemed to have come into operation on the date of commencement of the Maintenance and Promotion of Competition Act, 1979.

2. Short title.—This Act shall be called the Maintenance and Promotion of Competition Amendment Act, 1980.
