



STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

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No. 10129

KANTOOR VAN DIE STAATSPRESIDENT

No. 449.

19 Maart 1986

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 5 van 1986: Wysigingswet op die Handhawing en Bevordering van Mededinging, 1986.

STATE PRESIDENT'S OFFICE

No. 449.

19 March 1986

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

No. 5 of 1986: Maintenance and Promotion of Competition Amendment Act, 1986.

Wet No. 5, 1986

WYSIGINGSWET OP DIE HANDHAWING EN BEVORDERING VAN
MEDEDINGING, 1986

ALGEMENE VERDUIDELIKENDE NOTA:

[] Woorde in vet druk tussen vierkantige hake dui skappings uit bestaande verordenings aan.

_____ Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.

WET

Tot wysiging van die Wet op die Handhawing en Bevordering van Mededinging, 1979, ten einde 'n sekere verouderde benaming te vervang; 'n monopoliesituasie te omskryf; die Raad op Mededinging te magtig om monopoliesituasies te ondersoek en daarmee te handel; voorsiening te maak dat uitsonderings op verbodende in verband met beperkende praktyke, verkrygings en monopoliesituasies, wat tans in die betrokke kennisgewing vermeld moet word, op 'n ander wyse bepaal kan word; en voorsiening te maak vir 'n korter prosedure om sodanige kennisgewings te wysig; en vir aangeleenthede wat daarmee in verband staan.

(Afrikaanse teks deur die Staatspresident geteken.)
(Goedgekeur op 4 Maart 1986.)

DAAR WORD BEPAAL deur die Staatspresident en die Parlement van die Republiek van Suid-Afrika, soos volg:—

Wysiging van
artikel 1 van
Wet 96 van 1979,
soos gewysig deur
artikel 1 van
Wet 62 van 1983 en
artikel 1 van
Wet 12 van 1985.

1. Artikel 1 van die Wet op die Handhawing en Bevordering van Mededinging, 1979 (hieronder die Hoofwet genoem), word hierby gewysig —

- (a) deur paragraaf (iii) van die omskrywing van "beperkende praktyk" deur die volgende paragraaf te vervang:

"(iii) die prys van of enige ander teenprestasie vir enige handelsartikel te verhoog of te handhaaf; of";
- (b) deur die omskrywing van "Minister" deur die volgende omskrywing te vervang:

"Minister" die Minister van **[Nywerheidswese, Handel en Toerisme]** Handel en Nywerheid;"; en
- (c) deur na die omskrywing van "Minister" die volgende 15 omskrywing in te voeg:

"'monopoliesituasie' 'n situasie waar enige persoon, of twee of meer persone met 'n wesenlike ekonomiese verbintenis, geheel en al of grootliks die tipe besigheid waarin hy of hulle met betrekking tot enige handelsartikel betrokke is, in die Republiek of enige deel daarvan beheer;";

Wysiging van
artikel 2 van
Wet 96 van 1979,
soos gewysig deur
artikel 2 van
Wet 12 van 1985.

2. Artikel 2 van die Hoofwet word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:

"(2) Die bepalinge van paragraaf (a) van subartikel (1) van hierdie artikel word nie so uitgelê nie dat enigiemand daarkragtens 'n reg behou of verleen word om op 'n wyse in die omskrywing van 'beperkende praktyk' in artikel 1 bedoel, pryse of enige ander teenprestasie te verhoog of te handhaaf."

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with solid line indicate insertions in existing enactments.

ACT

To amend the Maintenance and Promotion of Competition Act, 1979, so as to replace a certain obsolete designation; to define a monopoly situation; to empower the Competition Board to investigate and deal with monopoly situations; to provide that exceptions to prohibitions in connection with restrictive practices, acquisitions and monopoly situations, which at present are required to be specified in the notice in question, may be determined in some other manner; and to provide for a shorter procedure for amending such notices; and for matters connected therewith.

*(Afrikaans text signed by the State President.)
(Assented to 4 March 1986.)*

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa; as follows:—

1. Section 1 of the Maintenance and Promotion of Competition Act, 1979 (hereinafter referred to as the principal Act), is hereby amended—
 - (a) by the substitution for the definition of “Minister” of the following definition:

“Minister” means the Minister of **[Industries, Commerce and Tourism]** Trade and Industry;”;
 - 10 (b) by the insertion after the definition of “Minister” of the following definition:

“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;”;
 - 15 (c) by the substitution for paragraph (iii) of the definition of “restrictive practice” of the following paragraph:

20 “(iii) enhancing or maintaining the price of or any other consideration for any commodity; or”.
2. Section 2 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:
- 25 “(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.”.

Amendment of section 1 of Act 96 of 1979, as amended by section 1 of Act 62 of 1983 and section 1 of Act 12 of 1985.

Amendment of section 2 of Act 96 of 1979, as amended by section 2 of Act 12 of 1985.

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Wysiging van
artikel 10 van
Wet 96 van 1979.

3. Artikel 10 van die Hoofwet word hierby gewysig —
- (a) deur die volgende paragraaf by subartikel (1) te voeg:
- “(d) na enige monopoliesituasie wat die raad of die Minister, na gelang van die geval, rede het om te vermoed bestaan of mag ontstaan.”; en
- (b) deur subartikel (2) deur die volgende subartikel te vervang:
- “(2) ’n Onderzoek in subartikel (1) (a), (b), [of] (c) of (d) bedoel, word nie deur die raad op eie inisiatief ingestel of voortgesit nie, indien sodanige ondersoek volgens die oordeel van die Minister nie in die openbare belang is nie.”.

Wysiging van
artikel 11 van
Wet 96 van 1979.

4. Artikel 11 van die Hoofwet word hierby gewysig deur paragraaf (b) van subartikel (1) deur die volgende paragraaf te vervang:
- “(b) ’n verkryging wat plaasgevind het, aan die plaasvind is of voorgestel word, of enige monopoliesituasie wat bestaan of mag ontstaan, en wat die onderwerp van ’n ondersoek ingevolge artikel 10 (1) (b) of (d) is, sal ophef, beëindig, voorkom of wysig, na gelang van die geval.”.

Wysiging van
artikel 12 van
Wet 96 van 1979,
soos gewysig deur
artikel 5 van
Wet 62 van 1983
en artikel 7 van
Wet 12 van 1985.

5. Artikel 12 van die Hoofwet word hierby gewysig—
- (a) deur subartikel (2) deur die volgende subartikel te vervang:
- “(2) Indien die raad na ondersoek ingevolge artikel 10 (1) (a), [of] (b) of (d)—
- (a) van mening is dat ’n beperkende praktyk of monopoliesituasie bestaan of te eniger tyd na die datum van die kennisgewing ingevolge artikel 10 (4) bestaan het of mag ontstaan, of dat ’n verkryging plaasgevind het, aan die plaasvind is of voorgestel word;
- (b) nie oortuig is dat bedoelde beperkende praktyk in die openbare belang geregverdig is nie of oortuig is dat bedoelde verkryging of monopoliesituasie nie in die openbare belang geregverdig is nie; en
- (c) nie met die betrokke partye ’n reëling getref het wat ingevolge artikel 13 (2) (a) deur die Minister bekragtig is nie,
- moet die raad by die Minister aanbeveel dat kragtens artikel 14 (1) opgetree word soos die raad onder die omstandighede nodig ag.”; en
- (b) deur subartikel (3) deur die volgende subartikel te vervang:
- “(3) Die raad mag nie in ’n verslag deur hom gedoen aangaande ’n ondersoek ingevolge artikel 10 (1), 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 beperkende praktyk of monopoliesituasie wat bestaan of mag ontstaan of ’n party is by ’n verkryging wat plaasgevind het, aan die plaasvind is of voorgestel word.”.

Wysiging van
artikel 14 van
Wet 96 van 1979,
soos gewysig deur
artikel 6 van
Wet 62 van 1983
en artikel 8 van
Wet 12 van 1985.

6. Artikel 14 van die Hoofwet word hierby gewysig—
- (a) deur subartikel (1) deur die volgende subartikel te vervang:
- “(1) Wanneer die Minister na oorweging van ’n verslag deur die raad ingevolge artikel 12 (1) aangaande die uitslag van ’n ondersoek deur die raad ingevolge artikel 10 (1) (a), [of] (b) of (d) ingestel, van mening is dat ’n beperkende praktyk bestaan of mag ontstaan en nie oortuig is dat die beperkende praktyk in die openbare belang geregverdig is nie, of van mening is dat ’n verkryging plaasgevind het, aan die plaasvind is of voorgestel word of dat ’n monopoliesituasie bestaan of

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3. Section 10 of the principal Act is hereby amended —

Amendment of
section 10 of
Act 96 of 1979.

- (a) by the addition to subsection (1) of the following paragraph:

5 “(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.”; and

- (b) by the substitution for subsection (2) of the following subsection:

10 “(2) An investigation referred to in subsection (1) (a), (b), **[or]** (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.”.

4. Section 11 of the principal Act is hereby amended by the
15 substitution for paragraph (b) of subsection (1) of the following paragraph:

Amendment of
section 11 of
Act 96 of 1979.

20 “(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).”.

5. Section 12 of the principal Act is hereby amended—

Amendment of
section 12 of
Act 96 of 1979,
as amended by
section 5 of
Act 62 of 1983
and section 7 of
Act 12 of 1985.

- 25 (a) by the substitution for subsection (2) of the following subsection:

 “(2) If after investigation in terms of section 10 (1) (a), **[or]** (b) or (d) the board—

30 (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;

35 (b) is not satisfied that such restrictive practice is justified in the public interest or is satisfied that such acquisition or monopoly situation is not justified in the public interest; and

40 (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.”; and

- 45 (b) by the substitution for subsection (3) of the following subsection:

50 “(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.”.

6. Section 14 of the principal Act is hereby amended—

Amendment of
section 14 of
Act 96 of 1979,
as amended by
section 6 of
Act 62 of 1983
and section 8 of
Act 12 of 1985.

- 55 (a) by the substitution for subsection (1) of the following subsection:

60 “(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), **[or]** (b) or (d), the Minister is of opinion that a restrictive practice exists or may come into existence and is not satisfied that such restrictive practice is justified in the public interest, or is of opinion that an acquisition has been or is being made or is proposed or that a non-

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mag ontstaan en oortuig is dat die verkryging of monopoliesituasie nie in die openbare belang geregverdig is nie, en nie 'n reëling vermeld in artikel 11 (1) of 13 (1) (a) ten opsigte van bedoelde beperkende praktyk, [of] verkryging of monopoliesituasie getref, bekragtig het 5 nie—

- (a) kan die Minister van Finansies op versoek van die Minister, ingevolge die Doeane- en Aksynswet, 1964 (Wet No. 91 van 1964), by kennisgewing in die *Staatskoerant*, enige reg wat betaal moet word 10 op ingevoerde goedere van soortgelyke aard as enige goedere wat deur die werking van daardie beperkende praktyk, [of] verkryging of monopoliesituasie geraak word, vanaf die datum van publikasie van bedoelde kennisgewing opskort in die 15 mate en vir die tydperk wat hy goedvind;
- (b) kan die Pryscontroleur op versoek van die Minister die maksimumprys kragtens die Wet op Prysbeheer, 1964 (Wet No. 25 van 1964), vasstel waarteen enige handelsartikel, uitgesonderd 'n 20 versekerings- of bankdiens, wat deur die werking van genoemde beperkende praktyk, [of] verkryging of monopoliesituasie geraak word, deur 'n persoon aan 'n ander persoon verkoop mag word of waarteen 'n persoon sodanige handelsartikel 25 van 'n ander persoon mag koop;
- (c) kan die Minister by kennisgewing in die *Staatskoerant*—
 - (i) genoemde beperkende praktyk, [of] verkryging of monopoliesituasie onwettig verklaar 30 en enigiemand wat volgens die Minister se oordeel by genoemde beperkende praktyk of monopoliesituasie betrokke is of wat volgens sy oordeel 'n party by genoemde verkryging is of was, gelas om die stappe te doen, met inbegrip van stappe vir die ontbinding van enige 35 liggaam, met of sonder regs persoonlikheid bekleed, 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 of voorkoming van daardie beperkende praktyk of monopoliesituasie of die opheffing of voorkoming van daardie verkryging te verseker of enige ongewenste kenmerke daarvan 45 uit te skakel;
 - (ii) iemand wat 'n party by 'n in die kennisgewing vermelde ooreenkoms, reëling, verstandhouding of versuim is of was of 'n aldus vermelde besigheidspraktyk of handelsmetode toepas of 50 toegepas het of 'n aldus vermelde handeling verrig of verrig het of 'n aldus vermelde toestand teweegbring of teweeggebring het, gelas om daardie ooreenkoms, reëling, verstandhouding of versuim te beëindig of om op te 55 hou om 'n party daarby te wees of om van daardie besigheidspraktyk of handelsmetode af te sien of om op te hou om daardie handeling te verrig of daardie toestand teweeg te bring of om te gener tyd 'n party by 'n ooreenkoms, reëling, verstandhouding of versuim te word nie of 'n besigheidspraktyk of handelsmetode toe te pas nie of 'n handeling te verrig nie of 'n toestand teweeg te bring nie wat van 'n in die kennisgewing vermelde aard is wat 65 volgens die oordeel van die Minister waarskynlik dieselfde uitwerking sal hê.”;

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opoly situation exists or may come into existence and is satisfied that such acquisition or 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, **[or]** 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, **[or]** 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, **[or]** 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, **[or]** 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, 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 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.”;

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- (b) deur subartikel (5) deur die volgende subartikel te vervang:

“(5) (a) Wanneer die Minister na oorweging van ’n verslag deur die raad ingevolge artikel 12 (1) aan- gaande die uitslag van ’n ondersoek deur die raad 5 ingevolge artikel 10 (1) (c) onderneem, van mening is dat dit in die openbare belang is, kan die Minister by kennisgewing in die *Staatskoerant* enige besondere tipe ooreenkoms, reëling, verstandhouding, besigheidspraktyk of handelsme- 10 tote wat die onderwerp van die ondersoek was, onwettig verklaar, hetsy in die algemeen of ten opsigte van ’n bepaalde gebied, na gelang die ondersoek van algemene aard was of met betrekking tot ’n bepaalde gebied geskied het, en enigiemand 15 verbied om so ’n ooreenkoms, reëling of verstandhouding aan te gaan of ’n party daarby te wees of te bly of om so ’n besigheidspraktyk of handelsme- tote toe te pas, hetsy geheel en al of in die mate of onderworpe aan **[die uitsonderings in die kennisge- 20 wing vermeld]** enige vrystelling bedoel in para- graaf (b), mits die Minister minstens een maand voor die datum van publikasie van die kennisge- wing die teks van die voorgenome kennisgewing in die *Staatskoerant* gepubliseer het, tesame met ’n 25 verklaring van sy voorneme om so ’n kennisgewing te publiseer.

- (b) Die Minister kan, op aanbeveling van die raad, in ’n bepaalde geval skriftelike vrystelling verleen van ’n verbod bedoel in paragraaf (a) in die mate en 30 onderworpe aan die voorwaardes uiteengesit in die vrystelling.”; en

- (c) deur subartikel (6) deur die volgende subartikel te vervang:

“(6) ’n Kennisgewing kragtens subartikel (5) kan te 35 eniger tyd na verdere ondersoek deur die raad deur die Minister by kennisgewing in die *Staatskoerant* ingetrek of op die wyse wat hy goedvind, gewysig word, mits hy, in die geval van bedoelde wysiging, minstens een maand voor die datum van publikasie van die **[kennis- 40 gewing]** wysigingskennisgewing die teks van die voorge- nome **[kennisgewing]** wysigingskennisgewing in die *Staatskoerant* gepubliseer het, tesame met ’n verklaring van sy voorneme om **[so ’n kennisgewing]** die wysi- 45 gingskennisgewing in die *Staatskoerant* te publiseer.”.

Kort titel
en inwerkingtreding.

7. (1) Hierdie Wet heet die Wysigingswet op die Handhawing en Bevordering van Mededinging, 1986.

(2) Artikel 6 (b) word geag op 1 Junie 1985 in werking te getree het.

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- (b) by the substitution for subsection (5) of the following subsection:

5 “(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
10 *Gazette* declare any particular type of agreement,
arrangement, understanding, business practice or
method of trading which was the subject of the in-
vestigation 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,
15 and prohibit any person from entering into or be-
ing or continuing to be a party to any such agree-
ment, arrangement or understanding or from ap-
plying any such business practice or method of
trading either wholly or to such extent or subject
20 to **[such exceptions as may be specified in the no-
tice]** 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
25 *Gazette*, together with a statement of his intention
to publish such a notice in the *Gazette*.

30 (b) The Minister may, on the recommendation of the
board, in a particular case in writing grant exemp-
tion from any prohibition contemplated in para-
graph (a) to such extent and subject to such con-
ditions as may be specified in the exemption.”; and

- (c) by the substitution for subsection (6) of the following subsection:

35 “(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 amend-
ment, he has not less than one month before the date
of publication of the amending notice published the
40 text of the proposed amending notice in the *Gazette*,
together with a statement of his intention to publish
such **[a]** amending notice in the *Gazette*.”.

7. (1) This Act is called the Maintenance and Promotion of
Competition Amendment Act, 1986.

45 (2) Section 6 (b) is deemed to have come into operation on 1
June 1985.

Short title
and commencement.

