

Revised

BUITENGEWONE



EXTRAORDINARY

VAN DIE UNIE VAN SUID-AFRIKA

Staatskoerant

Government Gazette

THE UNION OF SOUTH AFRICA

[Geregistreer by die Hoofposkantoor as 'n Nuusblad.]

[Registered at the General Post Office as a Newspaper.]

VOL. CLXXV.]

PRYS 6d.

**KAAPSTAD, 9 MAART 1954.
CAPE TOWN, 9TH MARCH, 1954.**

PRICE 6d.

[No. 5238.]

VOLKSRAAD.

Die volgende Wetsontwerp, ingedien in die Volksraad, word gepubliseer ingevolge artikel 160 van die Reglement van Orde.

J. M. HUGO,
Klerk van die Volksraad.

BLADSY

VW. 28—'54: Wetsontwerp op Reëling van Monopolistiese Toestande 2

HOUSE OF ASSEMBLY.

The following Bill having been introduced into the House of Assembly, is published in accordance with Standing Order No. 160.

J. M. HUGO,
Clerk of the House of Assembly.

PAGE

A.B. 28—'54: Regulation of Monopolistic Conditions
Bill 3

WETSONTWERP

Om voorsiening te maak vir die voorkoming of beheer van monopolistiese toestande, om die Wet op Onbehoorlike Belemmering van die Handel, 1949, te herroep, tot wysiging van die Wet op die Raad van Handel en Nywerheid, 1944, en om vir ander bykomstige aangeleenthede voorsiening te maak.

(Ingedien deur die MINISTER VAN EKONOMIESE SAKE.)

DIT WORD BEPAAL deur Haar Majesteit die Koningin, die Senaat en die Volksraad van die Unie van Suid-Afrika, as volg:—

Woordomskrywing.

1. Tensy uit die samehang anders blyk, beteken in hierdie Wet—

- (i) „distribusie” ook opberging, vervoer, versekering, bankiersdienste, aankoop en verkoop; (iv)
- (ii) „handelsware” ook enige gebou of struktuur en enige diens, hetsy persoonlik of andersins, met inbegrip van enige opbergings-, vervoer-, versekerings- of bankdiens; (ii)
- (iii) „koöperasie” ’n koöperatiewe landbouvereniging of ’n koöperatiewe landboumaatskappy of ’n spesiale koöperatiewe boeremaatskappy wat ingevolge die Wet op Koöperatiewe Verenigings, 1939 (Wet No. 29 van 1939), geregistreer is of geag word te wees; (iii)
- (iv) „Minister” die Minister van Ekonomiese Sake; (v)
- (v) „raad” die Raad van Handel en Nywerheid ingestel kragtens artikel twee van die Wet op die Raad van Handel en Nywerheid, 1944 (Wet No. 19 van 1944). (i)

Toestande waarop hierdie Wet van toepassing is.

2. (1) Hierdie Wet is, behoudens die bepalings van sub-artikel (2), van toepassing ten opsigte van elke monopolistiese toestand, dit wil sê—

- (a) elke ooreenkoms, reëling of verstandhouding, hetsy wetlik afdwingbaar al dan nie, tussen twee of meer persone;
 - (b) elke besigheidspraktyk of handelsmetode, met inbegrip van enige metode om pryse vas te stel;
 - (c) elke handeling of versuim deur enigiemand, hetsy hy onafhanklik dan wel tesame met iemand anders optree; en
 - (d) elke toestand wat uit die bedrywighede van enige persoon of klas of groep persone ontstaan, wat, deurdat dit mededinging regstreeks of onregstreeks beperk, die uitwerking het of bereken is om—
 - (i) die opbrings of afset van handelsware te beperk; of
 - (ii) die fasiliteite beskikbaar vir die produksie of distribusie van handelsware in te kort; of
 - (iii) pryse te verhoog of te handhaaf; of
 - (iv) die produksie of distribusie van handelsware op die mees doeltreffende en ekonomiese manier te verhoed; of
 - (v) die ontwikkeling of invoering van tegniese verbeterings of die uitbreiding van bestaande of skepping van nuwe markte te verhoed of te vertraag; of
 - (vi) die toetrede van nuwe produsente of distribueerders tot enige tak van die handel of nywerheid te verhoed of te beperk; of
 - (vii) die aanpassing van enige tak van die handel of nywerheid by veranderende toestande te verhoed of te vertraag.
- (2) Die bepalings van hierdie Wet word nie op so ’n wyse toegepas dat dit—
- (a) enige reg verkry ingevolge die Wet op Patente, 1952 (Wet No. 37 van 1952) of die „Wet op Modellen, Handelsmerken en Auteursrecht, 1916” (Wet No. 9 van 1916), inkort nie; of
 - (b) organisasies van werkliede belet om deur die aangaan van ooreenkomste of reëlings met werkgewers of verenigings van werkgewers met betrekking tot lone

BILL

To provide for the prevention or control of monopolistic conditions, to repeal the Undue Restraint of Trade Act, 1949, to amend the Board of Trade and Industries Act, 1944, and to provide for other incidental matters.

(Introduced by the MINISTER OF ECONOMIC AFFAIRS.)

BE IT ENACTED by the Queen's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:—

1. In this Act, unless the context otherwise indicates—
 - 5 (i) "board" means the Board of Trade and Industries established under section two of the Board of Trade and Industries Act, 1944 (Act No. 19 of 1944); (v)
 - (ii) "commodity" includes any building or structure and any service, whether personal or otherwise, including any storage, transportation, insurance or banking service; (ii)
 - 10 (iii) "co-operative society" means a co-operative agricultural society or a co-operative agricultural company or a farmers' special co-operative company registered or deemed to be registered under the Co-operative Societies Act, 1939 (Act No. 29 of 1939); (iii)
 - 15 (iv) "distribution" includes storage, transportation, insurance, banking, purchase and sale; (i)
 - 20 (v) "Minister" means the Minister of Economic Affairs. (iv)
2. (1) This Act shall, subject to the provisions of sub-section (2), apply in respect of every monopolistic condition, that is to say—

Definitions.

Conditions to which this Act applies.

 - 25 (a) every agreement, arrangement or understanding, whether legally enforceable or not, between two or more persons;
 - (b) every business practice or method of trading, including any method of fixing prices;
 - 30 (c) every act or omission on the part of any person, whether acting independently or in concert with any other person; and
 - (d) every situation arising out of the activities of any person or class or group of persons,
 - 35 which, by directly or indirectly restricting competition, has or is calculated to have the effect of—
 - (i) restricting the output or disposal of any commodity; or
 - 40 (ii) limiting the facilities available for the production or distribution of any commodity; or
 - (iii) enhancing or maintaining prices; or
 - (iv) preventing the production or distribution of any commodity by the most efficient and economical means; or
 - 45 (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
 - 50 (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 branch of trade or industry to changing circumstances.
 - (2) The provisions of this Act shall not be applied in such a manner as to—
 - 55 (a) limit any right derived under the Patents Act, 1952 (Act No. 37 of 1952), or the Designs, Trade Marks and Copyright Act, 1916 (Act No. 9 of 1916); or
 - 60 (b) prevent organizations of employees from protecting the interests of their members by entering into agreements or arrangements with employers or associations

en ander diensvoorwaardes, die belange van hul lede te beskerm nie; of

(c) belet dat—

- (i) 'n koöperasie of ander liggaam van produsente van landbouprodukte die produksie of distribusie van onverwerkte landbouprodukte reël nie; of
- (ii) 'n beherende raad ingestel kragtens die Bemakingswet, 1937 (Wet No. 26 van 1937) of 'n raad ingestel kragtens 'n Wet in die Bylae van daardie Wet genoem, die produksie of distribusie van onverwerkte landbouprodukte ten opsigte waarvan hy ingestel is, ooreenkomstig die uit hoofde van die betrokke Wet aan hom verleende bevoegdhede reël nie.

Ondersoek na vermoedelijke monopolistiese toestande.

3. (1) Die raad moet in opdrag van die Minister die ondersoek instel wat die raad nodig ag—

- (a) ten einde te bepaal of 'n monopolistiese toestand bestaan;
- (b) na enige vermelde besigheidsooreenoms, reëling, verstandhouding, besigheidspraktyk of handelsmetode wat volgens die Minister se oordeel algemeen vir die doeleindes van of in verband met die skepping of handhawing van monopolistiese toestande aangewend word:

Met dien verstande dat geen opdrag kragtens paragraaf (a) deur die Minister gegee word nie behalwe waar hy rede het om te vermoed dat 'n monopolistiese toestand bestaan.

(2) Indien die raad na ondersoek ingevolge hierdie artikel van mening is dat 'n monopolistiese toestand bestaan, en nie oortuig is dat daar omstandighede is wat die bestaan van so 'n monopolistiese toestand in die openbare belang regverdig nie, kan die raad by die Minister aanbeveel dat kragtens artikel ses opgetree word soos die raad onder die omstandighede nodig ag: Met dien verstande dat geen aanbeveling in verband met 'n ondersoek wat ingevolge 'n opdrag kragtens paragraaf (a) van sub-artikel (1) onderneem word, gemaak word nie tensy die raad nie daarin geslaag het nie om deur onderhandeling met enige betrokke persoon 'n reëling te tref wat die beëindiging van die betrokke monopolistiese toestand sal verseker, hetsy geheelal of vir sover dit volgens die raad se oordeel vir die openbare belang skadelik is, en totdat deur die raad aan die betrokke persoon skriftelik kennis gegee is van die raad se voorneme om so 'n aanbeveling te maak.

(3) Die raad moet aan die Minister verslag doen aangaande die uitslag van enige ondersoek uit hoofde van hierdie artikel deur hom onderneem, met inbegrip van enige ondersoek kragtens sub-artikel (4), en aangaande enige reëling wat ingevolge onderhandelings kragtens sub-artikel (2) getref mag wees, en die Minister kan na oorweging van 'n verslag van die raad—

- (a) so 'n reëling bekragtig, hetsy met of sonder wysigings, en of onvoorwaardelik of onderworpe aan sodanige voorwaardes as wat hy goedvind; of
- (b) so 'n reëling ter syde stel en kragtens artikel ses die opdragte gee of vereistes voorskryf wat hy onder die omstandighede nodig ag.

en so 'n reëling of gewysigde reëling, tesame met die voorwaardes, as daar is, onderworpe waaraan dit bekragtig is, kan deur die Minister by kennisgewing in die *Staatskoerant* afgekondig word, en het daarop dieselfde uitwerking as 'n kennisgewing kragtens artikel ses afgekondig.

(4) Wanneer 'n reëling kragtens sub-artikel (2) aangegaan, volgens voorskrif van sub-artikel (3) bekragtig is, hetsy met of sonder wysigings, of 'n kennisgewing kragtens artikel ses afgekondig is, moet die raad van tyd tot tyd die ondersoek instel wat hy nodig ag ten einde te bepaal of die bepalinge van daardie reëling of gewysigde reëling en die voorwaardes, as daar is, onderworpe waaraan dit bekragtig is, of van daardie kennisgewing, al na die geval, deur enigiemand op wie dit van toepassing is, nagekom word.

(5) Die raad het vir die doeleindes van 'n ondersoek ingevolge hierdie artikel dieselfde bevoegdhede as wat hy vir die doeleindes van 'n ondersoek deur hom ingevolge die Wet op die Raad van Handel en Nywerheid, 1944, het, en al die bepalinge van daardie Wet met betrekking tot 'n ondersoek daarkragtens is, behalwe vir sover in hierdie Wet anders bepaal word, *mutatis mutandis* van toepassing in verband met 'n ondersoek ingevolge hierdie artikel: Met dien verstande dat by die toepassing van die bepalinge van sub-artikel (3) van artikel tien van genoemde Wet die verwysing daarin na 'n boete van tweehonderd-en-vyftig pond as 'n verwysing na 'n boete van duisend pond opgevat word.

of employers in regard to wages and other working conditions; or

(c) prevent—

- 5 (i) any co-operative society or any other body of producers of agricultural products from regulating the production or distribution of any unprocessed agricultural commodity; or
- 10 (ii) any regulatory board established under the Marketing Act, 1937 (Act No. 26 of 1937), or any board established under an Act specified in the Schedule to that Act, from regulating in accordance with the powers vested in it by virtue of the relevant Act the production or distribution of
- 15 any unprocessed agricultural commodity in respect of which it has been established.

3. (1) The board shall on the directions of the Minister make such investigations as it may consider necessary—

Investigation into suspected monopolistic conditions.

- (a) in order to ascertain whether any monopolistic condition exists;
- 20 (b) into any specified business agreement, arrangement, understanding, business practice or method of trading which in the opinion of the Minister is commonly adopted for the purpose of or in connection with the creation or maintenance of monopolistic conditions;
- 25

Provided that no direction shall be given by the Minister under paragraph (a) except where he has reason to suspect that a monopolistic condition exists.

- (2) If after any investigation under this section the board
- 30 is of the opinion that a monopolistic condition exists and is not satisfied that there are circumstances which justify the existence of such monopolistic condition in the public interest, the board may recommend to the Minister that such action be taken under section six as it may consider necessary in the circumstances: Provided that no recommendation shall be
- 35 made in connection with an investigation undertaken in pursuance of a direction under paragraph (a) of sub-section (1), unless the board has failed by negotiation with any person concerned to arrive at an arrangement which will ensure the discontinuance of the monopolistic condition in question, either wholly or to such extent as, in the opinion of the board, it is detrimental to the public interest, and until notice in writing of the board's intention to make such a recommendation has been given by the board to the person concerned.
- 40

- (3) The board shall report to the Minister as to the result of any investigation undertaken by it under this section, including any investigation under sub-section (4), and as to any arrangement which may have been arrived at in pursuance of negotiations under sub-section (2), and the Minister may
- 45 after consideration of a report by the board—

- (a) confirm any such arrangement, either with or without modifications, and either unconditionally or subject to such conditions as he may deem fit; or
- 55 (b) set aside any such arrangement and give such directions or prescribe such requirements under section six as he may 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, may be published by the Minister by notice in the *Gazette*, and shall thereupon have the same effect as a notice published under section six.

- (4) Whenever any arrangement made under sub-section (2) has been confirmed, whether with or without modifications,
- 65 as provided in sub-section (3), or any notice has been published under section six, the board shall from time to time make such investigations as it may consider necessary to determine whether the terms of such arrangement or modified arrangement and the conditions, if any, subject to which it has been
- 70 confirmed, or of such notice, as the case may be, are being observed by any person to whom it applies.

- (5) The board shall for the purpose of any investigation under this section have the same powers as it has for the purpose of any investigation by it under the Board of Trade and Industries Act, 1944, and all the provisions of that Act relating to investigations thereunder shall, save as is otherwise provided in this Act, *mutatis mutandis* apply in connection with any investigation under this section: Provided that in the application of the provisions of sub-section (3) of section
- 75
- 80 ten of the said Act, the reference therein to a fine of two hundred and fifty pounds shall be deemed to be a reference to a fine of one thousand pounds.

(6) Die raad mag nie in 'n verslag ingevolge 'n opdrag kragtens sub-artikel (1) deur hom gedoen, die naam of besonderhede van die besigheid van iemand wie se besigheid ondersoek is, vermeld nie, behalwe waar so iemand volgens die raad se oordeel betrokke is by die bestaan van 'n monopolistiese toestand of party is by 'n ooreenkoms, reëling of verstandhouding of betrokke is by 'n besigheidspraktyk of handelsmetode bedoel in paragraaf (b) van sub-artikel (1) wat vir die openbare belang skadelik is.

Persone wie se bedrywighede ondersoek word, geregtig om aangehoor te word.

4. Die raad moet voordat hy aan die Minister verslag doen oor enige ondersoek ingevolge hierdie Wet deur hom gedoen, aan enigiemand wie se besigheid of bedrywighede deur hom ondersoek is 'n geleentheid gee om met betrekking tot die onderwerp van die ondersoek by die raad sodanige skriftelike verhoë in te dien as wat so iemand nodig mag ag. Met dien verstande dat die raad by skriftelike kennisgewing aan so iemand gerig, kan verlang dat enige sodanige verhoë by hom ingedien word binne 'n tydperk in die kennisgewing vermeld, maar minstens twee maande na die datum van daardie kennisgewing.

Bevoegdheid om verstrekking van skriftelike opgawes te eis.

5. Die raad kan, in verband met 'n ondersoek ingevolge hierdie Wet, enigiemand by skriftelike kennisgewing aansê om binne 'n tydperk in die kennisgewing vermeld, of van tyd tot tyd op die tye of binne die tydperke aldus vermeld, aan die raad 'n skriftelike opgawe te verstrek waarin in besonderhede sodanige inligting met betrekking tot die besigheid of bedrywighede van so iemand aangegee word as wat in die kennisgewing vermeld staan, met inbegrip van inligting aangaande enige besigheidsooreenkomste wat so iemand te eniger tyd met enigiemand anders mag aangegaan het, of aangaande enige reëling of verstandhouding waarby so iemand 'n party is of te eniger tyd mag gewees het.

Wyse waarop in verband met monopolistiese toestande gehandel kan word.

6. (1) Wanneer die Minister na oorweging van 'n verslag deur die raad aan hom voorgelê na aanleiding van 'n ondersoek ingevolge paragraaf (a) van sub-artikel (1) van artikel drie deur die raad onderneem, van mening is dat 'n monopolistiese toestand bestaan, en nie oortuig is dat daar omstandighede is wat die bestaan van so 'n monopolistiese toestand in die openbare belang regverdig nie—

- (a) kan die Minister van Finansies op versoek van die Minister by kennisgewing in die *Staatskoerant* verklaar dat, vanaf die datum in die kennisgewing vermeld, die invoerreg wat betaal moet word op ingevoerde goedere van soortgelyke aard as enige goedere wat deur die werking van daardie monopolistiese toestand geraak word, die minimum of intermediêre reg is soos in die betrokke items van die Doeanewet, 1944 (Wet No. 35 van 1944), uiteengesit;
- (b) kan die Minister by kennisgewing in die *Staatskoerant*—

- (i) enige party by 'n in die kennisgewing vermelde ooreenkoms, reëling of verstandhouding of enigiemand wat 'n aldus vermelde besigheidspraktyk of handelsmetode toepas of handel verrig of toestand teweegbring, gelas om daardie ooreenkoms, reëling of verstandhouding te beëindig of om op te hou om 'n party daarby te wees, of om van daardie besigheidspraktyk of handelsmetode af te sien of om op te hou om daardie handel te verrig of daardie toestand te weeg te bring, hetsy geheel en al of in die mate en op die wyse in die kennisgewing vermeld;
- (ii) so 'n monopolistiese toestand onwettig verklaar en enigiemand wat na die Minister se oordeel by die bestaan van bedoelde toestand betrokke is, gelas om die stappe te doen, met inbegrip van stappe vir die ontbinding van enige liggaam, hetsy met regs persoonlikheid bekleed al dan nie, of die verbreking van enige verband of vorm van assosiasie tussen twee of meer persone, met inbegrip van enige sodanige liggame, wat die Minister nodig ag om die beëindiging van daardie monopolistiese toestand te verseker of enige ongewenste kenmerke daarvan uit te skakel.

(2) Die Minister van Finansies kan te eniger tyd na verder ondersoek deur die raad en na oorlegpleging met die Minister, 'n kragtens paragraaf (a) van sub-artikel (1) gepubliseerde kennisgewing herroep of dit wysig op die wyse wat hy goedvind.

(6) The board shall not in any report made by it in pursuance of a direction under sub-section (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 monopolistic condition or is a party to any agreement, arrangement or understanding or is engaged in any business practice or method of trading referred to in paragraph (b) of sub-section (1) which is detrimental to the public interest.

10 4. The board shall, before submitting to the Minister a report on any investigation made by it under this Act, afford any person whose business or activities have been investigated by it, an opportunity of lodging with the board such written representations as he may consider necessary in regard to the subject of the investigation: Provided that the board may, by notice in writing addressed to any such person, require any such representations to be lodged with it within a period specified in the notice, not being less than two months after the date of such notice.

Persons whose activities are investigated entitled to be heard.

20 5. The board may, in connection with any investigation under this Act, by notice in writing require any person to submit to the board, within a time specified in the notice, or from time to time at such times or within such periods as may be so specified, a written return showing in detail such information with respect to the business or activities of such person as may be specified in the notice, including information as to any business agreements which such person may at any time have entered into with any other person, or as to any arrangement or understanding to which such person may be or may at any time have been a party.

Power to require submission of written returns.

35 6. (1) Whenever after consideration of a report submitted to him by the board in pursuance of any investigation undertaken by it under paragraph (a) of sub-section (1) of section three, the Minister is of the opinion that a monopolistic condition exists and is not satisfied that there are circumstances which justify the existence of such monopolistic condition in the public interest—

Manner of dealing with monopolistic conditions.

40 (a) the Minister of Finance may, at the request of the Minister, by notice in the *Gazette* declare that, as from the date specified in such notice, the import duty to be paid upon imported goods of like nature to any goods affected by the operation of that monopolistic condition shall be the minimum or intermediate duty set out in the relative items of the Customs Act, 1944 (Act No. 35 of 1944);

45 (b) the Minister may by notice in the *Gazette*—

50 (i) require any party to any agreement, arrangement or understanding, or any person employing any business practice or method of trading or committing any act or bringing about any situation, which may be specified in the notice, to terminate or to cease to be a party to such agreement, arrangement or understanding, or to refrain from applying such business practice or method of trading or from committing such act or bringing about such situation, either wholly or to such extent and in such manner as may be specified in the notice;

55 (ii) declare any such monopolistic condition to be unlawful, and require any person who, in the opinion of the Minister, is concerned in the existence of that condition, to take such action, including steps for the dissolution of any body corporate or unincorporate or the severance of any connection or of any form of association between two or more persons, including any such bodies, as the Minister may consider necessary to ensure the discontinuance of such monopolistic condition or to eliminate any undesirable features thereof.

60 (2) The Minister of Finance may at any time after further investigation by the board and after consultation with the Minister, withdraw any notice published under paragraph (a) of sub-section (1) or amend it in such manner as he may deem fit.

75

- (3) 'n Kennisgewing ingevolge paragraaf (b) van sub-artikel (1)—
- (a) word nie gepubliseer nie totdat die tersaaklike verslag van die raad deur die Minister beskikbaar gestel is aan enige persoon wat daarby betrokke is of volgens die Minister se oordeel waarskynlik betrokke is, en vir dié doel kan so 'n verslag aldus beskikbaar gestel word voordat dit in een of ander Huis van die Parlement ter Tafel gelê is; 5
 - (b) tree, behoudens die bepalings van sub-artikel (4) in werking op 'n datum deur die Minister vasgestel en in die kennisgewing vermeld, wat nie minder as ses weke na die datum van publikasie daarvan is nie; 10
 - (c) kan op alle persone of op alle persone wat behoort tot een of ander vermelde kategorie of groep van persone of op een of meer vermelde persone van toepassing wees; 15
 - (d) kan die vereistes voorskryf wat die Minister nodig ag om die oogmerke van daardie kennisgewing te verwesenlik, en die persone vermeld deur wie aan die bepalings van daardie kennisgewing of so 'n vereiste voldoen moet word, en die tye waarin en die voorwaardes met inagneming waarvan deur enige sodanige persoon aan daardie bepalings of vereiste voldoen moet word; 20 25
 - (e) kan te eniger tyd, na verder ondersoek deur die raad, deur die Minister herroep of op die wyse wat hy goetvind, gewysig word.
- (4) Ingeval ten opsigte van 'n kennisgewing kragtens paragraaf (b) van sub-artikel (1) van hierdie artikel gepubliseer, 'n appèl ooreenkomstig sub-artikel (5) van artikel sewe by die Minister ingedien word, tree daardie kennisgewing, onderworpe aan die bevel van die spesiale hof wat bedoelde appèl verhoor, in werking by publikasie, volgens voorskrif van sub-artikel (14) van laasbedoelde artikel, van daardie bevel. 30 35
- (5) Na oorweging van 'n verslag deur die raad aan hom voorgelê in verband met 'n ondersoek ingevolge 'n opdrag kragtens paragraaf (b) van sub-artikel (1) van artikel drie deur die raad onderneem, kan die Minister, met goedkeuring, by besluit, van beide Huise van die Parlement, by kennisgewing in die *Staatskoerant* enige besondere tipe van ooreenkoms, verstandhouding, besigheidspraktyk of handelsmetode onwettig verklaar, en enigiemand verbied om so 'n ooreenkoms of verstandhouding aan te gaan of 'n party daarby te wees of om so 'n besigheidspraktyk of handelsmetode toe te pas. 40 45
- (6) Vir die toepassing van sub-artikel (4) moet die Minister in die *Staatskoerant* van die indiening by hom van 'n appèl kragtens sub-artikel (5) van artikel sewe kennis gee so gou doenlik nadat die appèl aldus ingedien is.

Appèlle teen
beslissings
van Minister.

7. (1) Daar is 'n reg van appèl deur enige persoon wat deur 'n kragtens paragraaf (b) van sub-artikel (1) van artikel ses gepubliseerde kennisgewing geraak word, na 'n spesiale hof wat volgens voorskrif van hierdie artikel ingestel word. 50
- (2) 'n Spesiale hof kan deur die Goewerneur-generaal by proklamasie in die *Staatskoerant* ingestel word met regsbevoegdheid in die hele Unie of in een of meer vermelde gebiede vir die verhoor van alle of een of meer appèlle kragtens sub-artikel (5) by die Minister ingedien, na gelang die Goewerneur-generaal nodig ag. 55
- (3) So 'n hof bestaan uit 'n regter van die Hooggeregshof van Suid-Afrika, wat die president van die hof is, en twee ander lede, van wie— 60
- (a) een iemand moet wees wat 'n universiteitsgraad in ekonomie besit en volgens die Goewerneur-generaal se oordeel deeglike kennis van ekonomie het; en 65
 - (b) een iemand wat volgens die Goewerneur-generaal se oordeel breë ondervinding van nywerheids-, handels- of finansiële aangeleenthede het of, waar die Goewerneur-generaal na goetdunke op aansoek deur 'n appellant aldus gelas, 'n bevoegde myningenieur moet wees. 70
- (4) Daar kan aan die lede van 'n spesiale hof wat nie in die voltydse diens van die Staat is nie, die besoldiging en toelaes betaal word wat in elke geval deur die Minister met goedkeuring van die Minister van Finansies en na oorlegpleging met die Minister van Justisie bepaal word. 75
- (5) 'n Appèl na 'n spesiale hof ingevolge hierdie artikel moet skriftelik by die Minister ingedien word binne ses weke na die datum van publikasie van die kennisgewing waarop die appèl betrekking het, en moet die gronde waarop die appèl berus, uiteensit. 80

- (3) Any notice under paragraph (b) of sub-section (1)—
- (a) shall not be published until after the relevant report of the board has been made available by the Minister to any person who is or in the opinion of the Minister is likely to be concerned, and for that purpose any such report may be so made available before it has been laid upon the Table of either House of Parliament;
 - (b) shall, subject to the provisions of sub-section (4), come into operation upon a date to be fixed by the Minister and specified in such notice, not being less than six weeks after the date of publication thereof;
 - (c) may apply to all persons or to all persons belonging to any class or group of persons or to one or more specified persons;
 - (d) 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 times within which, and the conditions subject to which those terms or that requirement shall be complied with by any such person;
 - (e) 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) In the event of an appeal being lodged with the Minister in accordance with sub-section (5) of section seven, in respect of any notice published under paragraph (b) of sub-section (1) of this section, such notice shall, subject to the order of the special court which hears the appeal, come into operation upon the publication of that order as provided in sub-section (14) of the first-mentioned section.
- (5) After consideration of a report submitted to him by the board in connection with an investigation undertaken by it in pursuance of a direction under paragraph (b) of sub-section (1) of section three, the Minister may with the approval, by resolution, of both Houses of Parliament, by notice in the *Gazette*, declare any particular type of agreement, understanding, business practice or method of trading to be unlawful, and prohibit any person from entering into or being a party to any such agreement or understanding or from applying any such business practice or method of trading.
- (6) For the purpose of sub-section (4), the Minister shall give notice in the *Gazette* of the lodging with him of any appeal under sub-section (5) of section seven, as soon as practicable after the appeal has been so lodged.
7. (1) There shall be a right of appeal by any person affected by a notice published under paragraph (b) of sub-section (1) of section six, to a special court which shall be constituted as provided in this section. Appeals from Minister's decisions.
- (2) A special court may be constituted by the Governor-General by proclamation in the *Gazette*, with jurisdiction throughout the Union or in one or more specified areas, for the hearing of all or any one or more appeals lodged with the Minister under sub-section (5), as the Governor-General 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 conferred by a university in the Union, who in the opinion of the Governor-General has a thorough knowledge of economics; and
 - (b) one shall be a person who in the opinion of the Governor-General has wide experience of industrial, commercial or financial matters, or where the Governor-General in his discretion upon application by an appellant so directs, is a qualified mining engineer.
- (4) The members of a special court who are not in the full-time employment of the State may be paid such remuneration and allowances as may in each case be determined by the Minister with the approval of the Minister of Finance and after consultation with the Minister of Justice.
- (5) An appeal to a special court under 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) Die datum, tyd en plek van die verhoor van so 'n appèl moet deur die president van die betrokke spesiale hof bepaal word en moet minstens tien dae voor die aldus bepaalde datum skriftelik deur die Minister aan die appellant bekendgemaak word. 5

(7) Die Minister kan by die verhoor van so 'n appèl verteenwoordig word deur iemand wat hy aanwys, en die appellant kan by daardie verhoor persoonlik verskyn of deur sy advokaat, prokureur of agent verteenwoordig word.

(8) So 'n verhoor kan van tyd tot tyd deur die president van die betrokke spesiale hof verdaag word tot 'n datum, tyd en plek wat hy goedvind. 10

(9) Die sittings van 'n spesiale hof word in die openbaar gehou, maar die president van die hof kan enigiemand wie se aanwesigheid nie nodig is nie van aanwesigheid aldaar uitsluit of hom gelas om hom daarvan te onttrek. 15

(10) 'n Spesiale hof kan na oorweging van 'n appèl, die kennisgewing waarop die appèl betrekking het, bekragtig of ter syde stel of wysig op die wyse wat hy billik ag en kan die bevel wat hy regverdig ag met betrekking tot koste verleen. 20

(11) Die beslissing van 'n meerderheid van die lede van 'n spesiale hof is die beslissing van die hof: Met dien verstande dat enige regspunt wat vir beslissing deur so 'n hof opkom, en enige vraag of 'n punt vir beslissing 'n feitepunt of 'n regspunt is, deur die president van die hof beslis word, en geen ander lid het by die beslissing seggenskap nie. 25

(12) 'n Bevel met betrekking tot koste deur 'n spesiale hof verleen, het die uitwerking en word ten uitvoer gelê asof dit gegee was in die loop van 'n geding voor 'n afdeling van die Hooggeregshof van Suid-Afrika wat regsbevoeg is in die plek waar die sitting waar daardie bevel verleen was, plaasgevind het. 30

(13) Die beslissing van 'n spesiale hof, uitgesonderd 'n beslissing oor 'n aangeleentheid met betrekking waartoe die president alleen regsbevoeg is, is nie aan appèl na of hersiening deur 'n geregshof onderhewig nie. 35

(14) 'n Bevel van 'n spesiale hof wat die kennisgewing waarop die bevel betrekking het, bekragtig, ter syde stel of wysig, moet deur die Minister by kennisgewing in die *Staatskoerant* bekendgemaak word, en 'n wysiging wat deur so 'n bevel aan so 'n kennisgewing aangebring word, geld asof dit 'n wysiging was wat kragtens paragraaf (e) van sub-artikel (3) van artikel ses deur die Minister aangebring is. 40

(15) Die bepalings van artikels *nege-en-sewentig bis* en *nege-en-sewentig ter* van die Inkomstebelastingwet, 1941 (Wet No. 31 van 1941), is *mutatis mutandis* van toepassing met betrekking tot 'n spesiale hof kragtens hierdie artikel ingestel. 45

Oortredings en strawwe.

8. (1) Iemand wat 'n kennisgewing gepubliseer kragtens sub-artikel (3) van artikel *drie* of artikel *ses* oortree of versuim om daaraan te voldoen, is aan 'n misdryf skuldig en by veroordeling strafbaar met 'n boete van hoogstens tienduise pond of met gevangenisstraf vir 'n tydperk van hoogstens vyf jaar of met daardie boete sowel as daardie gevangenisstraf. 50

(2) Iemand wat versuim om aan 'n kennisgewing kragtens artikel vyf te voldoen, of wat in antwoord op so 'n kennisgewing wetens inligting verstrek wat in 'n wesentlike opsig vals is, is aan 'n misdryf skuldig en by veroordeling strafbaar met 'n boete van hoogstens vyfduisend pond of met gevangenisstraf vir 'n tydperk van hoogstens twee en 'n half jaar of met daardie boete sowel as daardie gevangenisstraf. 60

Regulasies.

9. Die Goewerneur-generaal kan regulasies uitvaardig wat nie met hierdie Wet onbestaanbaar is nie, met betrekking tot enige aangeleentheid wat hy nodig ag om voor te skryf ten einde aan die oogmerke van hierdie Wet gevolg te gee, met inbegrip van regulasies wat die prosedure voorskryf wat in verband met die behandeling en verhoor van appèlle ingevolge artikel *sewe* gevolg moet word. 65

Herroeping van Wet 59 van 1949 en artikel 9(1)(f) en (4) van Wet 19 van 1944.

10. Die Wet op Onbehoorlike Belemmering van die Handel, 1949, en paragraaf (f) van sub-artikel (1) en sub-artikel (4) van artikel *nege* van die Wet op die Raad van Handel en Nywerheid, 1944, word hiermee herroep. 70

Kort titel en inwerkingtreding.

11. Hierdie Wet heet die Wet op Reëling van Monopolistiese Toestande, 1954, en tree in werking op die eerste dag van Januarie 1955.

(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 ten days before the date so fixed.

(7) The Minister may be represented at the hearing of any such appeal by any person nominated by him, and the appellant may appear at such hearing in person or be represented thereat by his counsel, 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 as 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 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, other than a decision on a matter in relation to which the president of the court alone has jurisdiction, 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 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 paragraph (e) of sub-section (3) of section *six* by the Minister.

(15) The provisions of sections *seventy-nine bis* and *seventy-nine ter* of the Income Tax Act, 1941 (Act No. 31 of 1941), shall *mutatis mutandis* apply with reference to a special court constituted under this section.

8. (1) Any person who contravenes or fails to comply with any notice published under sub-section (3) of section *three* or section *six* shall be guilty of an offence and liable on conviction to a fine not exceeding ten thousand pounds or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Offences and penalties.

(2) Any person who fails to comply with any notice under section *five*, or who in response to any such notice knowingly furnishes information which is false in any material particular, shall be guilty of an offence and liable on conviction to a fine not exceeding five thousand pounds or to imprisonment for a period not exceeding two-and-a-half years or to both such fine and such imprisonment.

9. The Governor-General may make regulations, not inconsistent with this Act, in regard to any matter which he considers it necessary to prescribe for the purpose of giving effect to the objects of this Act, including regulations prescribing the procedure to be observed in the conduct and hearing of appeals under section *seven*.

Regulations.

10. The Undue Restraint of Trade Act, 1949, and paragraph (f) of sub-section (1) and sub-section (4) of section *nine* of the Board of Trade and Industries Act, 1944, are hereby repealed.

Repeal of Act 59 of 1949 and section 9(1)(f) and (4) of Act 19 of 1944.

11. This Act shall be called the Regulation of Monopolistic Conditions Act, 1954, and shall come into operation on the first day of January, 1955.

Short title and commencement.