Government Gazette

REPUBLIC OF SOUTH AFRICA

Vol. 644 | Cape Town Kaapstad | 14 February 2019 | No. 42231

THE PRESIDENCY

No. 175 14 February 2019

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

Act No. 18 of 2018: Competition Amendment Act, 2018

DIE PRESIDENSIE

No. 175 14 Februarie 2019

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

Wet No. 18 van 2018: Wysigingswet op Mededinging, 2018

ISSN 1682-5843

42231

9 771682 584003

AIDS HELPLINE: 0800-0123-22 Prevention is the cure

GENERAL EXPLANATORY NOTE:

[ ]	Words in bold type in square brackets indicate omissions from existing enactments.
______	Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President)
(Assented to 13 February 2019)

ACT

To amend the Competition Act, 1998, so as to introduce provisions that clarify and improve the determination of prohibited practices relating to restrictive horizontal and vertical practices, abuse of dominance and price discrimination and to strengthen the penalty regime; to introduce greater flexibility in the granting of exemptions which promote transformation and growth; to strengthen the role of market inquiries and merger processes in the promotion of competition and economic transformation through addressing the structures and de-concentration of markets; to protect and stimulate the growth of small and medium businesses and firms owned and controlled by historically disadvantaged persons while at the same time protecting and promoting employment, employment security and worker ownership; to facilitate the effective participation of the National Executive within proceedings contemplated in the Act, including making provision for the National Executive intervention in respect of mergers that affect the national security interests of the Republic; to mandate the Competition Commission to act in accordance with the results of a market inquiry; to amend the process by which market inquiries are initiated and promote greater efficiency regarding the conduct of market inquiries; to clarify and foster greater certainty regarding the determination of confidential information and access to confidential information; to provide the Competition Commission with the powers to conduct impact studies on prior decisions; to promote the administrative efficiency of the Competition Commission and Competition Tribunal; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 89 of 1998, as amended by section 1 of Act 39 of 2000 and section 1 of Act 1 of 2009

1. Section 1 of the Competition Act, 1998 (Act No. 89 of 1998) (hereinafter referred to as ''the principal Act''), is hereby amended—

(a) by the insertion after the definition of ''*agreement*'' of the following definitions:

'' **'average avoidable cost'** means the sum of all costs, including variable costs and product-specific fixed costs, that could have been avoided if the *firm* ceased producing an identified amount of additional output, divided by the quantity of the additional output;

ALGEMENE VERDUIDELIKENDE NOTA:

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

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

(Engelse teks deur die President geteken)
(Goedgekeur op 13 Februarie 2019)

WET

Tot wysiging van die Wet op Mededinging, 1998, ten einde bepalings te maak wat die bepaling van verbode praktyke met betrekking tot beperkende horisontale en vertikale praktyke, misbruik van dominansie en prysdiskriminasie duidelik maak en verbeter en om die boetebedeling te versterk; groter buigsaamheid in die toestaan van vrystellings wat transformasie en groei bevorder, toe te laat; die rol van markondersoeke en samesmeltingsprosesse in die bevordering van mededinging en ekonomiese transformasie te versterk deur die strukture en dekonsentrasie van markte te hanteer; die groei van klein- en mediumsake en firmas besit en beheer deur voorheen benadeelde persone te beskerm en te stimuleer terwyl indiensneming, werksekerheid en werker-eienaarskap terselfdertyd beskerm en bevorder word; doeltreffende deelname deur die Nasionale Uitvoerende Gesag aan verrigtinge beoog in die Wet te vergemaklik, met inbegrip van om voorsiening te maak vir ingryping deur die Nasionale Uitvoerende Gesag ten opsigte van samesmeltings wat die nasionale veiligheidsbelange van die Republiek raak; die Mededingingskommissie 'n mandaat te gee om ooreenkomstig die resultate van 'n markondersoek op te tree; die proses waarvolgens markondersoeke geïnisieer word, te wysig en meer doeltreffendheid in die doen van markondersoeke te bevorder; die bepaling van vertroulike inligting en toegang tot vertroulike inligting duidelik te maak en meer sekerheid daaroor te kweek; die Mededingingskommissie die bevoegdheid te gee om impakstudies oor vorige beslissings te doen; die administratiewe doeltreffendheid van die Mededingingskommissie en Mededingingstribunaal te bevorder; en voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

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

Wysiging van artikel 1 van Wet 89 van 1998, soos gewysig deur artikel 1 van Wet 39 van 2000 en artikel 1 van Wet 1 van 2009

1. Artikel 1 van die Wet op Mededinging, 1998 (Wet No. 89 van 1998) (hierna ''die Hoofwet'' genoem) word hierby gewysig—

(a) deur die omskrywing van ''buitensporige prys'' te skrap;

(b) deur die volgende omskrywing ná die omskrywing van ''buitensporige prys'' in te voeg:

'' **'deelneem'** die vermoë van of geleentheid vir *firmas* om hulself in die mark te handhaaf, en het **'deelname'** 'n ooreenstemmende betekenis;'';

'average variable cost' means the sum of all the costs that vary with an identified quantity of a particular product, divided by the total produced quantity of that product;'';

(b) by the deletion of the definition of ''excessive price'';

(c) by the substitution for the definition of ''exclusionary act'' of the following definition:

'' **'exclusionary act'** means an act that impedes or prevents a *firm* from entering into, *participating* in or expanding within **[,]** a market;'';

(d) by the insertion after the definition of ''*firm*'' of the following definition:

'' **'foreign acquiring firm'** means an *acquiring firm*—

(a) which was incorporated, established or formed under the laws of a country other than the Republic; or

(b) whose place of effective management is outside the Republic;'';

(e) by the insertion after the definition of ''*interest*''of the following definition:

'' **'margin squeeze'** occurs when the margin between the price at which a vertically integrated *firm*, which is dominant in an input market, sells a downstream product, and the price at which it sells the key input to competitors, is too small to allow downstream competitors to *participate* effectively;'';

(f) by the insertion after the definition of ''*market power*''of the following definition:

'' **'medium-sized business'** means a medium-sized *firm* as determined by the *Minister* by notice in the *Gazette*;'';

(g) by the substitution for the definition of ''Minister'' of the following definition:

'' **'Minister'** means the *Minister* **[of Trade and Industry]** responsible for the administration of *this Act*;'';

(h) by the insertion after the definition of ''*organ of state*''of the following definition:

'' **'participate'** refers to the ability of or opportunity for *firms* to sustain themselves in the market, and **'participation'** has a corresponding meaning;'';

(i) by the insertion after the definition of ''*party to a merger*''of the following definition:

'' **'predatory prices'** means prices for *goods or services* below the *firm's average avoidable cost* or *average variable cost*;'';

(j) by the substitution for the definition of ''prohibited practice'' of the following definition:

'' **'prohibited practice'** means a practice prohibited in terms of Chapter 2 **[or Chapter 2A]**;'';

(k) by the insertion after the definition of ''*restrictive vertical practice*'' of the following definition:

'' **'small and medium business'** means either a *small business* or a *medium-sized business*;''; and

(l) by the substitution for the definition of ''*small business*'' of the following definition:

'' **'small business' [has the meaning]** means a small *firm* determined by the *Minister* by notice in the *Gazette*, or if no determination has been made, as set out in the National Small Business Act, 1996 (Act No. 102 of 1996);''; and

(m) by the insertion after the definition of ''*vertical relationship*'' of the following definition:

'' **'workers'** means employees as defined in the Labour Relations Act, 1995 (Act No. 66 of 1995), and in the context of ownership, refers to ownership of a broad base of workers;''.

(*c*) deur die volgende omskrywings ná die omskrywing van "*firma*" in te voeg:

" **'gemiddelde veranderlike koste'** die som van al die koste wat verander met 'n geïdentifiseerde hoeveelheid van 'n bepaalde produk, gedeel deur die totale vervaardigde hoeveelheid van daardie produk; **'gemiddelde vermybare koste'** die som van alle koste, met inbegrip van veranderlike koste en produk-spesifieke vasgestelde koste, wat vermy kon gewees het indien die *firma* opgehou het om 'n geïdentifiseerde aantal bykomende uitsette op te lewer, gedeel deur die hoeveelheid van die bykomende uitsette;";

(*d*) deur die volgende omskrywing ná die omskrywing van "*klaer*" in te voeg:

" **'klein- en mediumsaak'** óf 'n *kleinsaak* óf 'n *mediumgrootsaak*;";

(*e*) deur die omskrywing van "*kleinsaak*" deur die volgende omskrywing te vervang:

" **'kleinsaak' [dieselfde as die betekenis wat]** 'n klein *firma* deur die *Minister* by kennisgewing in die *Staatskoerant* bepaal, of indien geen bepaling gemaak is nie, soos in die Nasionale Kleinsakewet, 1996 (Wet No. 102 van 1996), uiteengesit **[word]**;";

(*f*) deur die volgende omskrywing ná die omskrywing van "*ledebelang*" in te voeg:

" **'margevernouing'** geskied wanneer die marge tussen die prys waarteen 'n vertikaal geïntegreerde *firma*, wat dominant in 'n insetmark is, 'n stroomaf produk verkoop, en die prys waarteen dit die sleutelinset aan mededingers verkoop, is te laag om stroomaf mededingers toe te laat om doeltreffend *deel te neem*;";

(*g*) deur die volgende omskrywing ná die omskrywing van "*markkrag*" in te voeg:

" **'mediumgrootsaak'** 'n mediumgrootfirma soos deur die *Minister* by kennisgewing in die *Staatskoerant* bepaal;";

(*h*) deur die omskrywing van "*Minister*" deur die volgende omskrywing te vervang:

" **'Minister'** die *Minister* **[van Handel en Nywerheid]** verantwoordelik vir die administrasie van *hierdie Wet*;";

(*i*) deur die volgende omskrywing ná die omskrywing van "*respondent*" in te voeg:

" **'roofsugtige pryse'** pryse vir *goedere of dienste* onder die *firma* se *gemiddelde vermybare koste* of *gemiddelde veranderlike koste*;";

(*j*) deur die omskrywing van "*uitsluitende handeling*" deur die volgende omskrywing te vervang:

" **'uitsluitende handeling'** 'n handeling wat 'n *firma* belemmer of verhinder om toegang**[,]** tot of *deelname* aan of uitbreiding binne**[,]** 'n mark te verkry;";

(*k*) deur die omskrywing van "*verbode praktyk*" deur die volgende omskrywing te vervang:

" **'verbode praktyk'** 'n praktyk wat ingevolge Hoofstuk 2 **[of Hoofstuk 2A]** verbied word;";

(*l*) deur die volgende omskrywing ná die omskrywing van "*voorgeskryf*" in te voeg:

" **'vreemde verkrygende firma'** 'n verkrygende *firma*—

(*a*) wat kragtens die wette van 'n land anders as die Republiek ingelyf, gestig of gevorm is; of

(*b*) wie se plek van werklike bestuur buite die Republiek is;"; en

(*m*) deur die volgende omskrywing ná die omskrywing van "*voorgeskryf*" in te voeg:

" **'werkers'** werknemers soos omskryf in die Wet op Arbeidsverhoudinge, 1995 (Wet No. 66 van 1995), en in die konteks van eienaarskap, verwys na eienaarskap deur 'n breë basis van werkers;".

Amendment of section 2 of Act 89 of 1998, as amended by section 2 of Act 39 of 2000 and section 2 of Act 1 of 2009

2. Section 2 of the principal Act is hereby amended by the substitution for paragraph *(g)* of the following paragraph:

''*(g)* to detect and address conditions in the market for any particular **[goods or services]** *goods or services*, or any behaviour within such a market, that tends to **[prevent]** impede, restrict or distort competition in connection with the supply or acquisition of those *goods or services* within the Republic; and''.

Amendment of section 4 of Act 89 of 1998, as amended by section 3 of Act 39 of 2000

3. Section 4 of the principal Act is hereby amended—

(a) by the substitution in subsection (1)*(b)* for subparagraph (ii) of the following subparagraph:

''(ii) dividing markets by allocating market shares, customers, suppliers, territories**[,]** or specific types of *goods or services*; or''; and

(b) by the addition after subsection (5) of the following subsection:

''(6) The *Minister* must make regulations in terms of section 78 regarding the application of this section.''.

Amendment of section 5 of Act 89 of 1998

4. Section 5 of the principal Act is hereby amended by the addition after subsection (3) of the following subsection:

''(4) The *Minister* must make regulations in terms of section 78 regarding the application of this section.''.

Substitution of section 8 of Act 89 of 1998

5. The following section is hereby substituted for section 8 of the principal Act:

''**Abuse of dominance prohibited**

8. (1) It is prohibited for a dominant *firm* to—

(a) charge an **[excessive price]** excessive price to the detriment of consumers or customers;

(b) refuse to give a competitor access to an *essential facility* when it is economically feasible to do so;

(c) engage in an *exclusionary act*, other than an act listed in paragraph *(d)*, if the anti-competitive effect of that act outweighs its technological, efficiency or other pro-competitive**[,]** gain; or

(d) engage in any of the following *exclusionary acts*, unless the *firm* concerned can show technological, efficiency or other pro-competitive**[,]** gains which outweigh the anti-competitive effect of its act—

(i) requiring or inducing a supplier or customer to not deal with a competitor;

(ii) refusing to supply scarce **[goods]** *goods or services* to a competitor or customer when supplying those **[goods]** *goods or services* is economically feasible;

(iii) selling *goods or services* on condition that the buyer purchases separate *goods or services* unrelated to the object of a contract, or forcing a buyer to accept a condition unrelated to the object of a contract;

(iv) selling *goods or services* **[below their marginal or average variable cost; or]** at *predatory prices*;

Wysiging van artikel 2 van Wet 89 van 1998, soos gewysig deur artikel 2 van Wet 39 van 2000 en artikel 2 van Wet 1 van 2009

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

"*(g)* toestande rakende enige bepaalde *goedere of dienste*, of enige optrede in so 'n mark, wat die neiging toon om mededinging vir enige *goedere of dienste* te **[verhoed]** belemmer, te beperk of te verwring, in verband met die verskaffing of verkryging van daardie *goedere of dienste* in die Republiek, te identifiseer en aan te spreek; en".

Wysiging van artikel 4 van Wet 89 van 1998, soos gewysig deur artikel 3 van Wet 39 van 2000

3. Artikel 4 van die Hoofwet word hierby gewysig—

(a) deur in subartikel (1)*(b)* subparagraaf (ii) deur die volgende subparagraaf te vervang:

"(ii) die verdeling van markte deur die toewysing van markaandele, kliënte, verskaffers, gebiede of spesifieke soorte *goedere of dienste*; of"; en

(b) deur die volgende subartikel ná subartikel (5) by te voeg:

"(6) Die *Minister* moet ingevolge artikel 78 regulasies uitvaardig oor die toepassing van hierdie artikel.".

Wysiging van artikel 5 van Wet 89 van 1998

4. Artikel 5 van die Hoofwet word hierby gewysig deur die volgende subartikel ná subartikel (3) by te voeg:

"(4) Die *Minister* moet riglyne oor die toepassing van hierdie artikel ingevolge artikel 78 publiseer.".

Vervanging van artikel 8 van Wet 89 van 1998

5. Artikel 8 van die Hoofwet word hierby deur die volgende artikel vervang:

"**Verbod op misbruik van dominansie**

8. (1) Dit is verbode vir 'n **[dominate]** dominante *firma* om—

(a) 'n buitensporige prys tot nadeel van verbruikers of klante te hef;

(b) te weier om 'n mededinger toegang tot 'n *noodsaaklike fasiliteit* te bied wanneer dit ekonomies uitvoerbaar is om dit te doen;

(c) aan 'n *uitsluitende handeling* mee te doen, anders dan 'n handeling in paragraaf *(d)* gelys, indien die anti-mededingende uitwerking van daardie handeling swaarder weeg as die tegnologiese, doeltreffendheids- of ander pro-mededingende, voordeel; of

(d) mee te doen aan enige van die volgende *uitsluitende handelinge*, tensy die betrokke *firma* tegnologiese, doeltreffendheids- of ander pro-mededingende**[,]** voordele kan aantoon wat swaarder weeg as die anti-mededingende uitwerking van sy handeling**[:]**—

(i) om van 'n verskaffer of kliënt te verlang, of 'n verskaffer of kliënt aan te spoor, om nie met 'n mededinger te handel nie;

(ii) die weiering om skaars **[goedere]** *goedere of dienste* aan 'n mededinger of klant te verskaf wanneer die verskaffing **[daarvan]** van daardie *goedere of dienste* ekonomies uitvoerbaar is;

(iii) die verkoop van *goedere of dienste* op voorwaarde dat die koper aparte *goedere of dienste*, onverwant aan die oogmerk van 'n kontrak, koop, of 'n koper dwing om 'n voorwaarde wat onverwant aan die doel van die kontrak is, te aanvaar;

(iv) die verkoop van *goedere of dienste* **[benede hul marginale of gemiddelde veranderlike koste]** teen *roofsugtige pryse*;

This gazette is also available free online at **www.gpwonline.co.za**

(v) buying-up a scarce supply of intermediate goods or resources required by a competitor; or

(vi) engaging in a *margin squeeze*.

(2) If there is a *prima facie* case of abuse of dominance because the dominant *firm* charged an excessive price, the dominant *firm* must show that the price was reasonable.

(3) Any person determining whether a price is an *excessive price* must determine if that price is higher than a competitive price and whether such difference is unreasonable, determined by taking into account all relevant factors, which may include—

(a) the *respondent's* price-cost margin, internal rate of return, return on capital invested or profit history;

(b) the *respondent's* prices for the *goods or services*—

(i) in markets in which there are competing products;

(ii) to customers in other geographic markets;

(iii) for similar products in other markets; and

(iv) historically;

(c) relevant comparator *firm's* prices and level of profits for the *goods or services* in a competitive market for those *goods or services*;

(d) the length of time the prices have been charged at that level;

(e) the structural characteristics of the relevant market, including the extent of the *respondent's* market share, the degree of contestability of the market, barriers to entry and past or current advantage that is not due to the *respondent's* own commercial efficiency or investment, such as direct or indirect state support for a *firm* or *firms* in the market; and

(f) any regulations made by the *Minister*, in terms of section 78 regarding the calculation and determination of an excessive price.

(4) *(a)* It is prohibited for a dominant *firm* in a sector designated by the *Minister* in terms of paragraph *(d)* to directly or indirectly, require from or impose on a supplier that is *a small and medium business* or a *firm* controlled or owned by historically disadvantaged persons, unfair—

(i) prices; or

(ii) other trading conditions.

(b) It is prohibited for a dominant *firm* in a sector designated by the *Minister* in terms of paragraph *(d)* to avoid purchasing, or refuse to purchase, *goods or services* from a supplier that is *a small and medium business* or a *firm* controlled or owned by historically disadvantaged persons in order to circumvent the operation of paragraph *(a)*.

(c) If there is a *prima facie* case of a contravention of paragraph *(a)* or *(b)*, the dominant *firm* alleged to be in contravention must show that—

(i) in the case of paragraph *(a)*, the price or other trading condition is not unfair; and

(ii) in the case of paragraph *(b)*, it has not avoided purchasing, or refused to purchase, *goods or services* from a supplier referred to in paragraph *(b)* in order to circumvent the operation of paragraph *(a)*.

(d) The *Minister* must, in terms of section 78, make regulations—

(i) designating the sectors, and in respect of *firms* owned or controlled by historically disadvantaged persons, the benchmarks for determining the *firms*, to which this subsection will apply; and

(ii) setting out the relevant factors and benchmarks in those sectors for determining whether prices and other trading conditions contemplated in paragraph *(a)* are unfair.''.

(v) die opkoop van 'n skaars voorraad intermediêre goedere of hulpmiddele deur 'n mededinger benodig; of

(vi) van meedoening aan 'n *margevernouing*.

(2) Indien daar 'n *prima facie*-saak van misbruik van dominansie is omdat die dominante *firma* 'n buitensporige prys gehef het, moet die dominante *firma* toon dat die prys redelik was.

(3) Enigiemand wat bepaal of 'n prys 'n *buitensporige prys* is, al dan nie, moet bepaal of daardie prys hoër is as 'n mededingende prys wat bepaal word deur alle tersaaklike faktore in ag te neem, en of sodanige verskil onredelik is, wat kan insluit—

(a) die *respondent* se prys-koste-marge, interne opbrengskoers, opbrengs op kapitaal belê of winsgeskiedenis;

(b) die *respondent* se pryse vir die *goedere of dienste*—

(i) in markte waarin daar mededingende produkte is;

(ii) aan klante in ander geografiese markte;

(iii) vir soortgelyke produkte in ander markte; en

(iv) histories;

(c) 'n tersaaklike komparantfirma se pryse en winsvlakke vir die *goedere of dienste* in 'n mededingende mark vir daardie *goedere of dienste*;

(d) hoe lank die pryse reeds teen daardie vlak gehef word;

(e) die strukturele kenmerke van die tersaaklike mark, met inbegrip van die omvang van die *respondent* se markaandeel, die graad van toetreebaarheid van die mark, versperrings in die pad van toetrede en vorige en huidige voordeel wat nie aan die *respondent* se eie kommersiële doeltreffendheid of belegging toegeskryf kan word nie, soos regstreekse of onregstreekse staatsondersteuning vir 'n *firma* of *firmas* in die mark; en

(f) enige regulasies ingevolge artikel 78 deur die *Minister* uitgevaardig oor die berekening en vasstelling van 'n buitensporige prys.

(4) *(a)* Dit is verbode vir 'n dominante *firma* in 'n sektor ingevolge paragraaf *(d)* deur die *Minister* aangewys om regstreeks of onregstreeks van 'n verskaffer wat 'n *klein- en mediumsaak* of 'n *firma* beheer of besit deur histories benadeelde persone, onbillike—

(i) pryse; of

(ii) ander handelsvoorwaardes,

te vereis of op te lê.

(b) Dit is verbode vir 'n dominante *firma* in 'n sektor ingevolge paragraaf *(d)* deur die *Minister* aangewys om dit te vermy, of te weier om, *goedere of dienste* te koop van 'n verskaffer wat 'n *klein- en mediumsaak* of 'n *firma* is wat beheer of besit word deur histories benadeelde persone ten einde die werking van paragraaf *(a)* te omseil.

(c) Indien daar 'n *prima facie*-saak van 'n verbreking van paragraaf *(a)* of *(b)* is, moet die dominante *firma* wat na bewering oortree het, aantoon dat—

(i) in die geval van paragraaf *(a)*, die prys of ander handelsvoorwaarde nie onbillik is nie; en

(ii) in die geval van paragraaf *(b)*, die dominante *firma* dit nie vermy, of nie geweier het, om *goedere of dienste* te koop van 'n verskaffer in paragraaf *(b)* bedoel nie ten einde die werking van paragraaf *(a)* te omseil.

(d) Die *Minister* moet, ingevolge artikel 78, regulasies uitvaardig—

(i) wat die sektore aanwys, en ten opsigte van *firmas* besit of beheer deur histories benadeelde persone, die maatstawwe vir die bepaling van die *firmas* waarop hierdie subartikel van toepassing sal wees; en

(ii) wat die tersaaklike faktore en norme uiteensit vir bepaling hetsy pryse en ander handelsvoorwaardes in paragraaf *(a)* beoog, onbillik is, al dan nie.".

Amendment of section 9 of Act 89 of 1998

6. Section 9 of the principal Act is hereby amended—

(a) by the substitution for the heading of the section of the following heading:

"**Price discrimination by dominant firm as seller prohibited**";

(b) by the substitution in subsection (1) for paragraph *(a)* of the following paragraph:

"*(a)* it is likely to have the effect of—

(i) substantially preventing or lessening competition; or

(ii) impeding the ability of *small and medium businesses* or *firms* controlled or owned by historically disadvantaged persons, to *participate* effectively;";

(c) by the insertion after subsection (1) of the following subsection:

"(1A) It is prohibited for a dominant *firm* to avoid selling, or refuse to sell, *goods or services* to a purchaser that is *a small and medium business* or a *firm* controlled or owned by historically disadvantaged persons in order to circumvent the operation of subsection (1)*(a)*(ii).";

(d) by the substitution for subsection (2) of the following subsection:

"(2) Despite subsection (1), but subject to subsection (3), conduct involving differential treatment of purchasers in terms of any matter listed in paragraph *(c)* of **[that]** subsection (1) is not prohibited price discrimination if the dominant *firm* establishes that the differential treatment—

(a) makes only reasonable allowance for differences in cost or likely cost of manufacture, distribution, sale, promotion or delivery resulting from—

(i) the differing places to which**[,]** *goods or services* are supplied to different purchasers;

(ii) methods by which**[,]** *goods or services* are supplied to different purchasers; or

(iii) quantities in which**[,]** *goods or services* are supplied to different purchasers;

(b) is constituted by doing acts in good faith to meet a price or benefit offered by a competitor; or

(c) is in response to changing conditions affecting the market for the *goods or services* concerned, including—

(i) any action in response to the actual or imminent deterioration of perishable goods;

(ii) any action in response to the obsolescence of goods;

(iii) a sale pursuant to a liquidation or sequestration procedure; or

(iv) a sale in good faith in discontinuance of business in the *goods or services* concerned"; and

(e) by the addition of the following subsections after subsection (2):

"(3) If there is a *prima facie* case of a contravention of section (1)*(a)*(ii)—

(a) subsection (2)*(a)*(iii) is not applicable; and

(b) the dominant *firm* must, subject to regulations issued under section 9(4), show that its action did not impede the ability of *small and medium businesses* and *firms* controlled or owned by historically disadvantaged persons to *participate* effectively.

(3A) If there is a *prima facie* case of a contravention of subsection (1A), the dominant *firm* alleged to be in contravention must show that it has not avoided selling, or refused to sell, *goods or services* to a purchaser referred to in subsection (1A) in order to circumvent the operation of subsection (1)*(a)*(ii).

(4) The *Minister* must make regulations in terms of section 78—

(a) to give effect to this section, including the benchmarks for determining the application of this section to *firms* owned and controlled by historically disadvantaged persons; and

Wysiging van artikel 9 van Wet 89 van 1998

6. Artikel 9 van die Hoofwet word hierby gewysig—

(a) deur die opskrif van die artikel deur die volgende opskrif te vervang:

"**Verbod op prysdiskriminasie deur dominante firma as verkoper**";

(b) deur in subartikel (1) paragraaf *(a)* deur die volgende paragraaf te vervang:

"*(a)* dit waarskynlik die uitwerking sal hê van—

(i) wesenlike voorkoming of vermindering van mededinging **[wesenlik te voorkom of te verminder]**; of

(ii) belemmering van die vermoë van *klein- of mediumsake* of *firmas* beheer of besit deur histories benadeelde persone om doeltreffend *deel te neem*;";

(c) deur die volgende subartikel ná subartikel (1) in te voeg:

"(1A) Dit is verbode vir 'n dominante *firma* om te probeer om te vermy, of te weier, om *goedere of dienste* aan 'n verkoper te verkoop wat 'n *klein- en mediumsaak* of 'n *firma* is, wat besit of beheer word deur histories benadeelde persone, ten einde die werking van subartikel (1)*(a)*(ii) te omseil.";

(d) deur subartikel (2) deur die volgende subartikel te vervang:

"(2) Ondanks subartikel (1), maar behoudens subartikel (3), is optrede wat onderskeidende behandeling van kopers behels met betrekking tot enige aangeleentheid in paragraaf *(c)* van **[daardie]** subartikel (1) gelys, nie verbode prysdiskriminasie nie indien die dominante firma bewys dat die onderskeidende behandeling—

(a) slegs redelike ruimte laat vir verskille in koste of waarskynlike koste van vervaardiging, verspreiding, verkoop of lewering voortspruitend uit—

(i) die verskillende plekke waarheen**[,]** *goedere of dienste* aan verskillende kopers gelewer word;

(ii) metodes waardeur**[,]** *goedere of dienste* aan verskillende kopers gelewer word; of

(iii) hoeveelhede waarin**[,]** *goedere of dienste* aan verskillende kopers gelewer word;

(b) daaruit bestaan dat handelinge te goeder trou verrig word ten einde 'n prys of voordeel deur 'n mededinger aangebied, te ewenaar; of

(c) in reaksie is op veranderende omstandighede wat die mark vir die betrokke *goedere of dienste* raak, met inbegrip van—

(i) enige reaksie op die werklike of dreigende agteruitgang van bederfbare goedere;

(ii) enige reaksie op veroudering van goedere;

(iii) 'n verkoping na aanleiding van 'n likwidasie- of sekwestrasie-prosedure; of

(iv) 'n verkoping te goeder trou ter beëindiging van besigheid in die betrokke *goedere of dienste*."; en

(e) deur die volgende subartikels ná subartikel (2) in te voeg:

"(3) Indien daar 'n *prima facie*-saak is van oortreding van artikel (1)*(a)*(ii)—

(a) is subartikel (2)*(a)*(iii) nie van toepassing nie; en

(b) moet die dominante *firma*, behoudens die regulasies kragtens artikel 9(4) uitgereik, toon dat sy handeling nie die vermoë van *klein- en mediumsake* en *firmas* beheer of besit deur histories benadeelde persone om doeltreffend *deel te neem*, belemmer het nie.

(3A) Indien daar 'n *prima facie*-saak van 'n oortreding van subartikel (1A) is, moet die dominante *firma* wat na bewering oortree het, toon dat hy dit nie vermy het, of geweier het, om *goedere of dienste* te verkoop aan 'n koper bedoel in subartikel (1A), ten einde die werking van subartikel (1)*(a)*(ii) te omseil nie.

(4) Die *Minister* moet regulasies ingevolge artikel 78 uitvaardig—

(a) om aan hierdie artikel gevolg te gee, met inbegrip van die maatstawwe vir die bepaling van die toepassing van hierdie artikels op *firmas* besit en beheer deur histories benadeelde persone; en

(b) setting out the relevant factors and benchmarks for determining whether a dominant *firm's* action is price discrimination that impedes the *participation* of *small and medium businesses* and *firms* controlled or owned by historically disadvantaged persons.''.

Amendment of section 10 of Act 89 of 1998

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

(a) by the insertion after subsection (2) of the following subsection:

''(2A) Unless the Competition Commission and the applicant agree otherwise, the Competition Commission must grant or refuse to grant the exemption referred to in subsection (2) within one year of the receipt of the application or within such period as may be *prescribed* in terms of section 78.'';

(b) by the substitution in subsection (3)*(b)* for subparagraph (ii) of the following subparagraph:

''(ii) promotion of the **[ability of]** effective entry into, *participation* in or expansion within a market by *small* **[*business*,]** *and medium businesses*, or *firms* controlled or owned by historically disadvantaged persons **[, to become competitive]**;'';

(c) by the deletion in subsection (3)*(b)* of ''or'' at the end of subparagraph (iii) and the substitution for subparagraph (iv) of the following subparagraph:

''(iv) the economic development, growth, transformation or stability of any industry designated by the *Minister*, after consulting the Minister responsible for that industry**[.]**; or'';

(d) by the addition in subsection (3)*(b)* of the following subparagraph:

''(v) competitiveness and efficiency gains that promote employment or industrial expansion.''; and

(e) by the addition of the following subsection after subsection (9):

''(10) The *Minister* may, after consultation with the Competition Commission, and in order to give effect to the purposes of *this Act* as set out in section 2, issue *regulations* in terms of section 78 exempting a category of *agreements* or practices from the application of this Chapter.''.

Repeal of Chapter 2A of Act 89 of 1998, as inserted by section 4 of Act 1 of 2009

8. Chapter 2A of the principal Act is hereby repealed.

Amendment of section 12A of Act 89 of 1998, as inserted by section 6 of Act 39 of 2000

9. Section 12A of the principal Act is hereby amended—

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

''(1) Whenever required to consider a merger, the Competition Commission or Competition Tribunal must initially determine whether or not the merger is likely to substantially prevent or lessen competition, by assessing the factors set out in subsection (2), and **[—**

***(a)*]** if it appears that the merger is likely to substantially prevent or lessen competition, then determine—

[i]*(a)* whether or not the merger is likely to result in any technological, efficiency or other pro-competitive gain which will be greater than, and offset, the effects of any prevention or lessening of competition, that may result or is likely to result from the merger, and would not likely be obtained if the merger is prevented; and

[ii]*(b)* whether the merger can or cannot be justified on substantial public interest grounds by assessing the factors set out in subsection (3)**[;or**

(b) wat die tersaaklike faktore en maatstawwe uiteensit vir bepaling of 'n dominante *firma* se handeling prysdiskriminasie is wat die *deelname* van *klein- en mediumsake* en firmas beheer of besit deur histories benadeelde persone, belemmer.''.

Wysiging van artikel 10 van Wet 89 van 1998

7. Artikel 10 van die Hoofwet word hierby gewysig—

(a) deur die volgende subartikel ná subartikel (2) in te voeg:

''(2A) Tensy die Mededingingskommissie en die applikant anders ooreenkom, moet die Mededingingskommissie die vrystelling bedoel in subartikel (2) toestaan, of weier om dit toe te staan binne 'n jaar van ontvangs van die aansoek of binne 'n tydperk wat ingevolge artikel 78 *voorgeskryf* kan word.'';

(b) deur in subartikel (3)*(b)* subparagraaf (ii) deur die volgende subparagraaf te vervang:

''(ii) bevordering van die **[vermoë van kleinsake]** doeltreffende toetrede tot, *deelname* aan of groei binne 'n mark deur *klein- en mediumsake* of *firmas* wat beheer of besit word deur histories benadeelde persone**[, om mededingend te raak]**;'';

(c) deur in subartikel (3)*(b)* ''of'' aan die einde van subparagraaf (iii) te skrap en subparagraaf (iv) deur die volgende paragraaf te vervang:

''(iv) die ekonomiese ontwikkeling, groei, transformasie of stabiliteit van enige nywerheid deur die *Minister* aangewys, na oorlegpleging met die Minister verantwoordelik vir daardie nywerheid**[.]**; of'' ;

(d) deur die volgende subparagraaf tot subartikel (3)*(b)* by te voeg:

''(v) voordele in mededingendheid en doeltreffendheid wat indiensneming of nywerheidsgroei bevorder.''; en

(e) deur die volgende subartikel ná subartikel (9) in te voeg:

''(10) Die *Minister* kan, ná oorleg met die Mededingingskommissie, en ten einde aan die doeleindes van *hierdie Wet* soos gestel in artikel 2 gevolg te gee, *regulasies* ingevolge artikel 78 uitreik waarin 'n kategorie van *ooreenkomste* of praktyke van die toepassing van hierdie Hoofstuk vrygestel word.''.

Herroeping van Hoofstuk 2A van Wet 89 van 1998, soos ingevoeg deur artikel 4 van Wet 1 van 2009

8. Hoofstuk 2A van die Hoofwet word hierby herroep.

Wysiging van artikel 12A van Wet 89 van 1998, soos ingevoeg deur artikel 6 van Wet 39 van 2000

9. Artikel 12A van die Hoofwet word hierby gewysig deur—

(a) subartikel (1) deur die volgende subartikel te vervang:

''(1) Wanneer van hom verlang word om 'n samesmelting te oorweeg, moet die Mededingingskommissie of Mededingingstribunaal aanvanklik bepaal of die samesmelting waarskynlik mededinging wesenlik sal voorkom of verminder of nie, deur die faktore in subartikel (2) uiteengesit te beoordeel, en **[—**

***(a)*]** indien dit blyk dat die samesmelting mededinging waarskynlik wesenlik sal voorkom of verminder, dan bepaal—

[i]*(a)* of die samesmelting waarskynlik enige tegnologiese, doeltreffendheids- of ander pro-mededingende voordeel tot gevolg sal hê wat groter sal wees as die uitwerking van enige voorkoming of vermindering van mededinging, of die uitwerking daarvan sal uitkanselleer, wat moontlik of waarskynlik uit die samesmelting sal spruit, en wat waarskynlik nie verkry sal word indien die samesmelting voorkom word nie; en

[ii]*(b)* of die samesmelting geregverdig of nie geregverdig kan word nie, op wesenlike gronde van openbare belang deur die faktore in subartikel (3) uiteengesit, te beoordeel**[; of**

(b) **otherwise, determine whether the merger can or cannot be justified on substantial public interest grounds by assessing the factors set out in subsection (3)]**.'';

(b) by the insertion after subsection (1) of the following subsection:

''(1A) Despite its determination in subsection (1), the Competition Commission or Competition Tribunal must also determine whether the merger can or cannot be justified on substantial public interest grounds by assessing the factors set out in subsection (3).'';

(c) by the substitution in subsection (2) for paragraphs *(g)* and *(h)* of the following paragraphs, respectively:

''*(g)* whether the business or part of the business of a party to the merger or proposed merger has failed or is likely to fail; **[and]**

(h) whether the merger will result in the removal of an effective competitor**[.]**;'';

(d) by the addition in subsection (2) after paragraph *(h)* of the following paragraphs:

''*(i)* the extent of ownership by a party to the merger in another *firm* or other *firms* in related markets;

(j) the extent to which a party to the merger is related to another *firm* or other *firms* in related markets, including through common members or directors; and

(k) any other mergers engaged in by a party to a merger for such period as may be stipulated by the Competition Commission.'';

(e) by the substitution in subsection (3) for paragraphs *(c)* and *(d)* of the following paragraphs, respectively:

''*(c)* the ability of *small* and *medium businesses*, or *firms* controlled or owned by historically disadvantaged persons, to **[become competitive]** effectively enter into, *participate* in or expand within the market; **[and]**

(d) the ability of national industries to compete in international markets**[.]**; and''; and

(f) by the addition in subsection (3) after paragraph *(d)* of the following paragraph:

''*(e)* the promotion of a greater spread of ownership, in particular to increase the levels of ownership by historically disadvantaged persons and *workers* in *firms* in the market.''.

Amendment of section 15 of Act 89 of 1998, as amended by section 6 of Act 39 of 2000

10. Section 15 of the principal Act is hereby amended—

(a) by the substitution for the heading of the following heading:

''**Revocation of merger approval and enforcement of merger conditions**''; and

(b) by the substitution for subsection (1) of the following subsection:

''(1) The Competition Commission may revoke its own decision to approve or conditionally approve a small or intermediate merger or, in respect of a conditional approval, make any appropriate decision regarding any condition relating to the merger, including the issues referred to in section 12A(3)*(b)* and *(c)* if—

(a) the decision was based on incorrect information for which a party to a merger is responsible;

(b) the approval was obtained by deceit; or

(c) a *firm* concerned has breached an obligation attached to the decision.''.

Amendment of section 16 of Act 89 of 1998, as amended by section 6 of Act 39 of 2000

11. Section 16 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

''(3) Upon application by the Competition Commission, the Competition Tribunal may revoke its own decision to approve or conditionally approve a merger

(b) **andersins bepaal of die samesmelting geregverdig of nie geregverdig kan word nie, op wesenlike gronde van openbare belang, deur die faktore in subartikel (3) uiteengesit, te beoordeel]**.'';

(b) deur die volgende subartikel ná subartikel (1) in te voeg:

''(1A) Ondanks sy bepaling in subartikel (1), moet die Mededingingskommissie of Mededingingstribunaal ook bepaal hetsy die samesmelting op wesenlike gronde van openbare belang geregverdig kan word al dan nie, deur die faktore in subartikel (3) uiteengesit, te assesseer.'';

(c) deur in subartikel (2) paragrawe *(g)* en *(h)* onderskeidelik deur die volgende paragrawe te vervang:

''*(g)* of die besigheid of gedeelte van die besigheid, of 'n party tot die samesmelting of voorgestelde samesmelting, gefaal het, of waarskynlik sal faal; **[en]**

(h) of die samesmelting sal lei tot die verwydering van 'n doeltreffende mededinger**[.]**;'';

(d) deur in subartikel (2) die volgende paragrawe ná paragraaf *(h)* in te voeg:

''*(i)* die omvang van die eienaarskap van 'n party tot die samesmelting in 'n ander *firma* of ander *firmas* in verwante markte;

(j) die mate waartoe 'n party tot die samesmelting aan 'n ander *firma* verwant is, met inbegrip van deur gewone lede of direkteure; en

(k) enige ander samesmeltings waarby 'n party betrokke raak vir sodanige tydperk soos deur die Mededingingskommissie bepaal.'';

(e) deur paragrawe *(c)* en *(d)* in subartikel (3) onderskeidelik deur die volgende paragrawe te vervang:

''*(c)* die vermoë van **[kleinsake]** *klein- en mediumsake*, of van *firmas* beheer of besit deur histories benadeelde persone, om **[mededingend te raak]** die mark doeltreffend te betree, daaraan *deel te neem* of binne die mark te groei; **[en]**

(d) die vermoë van nasionale nywerhede om in internasionale markte mee te ding**[.]**; en''; en

(f) deur in subartikel (3) die volgende paragraaf na paragraaf *(d)* by te voeg:

''*(e)* die bevordering van 'n groter verspreiding van eienaarskap, in die besonder om die vlakke van eienaarskap deur histories benadeelde persone en *werkers* in *firmas* in die mark, te verhoog.''.

Wysiging van artikel 15 van Wet 89 van 1998, soos gewysig deur artikel 6 van Wet 39 van 2000

10. Artikel 15 van die Hoofwet word hierby gewysig—

(a) deur die opskrif deur die volgende opskrif te vervang:

''**Intrekking van samesmeltingsgoedkeuring en afdwinging van samesmeltingsvoorwaardes**''; en

(b) deur subartikel (1) deur die volgende subartikel te vervang:

''(1) Die Mededingingskommissie kan sy eie besluit om 'n klein of intermediêre samesmelting goed te keur, intrek, of, ten opsigte van 'n voorwaardelike goedkeuring, enige gepaste besluit neem oor enige voorwaarde aangaande die samesmelting, met inbegrip van die kwessies in artikel 12A(3)*(b)* en *(c)* bedoel indien—

(a) die besluit gegrond was op verkeerde inligting waarvoor 'n party tot die samesmelting verantwoordelik is;

(b) die goedkeuring deur misleiding verkry is; of

(c) 'n *firma* wat betrokke is 'n verpligting wat aan die besluit gekoppel was, verbreek het.''.

Wysiging van artikel 16 van Wet 89 van 1998, soos gewysig deur artikel 6 van Wet 39 van 2000

11. Artikel 16 van die Hoofwet word hierby gewysig deur subartikel (3) deur die volgende subartikel te vervang:

''(3) Die Mededingingstribunaal kan, op aansoek deur die Mededingingskommissie sy eie besluit om 'n samesmelting goed te keur of voorwaardelik goed

or, in respect of a conditional approval, make any appropriate decision regarding any condition relating to the merger, including the issues referred to in section 12A(3)*(b)* or *(c)*, and section 15, read with the changes required by the context, applies to a revocation or other decision in terms of this subsection.''.

Amendment of section 17 of Act 89 of 1998, as amended by section 6 of Act 39 of 2000

12. Section 17 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

''(1) Within 20 business days after notice of a decision by the Competition Tribunal in terms of section 16, an appeal from that decision may be made to the Competition Appeal Court, subject to its rules, by—

(a) any party to the merger; **[or]**

(b) the Competition Commission;

(c) the *Minister* on matters raised in terms of section 12A(3), where the *Minister participated* in the Competition Commission's or Competition Tribunal's proceedings in terms of section 18 or on application for leave to appeal to the Competition Appeal Court; or

(d) a person who, in terms of section 13A(2), is required to be given notice of the merger, provided the person had been a participant in the proceedings of the Competition Tribunal.''.

Amendment of section 18 of Act 89 of 1998, as amended by section 6 of Act 39 of 2000

13. Section 18 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

''(1) In order to make representations on any public interest ground referred to in section 12A(3), the *Minister* may participate as a party in any **[intermediate or large]** merger proceedings before the Competition Commission, Competition Tribunal or the Competition Appeal Court, in the *prescribed* manner.''.

Insertion of section 18A in Act 89 of 1998

14. The following section is hereby inserted after section 18 of the principal Act:

''**Intervention in merger proceedings involving *foreign acquiring firm***

18A. (1) The President must constitute a Committee which must be responsible for considering in terms of this section whether the implementation of a merger involving a *foreign acquiring firm* may have an adverse effect on the national security interests of the Republic.

(2) The Committee contemplated in subsection (1) must consist of such Cabinet Members and other public officials as may be determined and appointed by the President.

(3) The President must identify and publish in the *Gazette* a list of national security interests of the Republic, including the markets, industries, *goods or services*, sectors or regions in which a merger involving a *foreign acquiring firm* must be notified to the committee referred to in subsection (1), in terms of subsection (6).

(4) In determining what constitutes national security interests for purposes of *this Act*, the President must take into account all relevant factors, including the potential impact of a merger transaction—

(a) on the Republic's defence capabilities and interests;

(b) on the use or transfer of sensitive technology or know-how outside of the Republic;

te keur, intrek, of, ten opsigte van 'n voorwaardelike goedkeuring, enige gepaste besluit neem aangaande enige voorwaarde in verband met die samesmelting, met inbegrip van die kwessies in artikel 12A(3)*(b)* of *(c)* bedoel, en artikel 15, saamgelees met die veranderinge deur die konteks vereis, is van toepassing op 'n intrekking of ander besluit ingevolge hierdie subartikel.''.

Wysiging van artikel 17 van Wet 89 van 1998, soos gewysig deur artikel 6 van Wet 39 van 2000

12. Artikel 17 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

''(1) Binne 20 besigheidsdae na 'n kennisgewing van 'n besluit deur die Mededingingstribunaal ingevolge artikel 16, kan teen daardie besluit na die Appèlhof vir Mededinging appelleer word, behoudens sy reëls, deur—

(a) enige party tot die samesmelting; **[of]**

(b) die Mededingingskommissie;

(c) die *Minister* oor aangeleenthede ingevolge artikel 12A(3) geopper, waar die *Minister* aan die Mededingingskommissie of -tribunaal se verrigtinge ingevolge artikel 18 *deelgeneem* het of by aansoek om verlof om by die Appèlhof vir Mededinging te appelleer; of

(d) 'n persoon aan wie, ingevolge artikel 13A(2), kennis van die samesmelting gegee moet word, mits die persoon 'n deelnemer in die verrigtinge van die Mededingingstribunaal was.''.

Wysiging van artikel 18 van Wet 89 van 1998, soos gewysig deur artikel 6 van Wet 39 van 2000

13. Artikel 18 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

''(1) Ten einde voorleggings te doen op enige gronde van openbare belang in artikel 12A(3) bedoel, kan die *Minister*, as 'n party, deelneem aan enige **[intermediêre of groot]** samesmeltingsverrigtinge voor die Mededingingskommissie, die Mededingingstribunaal of die Appèlhof vir Mededinging, op die voorgeskrewe wyse.''.

Invoeging van artikel 18A in Wet 89 van 1998

14. Die volgende artikel word hierby ná artikel 18 van die Hoofwet ingevoeg:

''**Ingryping in samesmeltingsverrigtinge waarby *vreemde verkrygende firma* betrokke is**

18A. (1) Die President moet 'n komitee saamstel wat verantwoordelik moet wees vir oorweging, ingevolge hierdie artikel, hetsy die implementering van 'n samesmelting waarby 'n *vreemde verkrygende firma* betrokke is, 'n nadelige uitwerking op die nasionale veiligheidsbelange van die Republiek kan hê.

(2) Die Komitee in subartikel (1) beoog moet bestaan uit sodanige Kabinetslede en ander staatsamptenare soos deur die President bepaal en aangestel.

(3) Die President moet 'n lys van nasionale veiligheidsbelange in die Republiek identifiseer en in die *Staatskoerant* publiseer, met inbegrip van die markte, nywerhede, *goedere* of *dienste*, sektore of streke waarin 'n samesmelting waarby 'n *vreemde verkrygende firma* betrokke is ingevolge subartikel (6) by die komitee in subartikel (1) bedoel, gerapporteer moet word.

(4) Wanneer bepaal word wat by die toepassing van *hierdie Wet* nasionale veiligheidsbelange daarstel, moet die President alle tersaaklike faktore in ag neem, met inbegrip van die potensiële impak van 'n samesmeltingsooreenkoms—

(a) op die Republiek se verdedigingsvermoëns en -belange;

(b) op die gebruik of oordrag van sensitiewe tegnologie of kundigheid buite die Republiek;

(c) on the security of infrastructure, including processes, systems, facilities, technologies, networks, assets and services essential to the health, safety, security or economic well-being of citizens and the effective functioning of government;

(d) on the supply of critical *goods or services* to citizens, or the supply of *goods or services* to government;

(e) to enable foreign surveillance or espionage, or hinder current or future intelligence or law enforcement operations;

(f) on the Republic's international interests, including foreign relationships;

(g) to enable or facilitate the activities of illicit actors, such as terrorists, terrorist organisations or organised crime; and

(h) on the economic and social stability of the Republic.

(5) The President must issue *regulations* governing—

(a) the notification, processes, procedure and timeframes to be followed by the Committee referred to in subsection (1) when performing its functions under this section; and

(b) access to information concerning the merger, including *confidential information*.

(6) A *foreign acquiring firm* which is required to notify the Competition Commission in terms of section 13A(1) of an intended merger must, at the time of the notification of the merger to the Competition Commission, file a notice with the Committee referred to in subsection (1) in the *prescribed* form and manner if the merger relates to the list of national security interests of the Republic as identified by the President in terms of subsection (3).

(7) Within 60 days of receipt by the Committee referred to in subsection (1) of a notice in terms of subsection (6), or such further period which the President may agree to, on good cause shown, the Committee must consider and decide on whether the merger involving a *foreign acquiring firm* may have an adverse effect on the national security interests of the Republic identified by the President in terms of subsection (3).

(8) The Committee referred to in subsection (1) may take into account other relevant factors, including whether the *foreign acquiring firm* is a *firm* controlled by a foreign government.

(9) During its consideration of a merger in terms of this section, the Committee may consult and seek the advice of the Competition Commission or any other relevant *regulatory authority* or public institution.

(10) The *Minister* must, within 30 days of the decision contemplated in subsection (7)—

(a) publish a notice in the *Gazette* of the decision to permit, permit with conditions or prohibit the implementation of a merger; and

(b) inform the National Assembly, in appropriate detail, of the decision.

(11) The Competition Commission may not consider a merger in terms of section 12A, and the Competition Tribunal may not consider a merger in terms of section 16(2), if the *foreign acquiring firm* failed to notify the Committee in terms of subsection (6).

(12) The Competition Commission may not make a decision in terms of section 13(5)*(b)* or 14(1)*(b)*, and the Competition Tribunal may not make an order in terms of section 16(2), where the *Minister* has published a notice in the *Gazette* prohibiting the implementation of the merger on national security grounds.

(c) op die veiligheid van infrastruktuur, met inbegrip van prosesse, stelsels, fasiliteite, tegnologieë, netwerke, bates en dienste noodsaaklik vir die gesondheid, veiligheid, sekuriteit of ekonomiese welstand van burgers en die doeltreffende funksionering van die staat;

(d) op die voorsiening van kritieke *goedere of dienste* aan burgers, of die voorsiening van *goedere of dienste* aan die staat;

(e) om vreemde waarneming of spioenasie moontlik te maak, of huidige of toekomstige intelligensie- of wetstoepassings-operasies te belemmer;

(f) op die Republiek se internasionale belange, met inbegrip van vreemde verhoudinge;

(g) om die aktiwiteite van onwettige handelaars, soos terroriste, terroriste-organisasies of georganiseerde misdaad moontlik te maak of te vergemaklik; en

(h) op die ekonomiese en maatskaplike bestendigheid van die Republiek.

(5) Die President moet *regulasies* uitvaardig wat—

(a) die kennisgewing, prosesse, prosedure en tydsbestekke reël wat die Komitee in subartikel (1) bedoel, by die verrigting van daardie Komitee se funksies kragtens hierdie artikel moet volg; en

(b) toegang tot inligting aangaande die samesmelting, met inbegrip van *vertroulike inligting*, reël.

(6) ’n *Vreemde verkrygende firma* wat die Mededingingskommissie ingevolge artikel 13A(1) van ’n voorgenome samesmelting in kennis moet stel, moet, wanneer die Mededingingskommissie van die samesmelting in kennis gestel word, ’n kennisgewing by die Komitee bedoel in subartikel (1) indien op die *voorgeskrewe* wyse en in die *voorgeskrewe* vorm, as die samesmelting verband hou met die lys van nasionale veiligheidsbelange van die Republiek soos ingevolge subartikel (3) deur die President geïdentifiseer.

(7) Binne 60 dae vanaf ontvangs deur die Komitee bedoel in subartikel (1) van ’n kennisgewing ingevolge subartikel (6), of sodanige verdere tydperk waarvoor die President kan toestemming gee, by die aanvoer van goeie gronde, moet die Komitee oorweeg en beslis of die samesmelting wat ’n *vreemde verkrygende firma* betrek, ’n nadelige uitwerking kan hê op die nasionale veiligheidsbelange van die Republiek ingevolge subartikel (3) deur die President geïdentifiseer.

(8) Die Komitee in subartikel (1) bedoel kan ander tersaaklike faktore in ag neem, met inbegrip van hetsy die *vreemde verkrygende firma* ’n *firma* onder beheer van ’n vreemde regering is.

(9) Tydens die oorweging van ’n samesmelting ingevolge hierdie artikel, kan die Komitee oorleg pleeg met en die raad kry van die Mededingingskommissie of enige ander tersaaklike *regulerende owerheid* of openbare instelling.

(10) Die *Minister* moet, binne 30 dae vanaf die beslissing in subartikel (7) beoog—

(a) ’n kennisgewing in die *Staatskoerant* publiseer oor die beslissing om die implementering van die samesmelting toe te laat, met voorwaardes toe te laat of te verbied; of

(b) die Nasionale Vergadering, met gepaste besonderhede, oor die gepaste besluit inlig.

(11) Die Mededingingskommissie mag nie ’n samesmelting ingevolge artikel 12A oorweeg nie, en die Mededingingstribunaal mag nie ’n samesmelting ingevolge artikel 16(2) oorweeg nie indien die *vreemde verkrygende firma* versuim het om die Komitee ingevolge subartikel (6) in kennis te stel.

(12) Die Mededingingskommissie mag nie ’n beslissing ingevolge artikel 13(5)*(b)* of 14(1)*(b)* vel nie, en die Mededingingstribunaal mag nie ’n bevel ingevolge artikel 16(2) maak nie, waar die *Minister* ’n kennisgewing in die *Staatskoerant* gepubliseer het wat implementering van die samesmelting op gronde van nasionale veiligheid verbied.

(13) *(a)* The Committee may revoke its approval of the merger or, in respect of a conditional approval, make any appropriate decision regarding any condition relating to the merger, if—

(i) the approval was based on incorrect information for which a party to the merger is responsible;

(ii) the approval was obtained by deceit; or

(iii) a *firm* concerned has breached an obligation attached to the approval.

(b) If the Committee revokes its permission in terms of paragraph *(a)*, the Competition Commission's or Competition Tribunal's approval or conditional approval of the merger is deemed to be revoked.

(c) Unless the Committee determines otherwise, the Competition Commission's or Competition Tribunal's approval or conditional approval of a merger involving a *foreign acquiring firm* is deemed to be revoked if the *foreign acquiring firm* failed to notify the Committee in terms of subsection (6).

(14) The Competition Tribunal may impose an administrative penalty, in accordance with the provisions of section 59(3), on the parties to a merger involving a *foreign acquiring firm* for any contravention contemplated in section 59(1)*(d)*, read with the changes required by the context.

(15) The President may delegate any power or function conferred on him or her under subsection (3) or (4) to any Cabinet Member.''.

Amendment of section 19 of Act 89 of 1998, as amended by section 7 of Act 39 of 2000

15. Section 19 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

''(2) The Competition Commission consists of the Commissioner and **[one]** two or more Deputy Commissioners, appointed by the *Minister* in terms of *this Act*.''.

Amendment of section 21 of Act 89 of 1998, as amended by section 8 of Act 39 of 2000

16. Section 21 of the principal Act is hereby amended—

(a) by the insertion in subsection (1) after paragraph *(g)* of the following paragraphs:

''*(g*A*)* initiate and conduct market inquiries in terms of Chapter 4A;

*(g*B*)* conduct impact studies in terms of section 21A;

*(g*C*)* grant or refuse applications for leniency in terms of section 49E;

*(g*D*)* develop a policy regarding the granting of leniency to any *firm* contemplated in section 50;

*(g*E*)* issue guidelines in terms of section 79; and

*(g*F*)* issue advisory opinions in terms of section 79A;''; and

(b) by the substitution in subsection (3) for the words preceding paragraph *(a)* of the following words:

''The *Minister* must table in **[the National Assembly]** Parliament any report submitted in terms of subsection (1)*(k)* or section 43E(1), and any report submitted in terms of subsection (2) if that report deals with a substantial matter relating to the purposes of *this Act*—''.

Insertion of section 21A in Act 89 of 1998

17. The following section is hereby inserted after section 21 of the principal Act:

''**Impact Studies**

21A. (1) The Competition Commission may study the impact of any decision, ruling or judgment of the Commission, the Competition Tribunal or the Competition Appeal Court.

(13) *(a)* Die Kommissie kan sy goedkeuring van die samesmelting intrek of, ten opsigte van 'n voorwaardelike goedkeuring, enige gepaste besluit neem aangaande enige voorwaarde rakende die samesmelting, indien—

(i) die goedkeuring gegrond was op verkeerde inligting waarvoor 'n party tot die samesmelting verantwoordelik was;

(ii) die goedkeuring op 'n bedrieglike wyse verkry is; of

(iii) 'n betrokke *firma* 'n verpligting verbonde aan die goekeuring, verbreek het.

(b) Indien die Komitee sy toestemming ingevolge paragraaf *(a)* intrek, word die Mededingingskommissie of Mededingingstribunaal se goedkeuring of voorwaardelike goedkeuring van die samesmelting geag ingetrek te wees.

(c) Tensy die Komitee anders bepaal, word die Mededingingskommissie of Mededingingstribunaal se goedkeuring of voorwaardelike goedkeuring van 'n samesmelting wat 'n *vreemde verkrygende firma* betrek, geag ingetrek te wees indien die *vreemde verkrygende firma* versuim het om die Komitee ingevolge subartikel (6) in kennis te stel.

(14) Die Mededingingstribunaal kan 'n administratiewe boete oplê, ooreenkomstig die bepalings van artikel 59(3), op die partye by 'n samesmelting wat 'n *vreemde verkrygende firma* betrek vir enige oortreding in artikel 59(1)*(d)* bedoel, gelees met die veranderings deur die samehang vereis.

(15) Die President kan enige bevoegdheid of funksie kragtens subartikel (3) en (4) aan hom of haar opgedra aan enige Kabinetslid delegeer.''.

Wysiging van artikel 19 van Wet 89 van 1998, soos gewysig deur Wet 39 van 2000

15. Artikel 19 van die Hoofwet word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:

''(2) Die Mededingingskommissie bestaan uit die Kommissaris, en **[een]** twee of meer Adjunkkommissarisse deur die *Minister*, ingevolge *hierdie Wet*, aangestel.''.

Wysiging van artikel 21 van Wet 89 van 1998, soos gewysig deur artikel 8 van Wet 39 van 2000

16. Artikel 21 van die Hoofwet word hierby gewysig—

(a) deur die volgende paragrawe ná paragraaf *(g)* in subartikel (1) in te voeg:

''*(g*A*)* inisiëring en doen van markondersoeke ingevolge Hoofstuk 4A;

*(g*B*)* doen van impakstudies ingevolge artikel 21A;

*(g*C*)* toestaan of weiering van aansoeke om toegeeflikheid ingevolge artikel 49E;

*(g*D*)* ontwikkeling van 'n beleid aangaande die toestaan van toegeeflikheid aan enige *firma* in artikel 50 beoog;

*(g*E*)* uitreiking van riglyne ingevolge artikel 79; en

*(g*F*)* uitreiking van adviserende opinies ingevolge artikel 79A;''; en

(b) deur in subartikel (3) die woorde wat paragraaf *(a)* voorafgaan deur die volgende woorde te vervang:

''Die *Minister* moet enige verslag voorgelê ingevolge subartikel (1)*(k)* of artikel 43E(1), in die **[Nasionale Vergadering]** Parlement ter tafel lê, en enige verslag ingevolge subartikel (2) voorgelê, indien daardie verslag handel oor 'n wesenlike aangeleentheid wat verband hou met die oogmerke van *hierdie Wet*—''.

Invoeging van artikel 21A in Wet 89 van 1998

17. Die volgende artikel word hierby ná artikel 21 van die Hoofwet ingevoeg:

''**Impakstudies**

21A. (1) Die Mededingingskommissie kan die impak van enige beslissing, reëling of uitspraak van die Kommissie, die Mededingingstribunaal of die Appèlhof vir Mededinging bestudeer.

(2) The Commission may request information from any *firm* in order to compile its impact study report.

(3) The Commission must submit its report to the *Minister* and publish its report in the *Gazette* within 15 business days after submitting it to the *Minister*.

(4) The *Minister* must table in the National Assembly any impact study report within 10 business days after receiving the report from the Commission and, if Parliament is not sitting, within 10 business days after the commencement of the next sitting.

(5) Sections 44 and 45A, read with the changes required by the context, apply to the Commission's request for information from a *firm* and the publication of its report.

(6) A *firm* that receives a request for information in terms of subsection (2) may lodge an objection with the Competition Tribunal within 20 business days of receiving the request.

(7) The Competition Tribunal must determine the objection referred to in subsection (6) and may make any appropriate order after having considered all relevant information, including—

(a) the nature and extent of the information requested;

(b) the purpose and scope of the impact study; and

(c) the relevance of the information requested to the impact study.''.

Amendment of section 22 of Act 89 of 1998

18. Section 22 of the principal Act is hereby amended by the insertion after subsection (3) of the following subsections:

''(3A) The Commissioner, after consultation with the *Minister*, may determine a policy regarding the delegation of authority in the Competition Commission in order to facilitate administrative and operational efficiency.

(3B) The delegation of authority referred to in subsection (3A) may—

(a) provide for the delegation to a Deputy Commissioner or another staff member of the Commission of—

(i) any of the Commissioner's powers, functions or duties conferred or imposed upon the Commissioner under *this Act*, except those referred to in sections 24 and 25(1)*(b)*; and

(ii) any of the Competition Commission's powers, functions or duties conferred or imposed upon the Commission under *this Act*, except those referred to in section 15; and

(b) in appropriate circumstances, include the power to sub-delegate a delegated power.

(3C) The Commissioner may—

(a) delegate only in terms of the policy on delegations of authority;

(b) delegate either to a specific individual or the incumbent of a specific post;

(c) delegate subject to any conditions or restrictions that are deemed fit;

(d) withdraw or amend a delegation made in terms of the policy on delegations of authority;

(e) withdraw or amend any decision made by a person who exercises a power or performs a function or duty delegated in terms of the policy on delegations of authority.

(3D) A delegation in terms of the delegations of authority policy—

(a) must be in writing, unless it is impracticable in the circumstances;

(b) does not limit or restrict the competence of the Commissioner to exercise or perform any power, function or duty that has been delegated;

(c) does not divest the Commissioner of the responsibility concerning the exercise of the power or performance of the delegated duty; and

(d) is subject to the limitations, conditions and directions that the policy on delegations of authority imposes.''.

(2) Die Kommissie kan inligting van enige *firma* aanvra ten einde sy impakstudieverslag saam te stel.

(3) Die Kommissie moet sy verslag aan die *Minister* voorlê en die verslag binne 15 dae ná voorlegging aan die *Minister* in die *Staatskoerant* publiseer.

(4) Die *Minister* moet enige impakstudieverslag in die Nasionale Vergadering ter tafel lê binne 10 sakedae ná ontvangs van die verslag van die Kommissie en, indien die Parlement nie in sessie is nie, binne 10 sakedae ná die begin van die volgende sessie.

(5) Artikels 44 en 45A, gelees met die veranderings deur die samehang vereis, is van toepassing op die Kommissie se versoek om inligting van 'n *firma* en die publikasie van sy verslag.

(6) 'n *Firma* wat 'n versoek vir inligting ingevolge subartikel (2) ontvang, kan 'n beswaar binne 20 dae ná ontvangs van die versoek by die Mededingingstribunaal indien.

(7) Die Mededingingstribunaal moet die beswaar in subartikel (6) bedoel, bepaal en kan enige gepaste bevel gee ná oorweging van alle tersaaklike inligting, met inbegrip van—

(a) die aard en omvang van die inligting aangevra;
(b) die doel en bestek van die impakstudie; en
(c) hoe die aangevraagde inligting op die impakstudie betrekking het.''.

Wysiging van artikel 22 van Wet 89 van 1998

18. Artikel 22 van die Hoofwet word hierby gewysig deur die volgende subartikels ná subartikel (3) in te voeg:

''(3A) Die Kommissaris, ná oorleg met die *Minister*, kan 'n beleid bepaal oor die delegering van gesag in die Mededingingskommissie ten einde administratiewe en bedryfsdoeltreffendheid te fasiliteer.

(3B) Die delegering van gesag in subartikel 3A bedoel, kan—

(a) voorsiening maak vir die delegering aan 'n adjunkkommissaris of ander personeellid van die Kommissie van—
  (i) enige van die Kommissaris se bevoegdhede, funksies of pligte kragtens *hierdie Wet* aan die Kommissaris opgedra of opgelê, behalwe dié waarna in artikels 24 en 25(1)*(b)* verwys word; en
  (ii) enige van die Mededingingskommissie se bevoegdhede, funksies of pligte kragtens *hierdie Wet* aan die Kommissie opgedra of opgelê, behalwe dié waarna in artikel 15 verwys word; en
(b) in gepaste omstandighede, die bevoegdheid insluit om 'n gedelegeerde bevoegdheid te subdelegeer.

(3C) Die Kommissaris kan—

(a) gesag slegs ingevolge die beleid op delegering van gesag delegeer;
(b) óf aan 'n spesifieke individu óf die bekleër van 'n spesifieke pos delegeer;
(c) onderhewig aan enige voorwaardes of beperkings wat gepas geag word, delegeer;
(d) 'n delegering ingevolge die beleid op delegering van gesag gemaak, intrek of wysig;
(e) enige besluit geneem deur 'n persoon wat 'n bevoegdheid uitvoer of 'n funksie of plig verrig wat ingevolge die beleid op delegering van gesag gedelegeer is, intrek of wysig.

(3D) 'n Delegering ingevolge die beleid op delegering van gesag—

(a) moet skriftelik wees, tensy dit onder omstandighede onprakties is;
(b) beperk nie die bevoegdheid van die Kommissaris om enige bevoegdheid, funksie of plig wat gedelegeer is, uit te oefen of te verrig nie;
(c) ontdoen nie die Kommissaris van die verantwoordelikheid aangaande die uitoefening van die bevoegdheid of verrigting van die gedelegeerde plig nie; en
(d) is onderworpe aan die beperkings, voorwaardes en voorskrifte ingevolge die beleid op delegering van gesag opgelê.''.

Amendment of section 23 of Act 89 of 1998

19. Section 23 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) The *Minister* must designate—

(a) a Deputy Commissioner to perform the functions of the Commissioner whenever—

[*(a)*] (i) the Commissioner is unable for any reason to perform the functions of the Commissioner; or

[*(b)*](ii) the office of Commissioner is vacant; and

(b) one or more full-time or part-time Deputy Commissioners who are responsible for conducting market inquiries.".

Substitution of section 25 of Act 89 of 1998

20. The following section is hereby substituted for section 25 of the principal Act:

"**Staff of Competition Commission**

25. (1) The Commissioner may—

(a) appoint staff, or contract with other persons, to assist the Competition Commission in carrying out its functions; and

(b) in consultation with the *Minister* and the Minister of Finance, determine the remuneration, allowances, benefits, and other terms and conditions of **[appointment]** employment of each member of the staff.

(2) Subject to the provisions of *this Act*, the Commissioner may designate a staff member of the Competition Commission who has suitable qualifications or experience, to appear on behalf of the Commission in any court of law.".

Amendment of section 26 of Act 89 of 1998, as amended by section 10 of Act 39 of 2000

21. Section 26 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) *(a)* The Competition Tribunal consists of a Chairperson and not less than three, but not more than **[ten]** 14, other women or men appointed by the President, on a full or part-time basis, on the recommendation of the *Minister*, from among persons nominated by the *Minister* either on the *Minister's* initiative or in response to a public call for nominations, and any other person appointed in an acting capacity in terms of paragraph *(b)*.

(b) The *Minister*, after consultation with the Chairperson of the Competition Tribunal, may appoint one or more persons who meet the requirements of section 28, as acting part-time members of the Competition Tribunal for such a period as the *Minister* may determine.

(c) The *Minister* may re-appoint an acting member at the expiry of that member's term of office.

(d) Sections 30 to 34 and 54 to 55, read with the changes required by the context, apply to acting members of the Competition Tribunal.".

Amendment of section 31 of Act 89 of 1998, as amended by section 12 of Act 39 of 2000

22. Section 31 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection—

"(2) When assigning a matter in terms of subsection (1), the Chairperson must—

(a) ensure that at least one member of the panel is a person who has legal training and experience; **[and]**

(b) ensure that no more than one member of the panel is an acting member appointed in terms of section 23(2)*(b)*; and

Wysiging van artikel 23 van Wet 89 van 1998

19. Artikel 23 van die Hoofwet word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:

"(2) Die *Minister* moet—

(a) 'n Adjunkkommissaris aanstel om die funksies van die Kommissaris uit te oefen wanneer—

[*(a)*] (i) die Kommissaris, om welke rede ook al, nie die funksies van die Kommissaris kan uitoefen nie; of

[*(b)*](ii) die amp van Kommissaris vakant is; en

(b) een of meer voltydse of deeltydse adjunkkommissarisse aanstel wat vir die doen van markondersoeke verantwoordelik is.".

Vervanging van artikel 25 van Wet 89 van 1998

20. Artikel 25 van die Hoofwet word hierby deur die volgende artikel vervang:

"**Personeel van Mededingingskommissie**

25. (1) Die Kommissaris kan—

(a) personeel aanstel, of met ander persone kontrakteer, om die Mededingingskommissie in die uitoefening van sy funksies by te staan; en

(b) in oorleg met die *Minister* en die Minister van Finansies, die vergoeding, toelaes, voordele, en ander voorwaardes van **[aanstelling]** indiensneming van elke lid van die personeel, bepaal.

(2) Behoudens die bepalings van *hierdie Wet*, kan die Kommissaris 'n personeellid van die Mededingingskommissie wat gepaste kwalifikasies of ervaring het, aanwys om namens die Kommissie voor enige geregshof te verskyn.".

Wysiging van artikel 26 van Wet 89 van 1998, soos gewysig deur artikel 10 van Wet 39 van 2000

21. Artikel 26 van die Hoofwet word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:

"(2) *(a)* Die Mededingingstribunaal bestaan uit 'n voorsitter en nie minder nie as drie, maar nie meer as **[10]** 14 nie, ander vrouens of mans, deur die President aangestel, op 'n voltydse of deeltydse basis, op aanbeveling van die *Minister*, uit die geledere van persone deur die *Minister* aangewys, óf op die *Minister* se inisiatief, óf in reaksie op 'n openbare oproep om nominasies, en enige ander persoon ingevolge paragraaf *(b)* in 'n waarnemende hoedanigheid aangestel.

(b) Die *Minister*, ná oorleg met die Voorsitter van die Mededingingstribunaal, kan een of meer persone wat aan die vereistes van artikel 28 voldoen, as waarnemende deeltydse lede van die Mededingingstribunaal aanstel vir die tydperk wat die *Minister* bepaal.

(c) Die *Minister* kan 'n waarnemende lid by die verstryking van daardie lid se ampstermyn, heraanstel.

(d) Artikels 30 tot 34 en 54 tot 55, gelees met die veranderinge deur die samehang vereis, is van toepassing op waarnemende lede van die Mededingingstribunaal.".

Wysiging van artikel 31 van Wet 89 van 1998, soos gewysig deur artikel 12 van Wet 39 van 2000

22. Artikel 31 van die Hoofwet word hierby gewysig—

(a) deur subartikel (2) deur die volgende subartikel te vervang:

"(2) Wanneer 'n saak ingevolge subartikel (1) toegewys word, moet die Voorsitter—

(a) verseker dat ten minste een lid van die paneel 'n persoon is wat regsopleiding en ondervinding het; **[en]**

(b) verseker dat nie meer as een lid van die paneel 'n waarnemende lid is wat ingevolge artikel 23(2)*(b)* aangestel, is nie; en

(c) designate a member of the panel to preside over the panel's proceedings."; and

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

"(5) **[If the Competition Tribunal may extend or reduce a *prescribed* period in terms of *this Act*, the]** The Chairperson of the Competition Tribunal, or another member of the Tribunal assigned by the Chairperson, sitting alone, may make an order of an interlocutory nature that, in the opinion of the Chairperson, does not warrant being heard by a panel comprised of three members, including—

(a) extending or reducing **[that period]** a *prescribed* period in terms of *this Act*; **[or]**

(b) condoning late performance of an act that is subject to **[that period]** a *prescribed* period in terms of *this Act*;

(c) granting access to information contemplated in sections 44 to 45A and any conditions that must be attached to the access order; and

(d) compelling discovery of documents.".

Substitution of section 43A of Act 89 of 1998, as amended by section 6 of Act 1 of 2009

23. The following section is hereby substituted for section 43A of the principal Act:

"**Interpretation and Application of this Chapter**

43A. (1) In this Chapter, "market inquiry" means a formal inquiry in respect of the general state of competition, the levels of concentration in and structure of a market for particular *goods or services*, without necessarily referring to the conduct or activities of any particular named *firm*.

(2) An adverse effect on competition is established if any feature, or combination of features, of a market for *goods or services* impedes, restricts or distorts competition in that market.

(3) Any reference to a feature of a market for *goods or services* includes—

(a) the structure of that market or any aspect of that structure, including:

(i) the level and trends of concentration and ownership in the market;

(ii) the barriers to entry in the market, the regulation of the market, including the instruments in place to foster transformation in the market and past or current advantage that is not due to the *respondent's* own commercial efforts or investment, such as direct or indirect state support for a *firm* or *firms* in the market;

(b) the outcomes observed in the market, including—

(i) levels of concentration and ownership;

(ii) prices, customer choice, the quality of *goods or services* and innovation;

(iii) employment;

(iv) entry into and exit from the market;

(v) the ability of national industries to compete in international markets;

(c) conduct, whether in or outside the market which is the subject of the inquiry, by a *firm* or *firms* that supply or acquire *goods or services* in the market concerned;

(d) conscious parallel or co-ordinated conduct by two or more *firms* in a concentrated market without the *firms* having an agreement between or among themselves; or

(e) conduct relating to the market which is the subject of the inquiry of any customers of *firms* who supply or acquire *goods or services*.".

(c) 'n lid van die paneel aanwys om voor te sit by die paneel se verrigtinge."; en

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

"(5) **[Indien die Mededingingstribunaal 'n *voorgeskrewe* tydperk ingevolge *hierdie Wet* kan verleng of verminder, kan die]** Die Voorsitter van die **[Tribunaal]** Mededingingstribunaal of ander lid van die Tribunaal deur die Voorsitter aangewys, alleen sittende, kan 'n bevel gee van 'n tussentydse aard wat, na mening van die Voorsitter, nie deur 'n paneel van drie lede aangehoor hoef te word nie, met inbegrip van—

(a) **[wat daardie tydperk verleng of verminder]** verlenging of vermindering van 'n *voorgeskrewe* tydperk ingevolge *hierdie Wet*; **[of]**

(b) **[wat]** kondonering van laat uitvoering van 'n handeling wat aan **[daardie]** 'n *voorgeskrewe* tydperk ingevolge *hierdie Wet* onderhewig is**[, kondoneer]**;

(c) toestaan van toegang tot inligting in artikels 44 tot 45A beoog en enige voorwaardes wat aan die toegangsbevel geheg moet word; en

(d) verpligte blootlegging van dokumente.".

Vervanging van artikel 43A van Wet 89 van 1998, soos gewysig deur artikel 6 van Wet 1 van 2009

23. Artikel 43A van die Hoofwet word hierby deur die volgende artikel vervang:

"**Uitleg en toepassing van hierdie Hoofstuk**

43A. (1) In hierdie Hoofstuk beteken "markondersoek" 'n formele studie van die algemene stand van mededinging, die konsentrasievlakke in en struktuur van 'n mark vir bepaalde *goedere of dienste*, sonder noodwendige verwysing na die gedrag of aktiwiteite van enige bepaalde genoemde *firma*.

(2) 'n Nadelige uitwerking op mededinging word vasgestel indien enige kenmerk, of kombinasie van kenmerke, van 'n mark vir *goedere of dienste*, mededinging in daardie mark belemmer, beperk of verwring.

(3) Enige verwysing na 'n kenmerk van 'n mark vir *goedere of dienste* sluit in—

(a) die struktuur van daardie mark of enige aspek van daardie struktuur, met inbegrip van:
  - (i) die vlak en tendense van konsentrasie en eienaarskap in die mark;
  - (ii) hindernisse teen toetrede tot die mark, die regulering van die mark, met inbegrip van die instrumente wat in plek is om transformasie in die mark te bevorder en voordele in die verlede of die hede wat nie te wyte is aan die *respondent* se eie kommersiële inspanning of belegging nie, soos regstreekse of onregstreekse staatsondersteuning vir 'n *firma* of *firmas* in die mark;

(b) die gevolge in die mark waargeneem, met inbegrip van—
  - (i) vlakke van konsentrasie en eienaarskap;
  - (ii) pryse, klantekeuse, die kwaliteit van *goedere of dienste* en innovering;
  - (iii) indiensneming;
  - (iv) toetrede tot en uittrede uit die mark;
  - (v) die vermoë van nasionale nywerhede om aan internasionale markte deel te neem;

(c) gedrag, hetsy binne of buite die mark, wat die onderwerp van die ondersoek is, deur 'n *firma* of *firmas* wat *goedere of dienste* in die betrokke mark voorsien of verkry;

(d) bewustelike parallelle of gekoördineerde gedrag deur twee of meer *firmas* in 'n gekonsentreerde mark sonder dat die *firmas* 'n *ooreenkoms* tussen of met mekaar het; of

(e) gedrag betreffende die mark wat die onderwerp van die ondersoek van enige klante of *firmas* is wat *goedere of dienste* voorsien of verkry.".

Amendment of section 43B of Act 89 of 1998, as amended by section 6 of Act 1 of 2009

24. Section 43B of the principal Act is hereby amended—

(a) by the substitution for the heading of the following heading:

"**Initiating and conducting market inquiries**";

(b) by the substitution for subsection (1) of the following subsection:

"(1) *(a)* The Competition Commission, acting within its functions set out in section 21(1), **[and on its own initiative, or in response to a request from the *Minister*,]** may conduct a market inquiry at any time, subject to subsections (2) to **[(4)]** (6)—

(i) if it has reason to believe that any feature or combination of features of a market for any *goods or services* **[prevents]** impedes, distorts or restricts competition within that market; or

(ii) to achieve the purposes of *this Act*.

(b) The *Minister* may, after consultation with the Competition Commission and after consideration of the factors in paragraph *(a)*(i) and (ii), require the Competition Commission to conduct a market inquiry contemplated in paragraph *(a)* during a specified period.";

(c) by the substitution for subsection (2) of the following subsection:

"(2) The Competition Commission must, at least 20 business days before the commencement of a market inquiry, publish a notice in the *Gazette* announcing the establishment of the market inquiry, setting out the terms of reference for the market inquiry and inviting members of the public to provide **[information]** written representations to the market inquiry.";

(d) by the insertion after subsection (2) of the following subsections:

"(2A) Before publishing the notice referred to in subsection (2), the Competition Commission must notify and consult with the relevant *regulatory authority* if the intended market inquiry will investigate a sector over which the *regulatory authority* has jurisdiction in terms of any public regulation.

(2B) The Competition Commission must appoint a Deputy Commissioner referred to in section 23(2)*(b)* to chair a market inquiry and may appoint one or more additional suitably qualified persons to the panel that conducts the market inquiry.";

(e) by the insertion in subsection (3) after paragraph *(c)* of the following paragraph:

"*(cA)* Sections 49A(1), 52(2), 52(2A), 52(3), 55 and 56, read with the changes required by the context, apply to the conduct of a market inquiry, but for the purposes of this section, a reference in any of those sections to the Competition Tribunal, Chairperson of the Competition Tribunal or to a person 'presiding at a hearing' must be regarded as referring to the Competition Commission.";

(f) by the insertion after subsection (3) of the following subsection:

"(3A) For purposes of this Chapter—

(a) the Competition Commission may, within 20 business days of receipt of information claimed as confidential in terms of section 44(1), determine whether or not the information is *confidential information*;

(b) if the Competition Commission determines that the information is confidential, it may, within five business days, make an appropriate determination concerning access to that information by any person;

(c) before making the decision in paragraph *(a)* or *(b)*, the Competition Commission must give the party claiming the information to be confidential, notice of its intention to make its determination and consider the representations, if any, made to it by that person;

(d) any person aggrieved by the determination of the Competition Commission in terms of this subsection may within 15 business days of the determination, appeal against the determination to the Competition Tribunal.";

Wysiging van artikel 43B van Wet 89 van 1998, soos gewysig deur artikel 6 van Wet 1 van 2009

24. Artikel 43B van die Hoofwet word hierby gewysig—

(a) deur die opskrif deur die volgende opskrif te vervang:

“**Inisiëring en doen van markondersoeke**”;

(b) deur subartikel (1) deur die volgende subartikel te vervang:

“(1) *(a)* Die Mededingingskommissie, handelend binne sy funksies uiteengesit in artikel 21(1), **[en op sy eie inisiatief, of in antwoord op ’n versoek van die *Minister*,]** kan te eniger tyd ’n markondersoek doen, behoudens subartikels (2) tot **[(4)]** (6)—

(i) indien hy rede het om te glo dat enige kenmerk of kombinasie van kenmerke van ’n mark vir enige *goedere of dienste* mededinging in daardie mark verhoed, verwring of beperk; of

(ii) om die oogmerke van *hierdie Wet* te bereik.

(b) Die *Minister*, ná oorleg met die Mededingingskommissie en ná oorweging van die faktore in subparagrawe *(a)*(i) en (ii), kan vereis dat die Mededingingskommissie ’n markondersoek beoog in paragraaf *(a)* binne ’n gespesifiseerde tydperk doen.”;

(c) deur subartikel (2) deur die volgende subartikel te vervang:

“(2) Die Mededingingskommissie moet, ten minste 20 besigheidsdae voor die aanvang van ’n markondersoek, ’n kennisgewing in die *Staatskoerant* publiseer wat die instelling van ’n markondersoek aankondig, waarin die verwysingsraamwerk van die markondersoek uiteengesit word en waarin lede van die publiek genooi word om **[inligting]** skriftelike vertoë aan die markondersoek te verskaf.”;

(d) deur die volgende subartikels ná subartikel (2) in te voeg:

“(2A) Voor publikasie van die kennisgewing in subartikel (2) bedoel, moet die Mededingingskommissie die tersaaklike *regulerende owerheid* verwittig en raadpleeg indien die bedoelde markondersoek ’n sektor sal ondersoek waaroor die *regulerende owerheid* ingevolge enige openbare *regulasie* jurisdiksie het.

(2B) Die Mededingingskommissie moet ’n adjunkkommissaris in artikel 23(2)*(b)* bedoel, aanstel om voor te sit oor ’n markondersoek en kan een of meer bykomende persone met gepaste kwalifikasies aanstel op die paneel wat die markondersoek doen.”;

(e) deur die volgende paragraaf ná paragraaf *(c)* in subartikel (3) in te voeg:

“*(cA)* Artikels 49A(1), 52(2), 52(2A), 52(3), 55 en 56, gelees met die veranderinge deur die samehang vereis, is van toepassing op die doen van ’n markondersoek, maar by die toepassing van hierdie artikel moet ’n verwysing in enige van daardie artikels na die Mededingingstribunaal of ’n ‘persoon wat by ’n verhoor voorsit’, geag word ’n verwysing na die Mededingingskommissie te wees.”;

(f) deur die volgende subartikel ná subartikel (3) in te voeg:

“(3A) By toepassing van hierdie Hoofstuk—

(a) kan die Mededingingskommissie binne 20 sakedae vanaf ontvangs van die inligting wat volgens aanspraak ingevolge artikel 44(1) vertroulik is, bepaal hetsy die inligting vertroulik is al dan nie;

(b) indien die Mededingingskommissie bepaal dat die inligting vertroulik is, kan hy, binne vyf sakedae, ’n gepaste bepaling aangaande toegang tot daardie inligting deur enige persoon maak;

(c) voor die neem van die besluit in paragraaf *(a)* of *(b)*, moet die Mededingingskommissie die party wat daarop aanspraak maak dat die inligting vertroulik is, kennis gee van sy voorneme om ’n bepaling te maak en die vertoë, indien enige, deur daardie persoon daaraan gemaak, oorweeg;

(d) enige persoon wat te na gekom voel deur die bepaling van die Mededingingskommissie ingevolge hierdie subartikel, kan binne 15 sakedae vanaf die bepaling, by die Mededingingstribunaal teen die bepaling appelleer.”;

(g) by the substitution for subsection (4) of the following subsection:

"(4) *(a)* The terms of reference required in terms of subsection (2) must include, at a minimum, a statement of the scope of the inquiry, and the time within which it is expected to be completed, which period may not exceed 18 months.

(b) The Competition Commission may apply to the *Minister* to extend for a reasonable period, the completion of a market inquiry beyond the period referred to in paragraph *(a)*."; and

(h) by the substitution for subsection (6) of the following subsection:

"(6) **[The]** Subject to subsections (4) and (5), the Competition Commission must complete a market inquiry by publishing a report contemplated in **[section 43C]** sections 43D and 43E, within the time set out in the terms of reference **[contemplated]** referred to in subsection (2).".

Repeal of section 43C of Act 89 of 1998

25. Section 43C of the principal Act is hereby repealed.

Insertion of sections 43C to 43G in Act 89 of 1998

26. The following sections are hereby inserted after section 43B of the principal Act:

"**Matters to be decided at market inquiry**

43C. (1) In a market inquiry, the Competition Commission must decide—

(a) whether any feature, including structure and levels of concentration, of each relevant market for any *goods or services* impedes, restricts or distorts competition within that market; and

(b) on the procedures to be followed at the market inquiry.

(2) In making its decision in terms of subsection (1)*(a)*, the Competition Commission must have regard to the impact of the adverse effect on competition on *small and medium businesses*, or *firms* controlled or owned by historically disadvantaged persons.

(3) If the Competition Commission decides that there is an adverse effect on competition, it must determine—

(a) the action that must be taken in terms of section 43D;

(b) whether it must make recommendations to any Minister, *regulatory authority* or affected *firm* to take action to remedy, mitigate or prevent the adverse effect on competition;

(c) if any action must be taken in terms of paragraph *(b)*, the action that must be taken in respect of what must be remedied, mitigated or prevented.

(4) In determining the matters in subsection (3), the Competition Commission must have regard to the need to achieve as comprehensive a solution as is reasonable and practicable.

Duty to remedy adverse effects on competition

43D. (1) Subject to the provisions of any law, the Competition Commission may, in relation to each adverse effect on competition, take action to remedy, mitigate or prevent the adverse effect on competition.

(2) The action taken in terms of subsection (1) may include a recommendation by the Competition Commission to the Competition Tribunal in terms of section 60(2)*(c)*, and the Competition Tribunal may make an appropriate order in relation thereto.

(3) The decision of the Competition Commission in terms of subsection (1) must be consistent with the decisions of its report unless there has been a material change in circumstances since the preparation of the report or the Competition Commission has a justifiable reason for deciding differently.

(g) deur subartikel (4) deur die volgende subartikel te vervang:

"(4) *(a)* Die verwysingsraamwerk ingevolge subartikel (2) vereis moet insluit, as minimum, 'n verklaring van die omvang van die ondersoek en die verwagte tyd van afhandeling, welke tydperk nie meer as 18 maande mag wees nie.

(b) Die Mededingingskommissie kan by die *Minister* aansoek doen dat die afhandeling van 'n markondersoek met 'n redelike tydperk ná die tydperk bedoel in paragraaf *(a)* verleng word."; en

(h) deur subartikel (6) deur die volgende subartikel te vervang:

"(6) **[Die]** Behoudens subartikels (4) en (5), moet die Mededingingskommissie **[moet]** 'n markondersoek afhandel deur publikasie van 'n verslag in **[artikel 43C]** artikels 43D en 43E beoog, binne die tyd uiteengesit in die verwysingsraamwerk in subartikel (2) **[beoog]** bedoel.".

Herroeping van artikel 43C van Wet 89 van 1998

25. Artikel 43C van die Hoofwet word hierby herroep.

Invoeging van artikels 43C to 43G in Wet 89 van 1998

26. Die volgende artikels word hierby ná artikel 43B van die Hoofwet ingevoeg:

"**Aangeleenthede wat by markondersoek beslis staan te word**

43C. (1) In 'n markondersoek, moet die Mededingingskommissie beslis—

(a) hetsy enige kenmerk, met inbegrip van struktuur en vlakke van konsentrasie, van elke tersaaklike mark vir enige *goedere of dienste* mededinging binne daardie mark belemmer, beperk of verwring; en

(b) oor die prosedures wat by die markondersoek gevolg moet word.

(2) By die vel van sy beslissing ingevolge subartikel (1)*(a)*, moet die Mededingingskommissie die impak van die nadelige uitwerking op mededinging op *klein- en mediumsake* of *firmas* beheer of besit deur histories benadeelde persone, in gedagte hou.

(3) Indien die Mededingingskommissie beslis dat daar 'n nadelige uitwerking op mededinging is, moet hy—

(a) die stappe bepaal wat ingevolge artikel 43D gedoen moet word;

(b) bepaal hetsy hy aanbevelings by enige minister, *regulerende owerheid* of geraakte *firma* moet doen om stappe te doen om die nadelige uitwerking op mededinging te remedieer, te versag of te voorkom;

(c) indien enige stappe ingevolge paragraaf *(b)* gedoen moet word, die stappe bepaal wat gedoen moet word ten opsigte van wat geremedieer, versag of voorkom moet word.

(4) By die bepaling van die aangeleenthede in subartikel (3), moet die Mededingingskommissie poog om die mees omvattende oplossing wat redelik en prakties is, te bereik.

Plig om nadelige uitwerking op mededinging te remedieer

43D. (1) Behoudens die bepalings van enige wet, kan die Mededingingskommissie, in verband met elke nadelige uitwerking op mededinging, stappe doen om die nadelige uitwerking op mededinging te remedieer, te versag of te voorkom.

(2) Die stappe ingevolge subartikel (1) gedoen, kan 'n aanbeveling ingevolge artikel 60(2)*(c)* deur die Mededingingskommissie aan die Mededingingstribunaal insluit, en die Mededingingstribunaal kan 'n gepaste bevel in verband daarmee gee.

(3) Die beslissing van die Mededingingskommissie ingevolge subartikel (1) moet bestaanbaar wees met die beslissings van sy verslag tensy omstandighede wesenlik verander het sedert die verslag voorberei is of die Mededingingskommissie 'n regverdigbare rede het om anders te beslis.

(4) Any action in terms of subsection (1) must be reasonable and practicable, taking into account relevant factors, including—
(a) the nature and extent of the adverse effect on competition;
(b) the nature and extent of the remedial action;
(c) the relation between the adverse effect on competition and the remedial action;
(d) the likely effect of the remedial action on competition in the market that is the subject of the market inquiry and any related markets;
(e) the availability of less restrictive means to remedy, mitigate or prevent the adverse effect on competition; and
(f) any other relevant factor arising from any information obtained by the Competition Commission during the market inquiry.

Outcome of market inquiry

43E. (1) Upon completing a market inquiry, the Competition Commission must publish a report of the inquiry in the *Gazette*, and must submit the report to the *Minister* with recommendations, which may include, but are not limited to—
(a) recommendations for new or amended policy, legislation or *regulations*; and
(b) recommendations to other regulatory authorities in respect of competition matters.

(2) Section 21(3), read with the changes required by the context, applies to a report to the *Minister* in terms of subsection (1).

(3) On the basis of information obtained during a market inquiry, the Competition Commission may—
(a) initiate a complaint and enter into a consent order with any *respondent*, in accordance with section 49D, with or without conducting any further investigation;
(b) initiate a complaint against any *firm* for further investigation, in accordance with Part C of Chapter 5;
(c) initiate and refer a complaint directly to the Competition Tribunal without further investigation;
(d) take any other action within its powers in terms of *this Act* recommended in the report of the market inquiry; or
(e) take no further action.

(4) Before the completion of the market inquiry, the Competition Commission must take appropriate steps to communicate, and where necessary on a confidential basis, to any person who is materially affected by any provisional finding, decision, remedial action or recommendation of the market inquiry in terms of this section and call for comments from them.

(5) The Competition Commission must have regard to any further information or submissions received in terms of subsection (4) when deciding the action or making the recommendation in terms of section 43D(1) and (2).

Appeals against decisions made under this Chapter

43F. (1) The *Minister*, or any person referred to in section 43G(1) who is materially and adversely affected by the determination of the Competition Commission in terms of section 43D, may, within the *prescribed* period, appeal against that determination to the Competition Tribunal in accordance with the Rules of the Competition Tribunal.

(2) In determining an appeal in terms of subsection (1), the Competition Tribunal may—
(a) confirm the determination of the Competition Commission;
(b) amend or set aside the determination, in whole or in part; or
(c) make any determination or order that is appropriate in the circumstances.

(4) Enige stappe ingevolge subartikel (1) gedoen, moet redelik en prakties wees, met inagneming van tersaaklike faktore, met inbegrip van—
(a) die aard en omvang van die nadelige uitwerking op mededinging;
(b) die aard en omvang van die remediërende stappe;
(c) die verhouding tussen die nadelige uitwerking op mededinging en die remediërende stap;
(d) die waarskynlike uitwerking van die remediërende stappe op mededinging in die mark wat die onderwerp van die markondersoek is, en enige verwante markte;
(e) die beskikbaarheid van minder beperkende middele om die nadelige uitwerking op mededinging te remedieer, te versag of te voorkom; en
(f) enige ander tersaaklike faktor wat voortspruit uit enige inligting tydens die markondersoek deur die Mededingingskommissie verkry.

Gevolg van markondersoek

43E. (1) By afhandeling van 'n markondersoek, moet die Mededingingskommissie 'n verslag oor die ondersoek in die *Staatskoerant* publiseer, en moet die verslag met aanbevelings aan die *Minister* voorlê, wat kan insluit, maar nie beperk is nie tot—
(a) aanbevelings vir nuwe of gewysigde beleid, wetgewing of *regulasies*; en
(b) aanbevelings aan ander regulerende owerhede ten opsigte van mededingingsaangeleenthede.

(2) Artikel 21(3), gelees met die veranderinge deur die samehang vereis, is van toepassing op 'n verslag aan die *Minister* ingevolge subartikel (1).

(3) Op grond van inligting tydens 'n markondersoek verkry, kan die Mededingingskommissie—
(a) 'n klagte inisieer en 'n toestemmingsbevel met enige *respondent* aangaan, ooreenkomstig artikel 49D, deur of sonder om enige verdere ondersoek te doen;
(b) 'n klagte teen enige *firma* inisieer vir verdere ondersoek, ooreenkomstig Deel C van Hoofstuk 5;
(c) 'n klagte inisieer en sonder verdere ondersoek direk na die Mededingingstribunaal verwys;
(d) enige ander stap binne sy bevoegdhede ingevolge *hierdie Wet* doen soos in die verslag oor die markondersoek aanbeveel; of
(e) geen verdere stappe doen nie.

(4) Voordat 'n markondersoek afgehandel word, moet die Mededingingskommissie gepaste stappe doen om enige persoon wat wesenlik geraak word deur enige voorlopige bevinding, beslissing, remediërende stappe of aanbeveling van die markondersoek, te verwittig, en waar nodig op 'n vertroulike grondslag, van die markondersoek ingevolge hierdie artikel en kommentaar van hulle vra.

(5) Die Mededingingskommissie moet enige verdere inligting of voorleggings ingevolge subartikel (4) in ag neem wanneer besluit word oor die stappe of wanneer aanbevelings gedoen word ingevolge artikel 43D(1) en (2).

Appèlle teen beslissings kragtens hierdie Hoofstuk gevel

43F. (1) Die *Minister*, of enige persoon in artikel 43G(1) bedoel wat wesenlik en nadelig deur die bepaling van die Mededingingskommissie ingevolge artikel 43D geraak is, kan binne die *voorgeskrewe* tydperk teen die bepaling van die Mededingingstribunaal appelleer ooreenkomstig die Reëls van die Mededingingstribunaal.

(2) By die bepaling van 'n appèl ingevolge subartikel (1), kan die Mededingingstribunaal—
(a) die bepaling van die Mededingingskommissie bevestig;
(b) die bepaling wysig of tersyde stel, in die geheel of gedeeltelik; of
(c) enige bepaling maak of bevel gee wat onder die omstandighede gepas is.

(3) If the Competition Tribunal sets aside the decision of the Competition Commission, in whole or in part, it may remit the matter, or part of the matter, to the Competition Commission for further inquiry in terms of this Chapter.

(4) Any remittal to the Competition Commission in terms of subsection (3) must be completed within six months from the date of the order of the Competition Tribunal.

(5) The Competition Tribunal may, on good cause shown, extend the period referred to in subsection (4) for one further period of six months.

(6) Any person referred to in subsection (1) who is aggrieved by a determination or order of the Competition Tribunal in terms of subsection (2) may appeal against that determination or order to the Competition Appeal Court.

Participation in and representations to market inquiry

43G. (1) In accordance with the procedures adopted by the inquiry, the following persons may participate in a market inquiry—

(a) *firms*, including *small and medium businesses*, in the market that is the subject of the inquiry;

(b) any *registered trade union* that represents a substantial number of employees or the employees or representatives of the employees if there are no *registered trade unions* at the *firms* referred to in paragraph *(a)*;

(c) officials and staff of the Competition Commission or witnesses, who in the opinion of the Commission, would substantially assist with the work of the inquiry;

(d) a *regulatory authority* referred to in section 82(1);

(e) the *Minister*;

(f) at the request of the *Minister*, any Minister responsible for the sector that includes, or is materially affected by, the market that is the subject of the inquiry; and

(g) any other person—

(i) who has a material interest in the market inquiry;

(ii) whose interest is, in the opinion of the Competition Commission, not adequately represented by another participant; and

(iii) who would, in the opinion of the Competition Commission, substantially assist with the work of the inquiry.

(2) The Competition Commission must take reasonable steps to promote the participation of *small and medium businesses*, who have a material interest in the inquiry and are, in the opinion of the Competition Commission, not adequately represented.

(3) Subject to the procedures and time periods adopted for the inquiry, any person may make representations to the market inquiry on any issue related to the terms of reference published in terms of section 43B(2).

(4) Subject to the procedures and time periods adopted for the inquiry, participants referred to in subsection (1) may be required to respond to surveys and questionnaires, requests for information and submissions issued by the Commission.''.

Amendment of section 44 of Act 89 of 1998, as substituted by section 15 of Act 39 of 2000

27. Section 44 of the principal Act is hereby amended—

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

''(2) From the time information comes into the possession of the Competition Commission, Competition Tribunal or *Minister* until a final determination has been made concerning that information, the Commission, Tribunal and *Minister* must treat as confidential, any information that is the subject of a claim in terms of this section.'';

(3) Indien die Mededingingstribunaal die beslissing van die Mededingingskommissie tersyde stel, in die geheel of gedeeltelik, kan hy die aangeleentheid, of deel van die aangeleentheid, na die Mededingingskommissie terugverwys vir verdere ondersoek ingevolge hierdie Hoofstuk.

(4) Enige terugverwysing na die Mededingingskommissie ingevolge subartikel (3), moet binne ses maande vanaf die datum van die bevel van die Mededingingstribunaal afgehandel wees.

(5) Die Mededingingstribunaal kan, by die aanvoer van goeie gronde, die tydperk in subartikel (4) bedoel met een verdere tydperk van ses maande verleng.

(6) Enige persoon in subartikel (1) bedoel wat te na gekom voel deur 'n bepaling of bevel van die Mededingingstribunaal ingevolge subartikel (2), kan by die Appèlhof vir Mededinging teen daardie bepaling of bevel appelleer.

Deelname en vertoë aan markondersoek

43G. (1) Ooreenkomstig die prosedures in die ondersoek gevolg, kan die volgende persone aan 'n markondersoek deelneem:

(a) *firmas*, met inbegrip van *klein- en mediumsake* in die mark wat die onderwerp van die ondersoek is;
(b) enige *geregistreerde vakbond* wat 'n wesenlike getal werknemers, of die werknemers of verteenwoordigers van die werknemers indien daar geen geregistreerde vakbonde by die *firmas* bedoel in paragraaf *(a)* is nie, verteenwoordig;
(c) beamptes en personeel van die Mededingingskommissie of getuies, wat na mening van die Kommissie wesenlik sal help met die werk van die ondersoek;
(d) 'n *regulerende owerheid* in artikel 82(1) bedoel;
(e) die *Minister*;
(f) op versoek van die *Minister*, enige minister verantwoordelik vir die sektor wat die mark wat die onderwerp van die ondersoek is, insluit of wesenlik geraak word deur die mark wat die onderwerp van die ondersoek is; en
(g) enigiemand anders—
  (i) wat 'n wesenlike belang by die markondersoek het;
  (ii) wie se belang, na mening van die Mededingingskommissie, nie voldoende deur 'n ander deelnemer verteenwoordig word nie; en
  (iii) wat, na mening van die Mededingingskommissie, wesenlik sal help met die werk van die ondersoek.

(2) Die Mededingingskommissie moet redelike stappe doen om die deelname van *klein- en mediumsake* te bevorder wat 'n wesenlike belang by die ondersoek het en wat, na mening van die Mededingingskommissie, nie voldoende verteenwoordig word nie.

(3) Behoudens die prosedures en tydperke vir die ondersoek aangeneem, kan enigiemand vertoë aan die markondersoek rig oor enige kwessie wat verband hou met die opdrag ingevolge artikel 43B(2) gepubliseer.

(4) Behoudens die prosedures en tydperke vir die ondersoek aangeneem, kan van die deelnemers in subartikel (1) bedoel, vereis word om te antwoord op opnames en vraelyste, versoeke vir inligting en voorleggings deur die Kommissie uitgereik.''.

Wysiging van artikel 44 van Wet 89 van 1998, soos vervang deur artikel 15 van Wet 39 van 2000

27. Artikel 44 van die Hoofwet word hierby gewysig—

(a) deur subartikel (2) deur die volgende subartikel te vervang:

''(2) Van die tyd wanneer inligting in besit van die Mededingingskommissie, Mededingingstribunaal of *Minister* kom totdat 'n finale beslissing oor daardie inligting gemaak is, moet die Kommissie, Tribunaal en *Minister* enige inligting wat aan 'n aanspraak ingevolge hierdie artikel onderhewig is, as vertroulik hanteer.'';

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

"(3) In respect of information submitted to the Competition Commission, the Competition Commission may—

(a) determine whether the information is *confidential information*; and

(b) if it finds that the information is confidential, make any appropriate determination concerning access to that information."; and

(c) by the addition after subsection (3) of the following subsections:

"(4) The Competition Commission may not make a determination in terms of subsection (3) before it has given the claimant the *prescribed* notice of its intention to make the determination and has considered the claimant's representations, if any.

(5) A person contemplated in subsection (1) who is aggrieved by the determination of the Competition Commission in terms of subsection (3) may, within the *prescribed* period of the Commission's decision, refer the decision to the Competition Tribunal.

(6) The Competition Tribunal may confirm or substitute the Competition Commission's determination or substitute it with another appropriate ruling.

(7) In respect of *confidential information* submitted to the Competition Tribunal, the Tribunal may—

(a) determine whether the information is *confidential information*; and

(b) if it finds that the information is confidential, make any appropriate determination concerning access to that information.

(8) A person aggrieved by the ruling of the Competition Tribunal in terms of subsection (6) or (7) may, within the *prescribed* period and in accordance with the Competition Appeal Court's rules—

(a) refer the Tribunal's ruling to the Competition Appeal Court, if the Tribunal grants leave to appeal; and

(b) petition the President of the Competition Appeal Court for leave to refer the Tribunal's ruling to the Competition Appeal Court, if the Tribunal refuses leave to appeal.

(9) Unless the Competition Commission, Competition Tribunal or Competition Appeal Court holds' otherwise, an appropriate determination concerning access to *confidential information* includes the disclosure of the information to the legal representatives and economic advisors of the person seeking access—

(a) in a manner determined by the circumstances; and

(b) subject to the provision of appropriate confidentiality undertakings.".

Substitution of section 45 of Act 89 of 1998

28. The following section is hereby substituted for section 45 of the principal Act:

"**Disclosure of information**

45. (1) A person who seeks access to information that is subject to a claim or determination that it is *confidential information* may apply to the Competition Tribunal in the prescribed manner and form, and the Competition Tribunal may—

(a) determine whether or not the information is *confidential information*; and

(b) if it finds that the information is confidential, make any appropriate order concerning access to that *confidential information*.

(2) **[Within 10 business days after an order of the Competition Tribunal is made in terms of section 44(3), a party concerned may appeal against that decision to the Competition Appeal Court, subject to its rules]** The provisions of section 44 (8), read with the changes required by the context, apply to the application referred to in subsection (1).

(b) deur subartikel (3) deur die volgende subartikel te vervang:

"(3) Ten opsigte van inligting aan die Mededingingskommissie voorgelê, kan die Mededingingskommissie—

(a) bepaal of die inligting *vertroulike inligting* is; en

(b) indien die Kommissie bevind dat die inligting vertroulik is, enige gepaste bepaling oor toegang tot daardie inligting maak."; en

(c) deur die volgende subartikels ná subartikel (3) by te voeg:

"(4) Die Mededingingskommissie kan nie 'n bepaling ingevolge subartikel (3) maak voordat hy die eiser die *voorgeskrewe* kennis gegee het van sy voorneme om die bepaling te maak en die eiser se vertoë, indien enige, oorweeg het nie.

(5) 'n Persoon in subartikel (1) beoog wat te na gekom voel deur die bepaling van die Mededingingskommissie ingevolge subartikel (3) kan, binne die *voorgeskrewe* tydperk van die Kommissie se beslissing, die beslissing na die Mededingingstribunaal verwys.

(6) Die Mededingingstribunaal kan die Mededingingskommissie se bepaling bevestig of vervang of dit met 'n ander gepaste uitspraak vervang.

(7) Ten opsigte van *vertroulike inligting* aan die Mededingingstribunaal voorgelê, kan die Tribunaal—

(a) bepaal hetsy die inligting *vertroulike inligting* is; en

(b) indien hy bevind dat die inligting vertroulik is, enige gepaste bepaling aangaande toegang tot daardie inligting maak.

(8) 'n Persoon wat te na gekom voel deur die uitspraak van die Mededingingstribunaal ingevolge subartikels (6) of (7) kan, binne die *voorgeskrewe* tydperk en ooreenkomstig die Appèlhof vir Mededinging se reëls—

(a) die Tribunaal se uitspraak na die Appèlhof vir Mededinging verwys, indien die Tribunaal verlof tot appèl toestaan; en

(b) 'n versoekskrif aan die president van die Appèlhof vir Mededinging rig vir verlof om die Tribunaal se uitspraak na die Appèlhof vir Mededinging te verwys, indien die Tribunaal verlof tot appèl weier.

(9) Tensy die Mededingingskommissie, Mededingingstribunaal of Appèlhof vir Mededinging anders bevind, sluit 'n gepaste bepaling aangaande toegang tot *vertroulike inligting* die bekendmaking van die inligting aan regsverteenwoordigers en ekonomiese adviseurs van die persoon wat toegang verlang, in—

(a) op 'n wyse deur die omstandighede bepaal; en

(b) behoudens die voorsiening van gepaste vertroulikheidsondernemings.".

Vervanging van artikel 45 van Wet 89 van 1998

28. Die volgende artikel word hierby deur artikel 45 van die Hoofwet vervang:

"**Bekendmaking van inligting**

45. (1) 'n Persoon wat toegang tot inligting versoek wat onderhewig is aan 'n aanspraak of bepaling dat dit *vertroulike inligting* is, kan op die *voorgeskrewe* wyse en in die *voorgeskrewe* vorm by die Mededingingstribunaal aansoek doen en die Mededingingstribunaal kan—

(a) bepaal of die inligting vertroulike inligting is of nie; en

(b) indien hy bevind dat die inligting vertroulik is, enige toepaslike bevel gee rakende toegang tot daardie *vertroulike inligting*.

(2) **[Binne 10 besigheidsdae nadat 'n bevel van die Mededingingstribunaal ingevolge artikel 44(3) gegee is, kan 'n betrokke party teen daardie beslissing na die Appèlhof vir Mededinging appelleer, behoudens sy reëls]** Die bepalings van artikel 44(8), gelees met die veranderinge deur die samehang vereis, is van toepassing op die aansoek in subartikel (1) bedoel.

(3) **[From the time information comes into the possession of the Competition Commission or Competition Tribunal until a final determination has been made concerning it, the Commission and Tribunal must treat as confidential, any information that—**

(a) **the Competition Tribunal has determined is *confidential information*; or**

(b) **is the subject of a claim in terms of this section]** Subject to section 44(2) and for the purposes of their *participation* in proceedings contemplated in *this Act*, including merger proceedings—

(a) the *Minister* may have access to a *firm's confidential information*, which information may only be used for the purposes of *this Act* unless required to be disclosed in terms of any other law or the *Minister* has reasonable grounds to believe the information discloses a potential criminal offence; and

(b) any other relevant Minister and any relevant *regulatory authority* may have access to a *firm's confidential information* unless the Tribunal determines otherwise, which information may only be used for the purposes of *this Act* unless required to be disclosed in terms of any other law or the Minister has reasonable grounds to believe the information discloses a potential criminal offence.

(4) Once a final determination has been made concerning any information, it is confidential only to the extent that it has been accepted to be *confidential information* by the Competition Tribunal or the Competition Appeal Court.''.

Amendment of section 49D of Act 89 of 1998, as inserted by section 15 of Act 39 of 2000

29. Section 49D of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

''(1) If, during, on or after the completion of the investigation of a complaint or a market inquiry, the Competition Commission and the *respondent*, or any person that is the subject of action by the Competition Commission in terms of section 43E, agree on the terms of an appropriate order, the Competition Tribunal, without hearing any evidence, may confirm that *agreement* as a consent order in terms of section 58(1)*(b)*.''.

Insertion of section 49E in Act 89 of 1998

30. The following section is hereby inserted after section 49D of the principal Act:

''**Leniency**

49E. (1) The Competition Commission must develop, and publish in the *Gazette*, a policy on leniency, including the types of leniency that may be granted, criteria for granting leniency, the procedures to apply for leniency and the possible conditions that may be attached to a decision to grant leniency.

(2) The Competition Commission may grant leniency, with or without conditions, in terms of its leniency policy.''.

Amendment of section 54 of Act 89 of 1998, as amended by section 15 of Act 39 of 2000

31. Section 54 of the principal Act is hereby amended by the insertion after paragraph *(d)* of the following paragraph:

''*(d*A) amend or withdraw any direction or summons referred to in subsection *(a)*, *(c)* or *(d)*;''.

This gazette is also available free online at www.gpwonline.co.za

(3) **[Vanaf die tydstip waarop inligting tot die beskikking van die Mededingingskommissie of Mededingingstribunaal kom totdat 'n finale beslissing met betrekking daartoe gemaak is, moet die Kommissie en die Tribunaal enige inligting as vertroulik hanteer wat—**

(a) **deur die Mededingingstribunaal as *vertroulike inligting* bevind is; of**

(b) **die onderwerp van 'n aanspraak ingevolge hierdie artikel is]** Behoudens artikel 44(2) en vir die doeleindes van hul *deelname* aan verrigtinge in *hierdie Wet* beoog, met inbegrip van samesmeltingsverrigtinge—

(a) kan die *Minister* toegang tot 'n *firma* se *vertroulike inligting* hê, welke inligting slegs vir die doeleindes van *hierdie Wet* gebruik mag word tensy dit ingevolge enige ander wet bekend gemaak moet word of indien die *Minister* redelike gronde het om te glo dat die inligting 'n potensiële strafregtelike misdryf ontbloot; en

(b) enige ander tersaaklike Minister en enige tersaaklike *regulerende owerheid* kan toegang tot 'n *firma* se *vertroulike inligting* kry tensy die Tribunaal anders bepaal, welke inligting slegs vir die doeleindes van *hierdie Wet* gebruik mag word tensy dit ingevolge enige ander wet bekend gemaak moet word of as die Minister redelike gronde het om te glo dat die inligting 'n potensiële strafregtelike misdryf ontbloot.

(4) Wanneer 'n finale beslissing rakende enige inligting gemaak is, is dit slegs vertroulik in die mate wat die Mededingingstribunaal of die Appèlhof vir Mededinging dit as *vertroulike inligting* aanvaar het.''.

Wysiging van artikel 49D van Wet 89 van 1998, soos ingevoeg deur artikel 15 van Wet 39 van 2000

29. Artikel 49D van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

''(1) Indien, gedurende, by of na die afhandeling van die ondersoek van 'n klagte of 'n markondersoek, die Mededingingskommissie en die *respondent*, of enige persoon wat die onderwerp van stappe deur die Mededingingskommissie ingevolge artikel 43E is, saamstem oor die bepalings van 'n toepaslike bevel, kan die Mededingingstribunaal, sonder om enige getuienis aan te hoor, daardie *ooreenkoms* as 'n toestemmingsbevel ingevolge artikel 58(1)*(b)* bekragtig.''.

Invoeging van artikel 49E in Wet 89 van 1998

30. Die volgende artikel word hierby ná artikel 49D van die Hoofwet ingevoeg:

''**Toegeeflikheid**

49E. (1) Die Mededingingskommissie moet 'n beleid oor toegeeflikheid ontwikkel en in die *Staatskoerant* publiseer, met inbegrip van die tipes toegeeflikheid wat toegestaan kan word, maatstawwe vir die toestaan van toegeeflikheid en die moontlike voorwaardes wat aan 'n besluit om toegeeflikheid toe te staan, geheg kan word.

(2) Die Mededingingskommissie kan toegeeflikheid toestaan, met of sonder voorwaardes, ingevolge sy toegeeflikheidsbeleid.''.

Wysiging van artikel 54 van Wet 89 van 1998, soos gewysig deur artikel 15 van Wet 39 van 2000

31. Artikel 54 van die Hoofwet word hierby gewysig deur die volgende paragraaf ná paragraaf *(d)* in te voeg:

''*(d*A) enige opdrag of dagvaarding bedoel in subartikel *(a)*, *(c)* of *(d)*, wysig of intrek;''.

Amendment of section 58 of Act 89 of 1998, as amended by section 15 of Act 39 of 2000 and section 9 of Act 1 of 2009

32. Section 58 of the principal Act is hereby amended—

(a) by the substitution in subsection (1)*(a)* for the words preceding subparagraph (i) of the following words:

"make an appropriate order in relation to a *prohibited practice* or an appeal referred to in section 43F, including—"; and

(b) by the substitution in subsection (1)*(c)* for the words preceding subparagraph (i) of the following words:

"subject to sections 13(6) **[and]**, 14(2) and 43B(4)*(b)*, condone, on good cause shown, any non-compliance of—".

Amendment of section 59 of Act 89 of 1998, as amended by section 10 of Act 1 of 2009

33. Section 59 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph *(a)* of the following paragraph:

"*(a)* for a *prohibited practice* in terms of section **[4(1)*(b)*, 5(2) or 8*(a)*, *(b)* or *(d)*]** 4(1), 5(1) and (2), 8(1), 8(4), 9(1) or 9(1A);";

(b) by the deletion of paragraph *(b)*;

(c) by the insertion after subsection (2) of the following subsection:

"(2A) An administrative penalty imposed in terms of subsection (1) may not exceed 25 per cent of the *firm's* annual turnover in the Republic and its exports from the Republic during the *firm's* preceding financial year if the conduct is substantially a repeat by the same *firm* of conduct previously found by the Competition Tribunal to be a *prohibited practice*.";

(d) by the substitution for subsection (3) of the following subsection:

"(3) When determining an appropriate penalty, the Competition Tribunal must consider the following factors:

(a) the nature, duration, gravity and extent of the contravention;
(b) any loss or damage suffered as a result of the contravention;
(c) the behaviour of the *respondent*;
(d) the market circumstances in which the contravention took place, including whether, and to what extent, the contravention had an impact upon *small and medium businesses* and *firms* owned or controlled by historically disadvantaged persons;
(e) the level of profit derived from the contravention;
(f) the degree to which the *respondent* has co-operated with the Competition Commission and the Competition Tribunal; **[and]**
(g) whether the *respondent* has previously been found in contravention of *this Act*; and
(h) whether the conduct has previously been found to be a contravention of *this Act* or is substantially the same as conduct regarding which Guidelines have been issued by the Competition Commission in terms of section 79."; and

(e) by the insertion after subsection (3) of the following subsection:

"(3A) In determining the extent of the administrative penalty to be imposed, the Competition Tribunal may—

(a) increase the administrative penalty referred to in subsections (2) and (2A) to include the turnover of any *firm* or *firms* that control the *respondent*, where the controlling *firm* or *firms* knew or should reasonably have known that the *respondent* was engaging in the prohibited conduct; and
(b) on notice to the controlling *firm* or *firms*, order that the controlling *firm* or *firms* be jointly and severally liable for the payment of the administrative penalty imposed.".

Wysiging van artikel 58 van Wet 89 van 1998, soos gewysig deur artikel 15 in Wet 39 van 2000 en artikel 9 van Wet 1 van 2009

32. Artikel 58 van die Hoofwet word hierby gewysig—

(a) deur in subartikel (1)*(a)* die woorde wat subparagraaf (i) voorafgaan deur die volgende woorde te vervang:

“ ’n toepaslike bevel met betrekking tot ’n *verbode praktyk* of ’n appèl bedoel in artikel 43F gee, met inbegrip daarvan om—”; en

(b) deur in subartikel (1)*(c)* die woorde wat subparagraaf (i) voorafgaan deur die volgende woorde te vervang:

“behoudens artikels 13(6) **[en]**, 14(2) en 43B(4)*(b)*, op goeie grond aangetoon, enige nie-voldoening aan—”.

Wysiging van artikel 59 van Wet 89 van 1998, soos gewysig deur artikel 10 van Wet 1 van 2009

33. Artikel 59 van die Hoofwet word hierby gewysig—

(a) deur paragraaf *(a)* in subartikel (1) deur die volgende paragraaf te vervang:

“*(a)* vir ’n *verbode praktyk* ingevolge artikel **[4(1)*(b)*, 5(2), 8*(a)*, *(b)* of *(d)*]** 4(1), 5(1) en (2), 8(1), 8(4), 9(1) of 9(1A);”;

(b) deur paragraaf *(b)* te skrap;

(c) deur subartikel (2) deur die volgende subartikel te vervang:

“(2A) ’n Administratiewe boete ingevolge subartikel (1) opgelê, mag nie 25 persent van die *firma* se jaarlikse omset in die Republiek en die *firma* se uitvoere uit die Republiek tydens die *firma* se voorafgaande boekjaar oorskry nie indien die gedrag wesenlik ’n herhaling deur dieselfde *firma* is van gedrag wat voorheen deur die Mededingingstribunaal bevind is ’n *verbode praktyk* te wees.”;

(d) deur subartikel (3) deur die volgende subartikel te vervang:

“(3) Wanneer ’n toepaslike boete deur die Mededingingstribunaal bepaal word, moet hy die volgende faktore oorweeg:

(a) Die aard, duur, erns en omvang van die oortreding;

(b) enige verlies of skade gely as gevolg van die oortreding;

(c) die gedrag van die *respondent*;

(d) die markomstandighede waarin die oortreding plaasgevind het, met inbegrip van hetsy, en tot welke mate, die oortreding ’n impak het op *klein- en mediumsake* en *firmas* deur histories benadeelde persone besit en beheer;

(e) die vlak van wins uit die oortreding verkry;

(f) die graad waarin die *respondent* met die Mededingingskommissie en die Mededingingstribunaal saamgewerk het; **[en]**

(g) of voorheen bevind is dat die *respondent hierdie Wet* oortree het; en

(h) of die gedrag wat voorheen bevind is in stryd met *hierdie Wet* te wees, wesenlik dieselfde is as gedrag waaroor riglyne ingevolge artikel 79 deur die Mededingingskommissie uitgereik is.”; en

(e) deur die volgende subartikel ná subartikel (3) in te voeg:

“(3A) By die bepaling van die omvang van die administratiewe boete wat opgelê staan te word, kan die Mededingingskommissie—

(a) die administratiewe boete in subartikels (2) en (2A) bedoel verhoog om die omset van enige *firma* of *firmas* wat die *respondent* beheer, in te sluit, waar die beherende *firma* of *firmas* geweet het of redelikerwys moes geweet het dat die *respondent* met die verbode gedrag besig was; en

(b) by kennisgewing aan die beherende *firma* of *firmas*, beveel dat die beherende *firma* of *firmas* gesamentlik of afsonderlik vir betaling van die opgelegde administratiewe boete aanspreeklik is.”.

Amendment of section 60 of Act 89 of 1998, as amended by section 15 of Act 39 of 2000

34. Section 60 of the principal Act is hereby amended—

(a) by the substitution in subsection (2) for paragraph *(b)* of the following paragraph:

"*(b)* the *prohibited practice*—

(i) cannot adequately be remedied in terms of another provision of *this Act*; **[or]**

(ii) is substantially a repeat by that *firm* of conduct previously found by the Tribunal to be a *prohibited practice***[.]**; or";

(b) by the addition in subsection (2) of the following paragraph:

"*(c)* after a market inquiry conducted in terms of Chapter 4A, the Competition Commission finds that there is an adverse effect on competition in the relevant market and makes a recommendation to the Competition Tribunal that such an order is appropriate.";

(c) by the substitution for subsection (3) of the following subsection:

"(3) An order made by the Competition Tribunal in terms of subsection (2), except an order made in terms of section 43D(2), is of no force or effect unless confirmed by the Competition Appeal Court."; and

(d) by the substitution for subsection (4) of the following subsection:

"(4) An order made in terms of subsection (1) or (2) may set a time for compliance, and any other terms that the Competition Tribunal considers appropriate, having regard to the commercial interests of the party concerned and the purposes of *this Act*.".

Amendment of section 62 of Act 89 of 1998, as amended by section 15 of Act 39 of 2000

35. Section 62 of the principal Act is hereby amended—

(a) by the insertion after subsection (2) of the following subsection:

"(2A) Despite subsections (1)*(a)* and (2)*(b)*, neither the Competition Tribunal nor the Competition Appeal Court has jurisdiction over matters regulated by section 18A, except section 18A(14)."; and

(b) by the substitution for subsection (4) of the following subsection:

"(4) An appeal from a decision of the Competition Appeal Court in respect of a matter within its jurisdiction in terms of subsection (2) lies to the **[Supreme Court of Appeal or]** Constitutional Court, subject to section 63 and **[their]** its respective rules.".

Amendment of section 63 of Act 89 of 1998, as amended by section 15 of Act 39 of 2000

36. Section 63 of the principal Act is hereby amended—

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

"(2) **[An]** Subject to the Constitution and despite any other law, an appeal in terms of section 62(4) may be brought to the **[Supreme Court of Appeal or, if it concerns a constitutional matter, to the Constitutional Court, only—**

***(a)* with leave of the Competition Appeal Court; or**

***(b)* if the Competition Appeal Court refuses leave, with the leave of the Supreme Court of Appeal or the Constitutional Court, as the case may be]** Constitutional Court with the leave of the Constitutional Court.";

(b) by the substitution for subsection (4) of the following subsection:

"(4) If the Competition Appeal Court, when refusing leave to appeal, made an order of costs against the applicant, **[the Supreme Court of Appeal or]** the Constitutional Court may vary that order on granting leave to appeal."; and

(c) by the deletion of subsections (7) and (8).

Wysiging van artikel 60 van Wet 89 van 1998, soos gewysig deur artikel 15 van Wet 39 van 2000

34. Artikel 60 van die Hoofwet word hierby vervang—

(a) deur in subartikel (2) paragraaf *(b)* deur die volgende paragraaf te vervang:

“*(b)* die *verbode praktyk*—

(i) nie genoegsaam ingevolge enige ander bepaling van *hierdie Wet* goedgemaak kan word nie; **[of]**

(ii) wesenlik ’n herhaling is deur daardie *firma* van optrede wat voorheen deur die Tribunaal bevind is ’n *verbode praktyk* te wees**[.]**; of”;

(b) deur die volgende paragraaf in subartikel (2) by te voeg:

“*(c)* die Mededingingskommissie ná ’n markondersoek ingevolge Hoofstuk 4A gedoen, bevind dat daar ’n nadelige uitwerking op mededinging in die tersaaklike mark is en ’n aanbeveling aan die Mededingingstribunaal doen dat sodanige bevel gepas is.”;

(c) deur subartikel (3) deur die volgende subartikel te vervang:

“(3) ’n Bevel deur die Mededingingstribunaal ingevolge subartikel (2) gegee, met uitsondering van ’n bevel ingevolge subartikel 43D(2) gegee, is van nul en gener waarde tensy dit deur die Appèlhof vir Mededinging bekragtig is.”; en

(d) deur subartikel (4) deur die volgende subartikel te vervang:

“(4) ’n Bevel ingevolge subartikel (1) of (2) gegee, kan ’n tyd vir nakoming stel, en enige ander voorwaardes wat die Mededingingstribunaal toepaslik vind, met inagneming van die handelsbelange van die betrokke party en die doeleindes van *hierdie Wet*.”.

Wysiging van artikel 62 van Wet 89 van 1998, soos gewysig deur artikel 15 van Wet 39 van 2000

35. Artikel 62 van die Hoofwet word hierby gewysig—

(a) deur die volgende subartikel ná subartikel (2) in te voeg:

“(2A) Ondanks subartikels (1)*(a)* en (2)*(b)*, het nóg die Mededingingstribunaal nóg die Appèlhof vir Mededinging jurisdiksie oor aangeleenthede wat by artikel 18A gereël word, met uitsondering van artikel 18A(14).”; en

(b) deur subartikel (4) deur die volgende subartikel te vervang:

“(4) ’n Appèl teen ’n beslissing van die Appèlhof vir Mededinging ten opsigte van ’n aangeleentheid binne sy regsbevoegdheid ingevolge subartikel (2), berus by die **[Hoogste Hof van Appèl of]** Konstitusionele Hof, behoudens artikel 63 en **[hul]** sy onderskeie reëls.”.

Wysiging van artikel 63 van Wet 89 van 1998, soos gewysig deur artikel 15 van Wet 39 van 2000

36. Artikel 63 van die Hoofwet word hierby gewysig—

(a) deur subartikel (2) deur die volgende subartikel te vervang:

“(2) Behoudens die Grondwet en ondanks enige ander wetsbepaling, kan ’n **[Appèl]** appèl ingevolge artikel 62(4) **[kan]** by die **[Hoogste Hof van Appèl aanhangig gemaak word of, indien dit met ’n grondwetlike aangeleentheid verband hou, by die Konstitusionele Hof, alleenlik—**

***(a)* met verlof van die Appèlhof vir Mededinging; of**

***(b)* indien die Appèlhof vir Mededinging verlof weier, met verlof van die Hoogste Hof van Appèl of die Konstitusionele Hof, na gelang van die geval]** Konstitusionele Hof met die verlof van die Konstitusionele Hof aanhangig gemaak word.”;

(b) deur subartikel (4) deur die volgende subartikel te vervang:

“(4) Indien die Appèlhof vir Mededinging, wanneer verlof tot appèl geweier word, ’n kostebevel teen die applikant gegee het, kan die **[Hoogste Hof van Appèl of die]** Konstitusionele Hof daardie bevel wysig by verlening van verlof tot appèl.”; en

(c) deur subartikels (7) en (8) te skrap.

Amendment of section 67 of Act 89 of 1998

37. Section 67 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) A complaint in respect of a *prohibited practice* that ceased more than three years before the complaint was initiated may not be **[initiated more than three years after the practice has ceased]** referred to the Competition Tribunal.".

Amendment of section 74 of Act 89 of 1998, as amended by section 13 of Act 1 of 2009

38. Section 74 of the principal Act is hereby amended by the substitution for paragraph *(b)* of the following paragraph:

"*(b)* in any other case, to a fine not exceeding **[R2 000-00]** R10 000-00 or to imprisonment for a period not exceeding six months, or to both a fine and imprisonment.".

Amendment of section 78 of Act 89 of 1998

39. The following section is hereby substituted for section 78 of the principal Act:

"(1) The *Minister*, by notice in the *Gazette*, may make *regulations* that are required to give effect to the purposes of *this Act*.

(2) Before making the *regulations* referred to in sections 4, 5, 8, and 9, the *Minister* must consult the Competition Commission and publish a notice in the *Gazette*—

(a) stating that draft regulations have been prepared;
(b) specifying the place, which may include a website, where a copy of the draft regulations may be obtained;
(c) inviting interested parties to submit written comments on the draft regulations within a reasonable period; and
(d) consider any comments submitted within the period contemplated in paragraph *(c)*.".

Amendment of section 79 of Act 89 of 1998

40. The following section is hereby substituted for section 79 of the principal Act:

"**Guidelines**

79. (1) The Competition Commission may prepare, amend, replace and issue guidelines to indicate the Commission's policy approach to any matter within its jurisdiction in terms of *this Act*.

(2) A guideline **[prepared in terms of]** referred to in subsection (1) **[—**
(a)*]** must be published in the *Gazette[; but**
(b) **is not binding on the Competition Commission, the Competition Tribunal or the Competition Appeal Court in the exercise of their respective discretion, or their interpretation of *this Act*]**.

(3) Before the Competition Commission issues a guideline referred to in subsection (1), the Competition Commission must—

(a) publish a notice in the *Gazette*—
(i) stating that a draft guideline has been prepared;
(ii) stating the place, which may include the Competition Commission's website, where a copy of the draft guideline may be obtained; and
(iii) inviting interested parties to submit written representations on the draft guideline within a reasonable period; and
(b) consider any representations which were submitted within the period specified in the notice.

(4) A guideline referred to in subsection (1) is not binding, but any person interpreting or applying *this Act* must take it into account.".

Wysiging van artikel 67 van Wet 89 van 1998

37. Artikel 67 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

"(1) 'n Klagte met betrekking tot 'n *verbode praktyk* wat gestaak is drie jaar voor die klagte ingestel is, mag nie na **[meer as drie jaar nadat die praktyk opgehou het, ingestel word nie]** die Mededingingstribunaal verwys word nie.".

Wysiging van artikel 74 van Wet 89 van 1998, soos gewysig deur artikel 13 van Wet 1 van 2009

38. Artikel 74 van die Hoofwet word hierby gewysig deur paragraaf *(b)* deur die volgende paragraaf te vervang:

"*(b)* in enige ander geval, met 'n boete van hoogstens **[R2 000-00]** R10 000-00 of met gevangenisstraf vir 'n tydperk van hoogstens ses maande, of met beide die boete en gevangenisstraf.".

Wysiging van artikel 78 van Wet 89 van 1998

39. Artikel 78 van die Hoofwet word hierby deur die volgende artikel vervang:

"(1) Die *Minister* kan, by kennisgewing in die *Staatskoerant*, *regulasies* uitvaardig wat nodig is om uitvoering te gee aan die oogmerke van *hierdie Wet*.

(2) Voordat *regulasies* bedoel in artikels 4, 5, 8 en 9 gemaak word, moet die *Minister* met die Mededingingskommissie oorleg pleeg en 'n kennisgewing in die *Staatskoerant* publiseer—

(a) wat stel dat konsepregulasies voorberei is;

(b) wat die plek spesifiseer, wat 'n webwerf kan insluit, waar 'n afskrif van die konsepregulasies verkry kan word;

(c) wat belangstellende partye uitnooi om skriftelike kommentaar oor die konsepregulasies binne 'n redelike tydperk voor te lê; en

(d) enige kommentaar oorweeg wat binne die tydperk in paragraaf *(c)* bedoel, voorgelê is.".

Wysiging van artikel 79 van Wet 89 van 1998

40. Artikel 79 van die Hoofwet word hierby deur die volgende artikel vervang:

"**Riglyne**

79. (1) Die Mededingingskommissie kan riglyne voorberei, wysig, vervang en uitreik om aan te dui wat die Kommissie se beleidsbenadering is tot enige aangeleentheid binne sy regsbevoegdheid ingevolge *hierdie Wet*.

(2) 'n Riglyn **[voorberei ingevolge]** in subartikel (1) bedoel**[—**

***(a)*]** moet in die *Staatskoerant* gepubliseer word**[; maar**

***(b)* is nie bindend op die Mededingingskommissie, die Mededingingstribunaal of die Appèlhof vir Mededinging in die uitoefening van hul onderskeie diskresies of hul uitleg van *hierdie Wet* nie]**.

(3) Voordat die Mededingingskommissie 'n riglyn bedoel in subartikel (1), uitreik, moet die Mededingingskommissie—

(a) 'n kennisgewing in die *Staatskoerant* publiseer—

(i) wat stel dat 'n konsepriglyn voorberei is;

(ii) wat die plek, wat die Mededingingskommissie se webwerf kan insluit, aandui waar 'n afskrif van die konsepriglyn beskikbaar is; en

(iii) waarin 'n oproep op belanghebbende partye gedoen word om skriftelike vertoë oor die konsepriglyn binne 'n redelike tydperk voor te lê; en

(b) enige vertoë oorweeg wat binne die tydperk in die kennisgewing gespesifiseer, voorgelê is.

(4) 'n Riglyn in subartikel (1) bedoel is nie bindend nie, maar enige persoon wat *hierdie Wet* uitlê of toepas, moet dit in aanmerking neem.".

Insertion of section 79A in Act 89 of 1998

41. The following section is hereby inserted after section 79 of the principal Act:

"**Advisory opinions of Commission**

79A. The *Minister* may, after consultation with the Competition Commission, issue *regulations* to provide for non-binding advisory opinions to be issued by the Competition Commission, including the fees payable in respect of a non-binding opinion.".

Amendment of section 82 of Act 89 of 1998

42. Section 82 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph *(a)* of the following words:

"A *regulatory authority* which, in terms of any *public regulation*, has jurisdiction in respect of conduct regulated in terms of Chapter 2 or 3 or on matters set out in Chapter 4A within a particular sector—".

Amendment of section 83 of Act 89 of 1998

43. Section 83 of the principal Act is hereby amended by the addition after subsection (2) of the following subsection:

"(3) Until a leniency policy referred to in section 49E is published in the *Gazette*, the leniency policy published in Government *Gazette* No. 31064 (GN 628 of 23 May 2008), and amended in Government *Gazette* No. 35139 (GN 212 of 16 March 2012), remains in effect.".

Substitution of certain expression in Act 89 of 1998

44. The principal Act is hereby amended by the substitution for the expression *"excessive price"*, wherever it occurs, of the expression "excessive price".

Amendment of Arrangement of Sections of Act 89 of 1998

45. The Arrangement of Sections of the principal Act is hereby amended—

(a) by the substitution for item 9 of the following item:
"9. Price discrimination by dominant firm as seller prohibited";

(b) by the substitution for item 15 of the following item:
"15. Revocation of merger approval and enforcement of merger conditions";

(c) by the insertion after item 18 of the following item:
"18A. Intervention in merger proceedings involving *foreign acquiring firm*";

(d) by the insertion after item 21 of the following item:
"21A. Impact Studies";

(e) by the substitution for item 43B of the following item:
"43B. Initiating and conducting market inquiries";

(f) by the substitution for item 43C of the following item:
"43C. Matters to be decided at market inquiry";

(g) by the insertion after item 43C of the following items:
"43D. Duty to remedy adverse effects on competition
43E. Outcome of market inquiry
43F. Appeals against decisions made under this Chapter
43G. Participation in and representations to market inquiry";

(h) by the insertion after item 49D of the following item:
"49E. Leniency"; and

(i) by the insertion after item 79 of the following item:
"79A. Advisory opinions of Commission".

This gazette is also available free online at www.gpwonline.co.za

Invoeging van artikel 79A in Wet 89 van 1998

41. Die volgende artikel word hierby ná artikel 79 van die Hoofwet ingevoeg:

"**Adviserende opinies van Kommissie**

79A. Die *Minister* kan, ná oorleg met die Mededingingskommissie, *regulasies* uitvaardig om voorsiening te maak vir niebindende adviserende opinies wat deur die Mededingingskommissie uitgereik staan te word, met inbegrip van die gelde betaalbaar ten opsigte van 'n niebindende opinie.".

Wysiging van artikel 82 van Wet 89 van 1998

42. Artikel 82 van die Hoofwet word hierby gewysig deur in subartikel (1) die woorde wat paragraaf *(a)* voorafgaan deur die volgende woorde te vervang:

" 'n *Regulerende owerheid* wat, ingevolge enige openbare *regulasie*, regsbevoegdheid het ten aansien van optrede wat ingevolge Hoofstuk 2 of 3 gereguleer word, of ten aansien van aangeleenthede in Hoofstuk 4A uiteengesit, binne 'n bepaalde sektor—".

Wysiging van artikel 83 van Wet 89 van 1998

43. Artikel 83 van die Hoofwet word hierby gewysig deur die volgende subartikel ná subartikel (2) in te voeg:

"(3) Totdat 'n toegeeflikheidsbeleid in artikel 49E bedoel in die *Staatskoerant* gepubliseer word, bly die toegeeflikheidsbeleid gepubliseer in *Staatskoerant* No. 31064 (GN 628 van 23 Mei 2008) en gewysig in *Staatskoerant* No. 35139 (GN 212 van 16 Maart 2012), van krag.".

Vervanging van sekere uitdrukking in Wet 89 van 1998

44. Die Hoofwet word gewysig deur die uitdrukking *"buitensporige prys"* waar dit ook al voorkom, te vervang deur die uitdrukking "buitensporige prys".

Wysiging van Indeling van Artikels van Wet 89 van 1998

45. Die Indeling van Artikels van die Hoofwet word hierby gewysig—

(a) deur item 9 deur die volgende item te vervang:
"9. Verbod op prysdiskriminasie deur dominante firma as verkoper";

(b) deur item 15 deur die volgende item te vervang:
"15. Intrekking van samesmeltingsgoedkeuring en afdwinging van samesmeltingsvoorwaardes";

(c) deur die volgende item ná item 18 in te voeg:
"18A. Ingryping in samesmeltingsverrigtinge waarby *vreemde verkrygende firma* betrokke is";

(d) deur die volgende item ná item 21 in te voeg:
"21A. Impakstudies";

(e) deur item 43B deur die volgende item te vervang:
"43B. Inisiëring en doen van markondersoeke";

(f) deur item 43C deur die volgende item te vervang:
"43C. Aangeleenthede wat by markondersoek beslis staan te word";

(g) deur die volgende items ná item 43C in te voeg:
"43D. Plig om nadelige uitwerking op mededinging te remedieer
43E. Resultaat van markondersoek
43F. Appèlle teen beslissings kragtens hierdie Hoofstuk gevel
43G. Deelname en vertoë aan markondersoek";

(h) deur die volgende item ná item 49D in te voeg:
"49E. Toegeeflikheid"; en

(i) deur die volgende item ná item 79 in te voeg:
"79A. Adviserende opinies van Kommissie".

Short title and commencement

46. This Act is called the Competition Amendment Act, 2018, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

Kort titel en inwerkingtreding

44. Hierdie Wet heet die Wysigingswet op Mededinging, 2018, en tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* vasgestel.

Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001
Contact Centre Tel: 012-748 6200. eMail: info.egazette@gpw.gov.za
Publications: Tel: (012) 748 6053, 748 6061, 748 6065

This gazette is also available free online at **www.gpwonline.co.za**