



The Competition Act

how it benefits labour

The new Competition Act, number 89 of 1998, regulates business conduct. It was negotiated by labour, business and government delegates at Nedlac and became effective on 1 September 1999, replacing the old Competition Act of 1979.

The preamble of the Act recognises 'that an efficient, competitive economic environment, balancing the interests of workers, owners and consumers and focused on development, will benefit all South Africans'. The Act aims to promote and maintain competition in the market place in order to:

- promote the efficiency, adaptability and development of the economy;
- provide consumers with competitive prices and product choices;
- promote employment and advance the social and economic welfare of South Africans;
- expand opportunities for South African participation in world markets and recognise the role of foreign competition in the Republic;
- ensure that small and medium-sized enterprises have an equitable opportunity to participate in the economy;
- promote a greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged persons.

The Act applies to all economic activity in South Africa as well as all economic activity which has an effect in South Africa. It applies to all enterprises - both public and private. However, some sectors that are regulated are excluded from the application of the Act.

Effect on business operations

The Act sets out rules of how business must conduct itself in relation to competitors, suppliers and customers. It seeks to ensure that business is conducted in a fair and transparent manner and therefore prohibits certain practices and agreements which would have a substantial negative effect on competition.

These practices and agreements relate to arrangements between competitors, as well as relationships between suppliers, producers and their customers. The Act also contains specific provisions relating to firms that are dominant in a market to make sure that they do not abuse their dominant position in that market.

The Act requires that the Competition authorities approve all mergers between firms and the acquisition of the whole or parts of businesses, which are above the thresholds set out in the Act. Essentially, the Competition Commission must be notified about any merger or acquisition, where the combined annual turnover or

the assets of the merging parties is greater than R50-million. This provision seeks to prevent transactions which would have a negative impact on competition in a market and therefore on competitors, suppliers, customers, consumers and small business.

'The Commission would have to analyse a proposed transaction and determine how that transaction will effect the economy. If the effect on the economy is positive, it encourages investment, it encourages growth and efficiency - the Commission would approve of that transaction. But if that proposed transaction has the effect of substantially lessening competition - has an effect of increasing market concentration - the Commission may recommend that the transaction be prohibited. Or if that transaction results in significant loss of employment, the Commission may also recommend, if appropriate, that the transaction be prohibited,' says Advocate Menzi Simelane, the Commissioner of the Competition Commission.

'The Competition Act is about fairness, it's about efficiency, it's about expanding opportunities for South African participation in world markets. It's about giving people a chance.'

Enforcing the Act

The New Competition Act sets up three independent institutions to administer its provisions:

- the Competition Commission
- the Competition Tribunal
- the Competition Appeal Court.

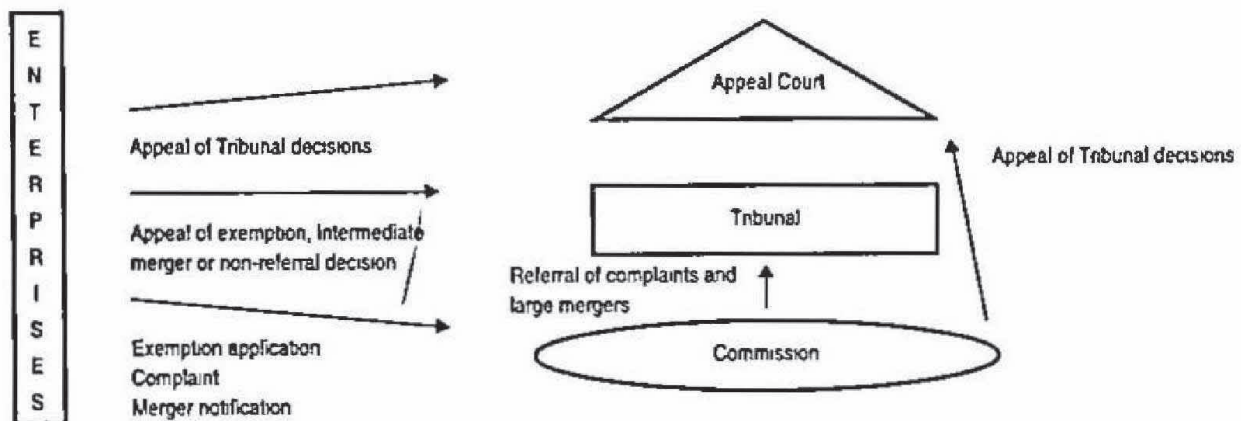
The Competition Commission

The Competition Commission is responsible for the investigation, control and evaluation of prohibited practices, exemption applications and mergers and acquisitions. It also has an education and advocacy function. The Commissioner heads the Competition Commission. He/she is appointed by the Minister of Trade and Industry for a five-year term. The Minister may renew the Commissioners contract for a second term. The Commissioner is supported by six divisional managers who form part of the Executive of the Commission.

The Competition Commission would like to emphasise the importance to stakeholders participating in proceedings. One of these key stakeholders is labour. To this end, the Commission appointed a labour liaison, Rhorho Cloete. The role of the labour liaison is to conduct information and training sessions for

Table 1: The Commission's structure

The Commissioner					
Mergers & Acquisitions Division	Enforcement & Exemptions Division	Compliance Division	Policy & Research Division	Legal Services Division	Corporate Services Division
The Division conducts merger reviews in terms of Chapter 3 of the Act.	The Division investigates contraventions of Chapter 2 of the Act and grants exemptions from the provisions of the Act.	The Division aims to encourage and facilitate voluntary compliance with the provisions of the Act through education and information programmes, non-binding advisory opinions and general communications.	The Division is responsible for analysing and evaluating market conditions, structures and trends, developing sector profiles, facilitating policy generation and review, and providing economic data and other information to other divisions in the Commission.	The Division provides legal advice internally to the Commissioner and other divisions and assists in developing strategies for cases as well as in preparing and conducting cases before the Tribunal and Appeal Court.	The Division is responsible for Finance & Administration, Human Resources & Training, Information Technology; and the Registry.

Table 2: Who enforces the Act?

labour and liaise with trade unions and to assist labour in understanding the Competition Act.

The Competition Tribunal

The Act describes the Competition Tribunal as an adjudicative body – it hears cases that the Commission brings before it and makes a judgement. The Tribunal decides whether to approve a large merger or not – only large mergers that have been approved by the Tribunal can take place. The Tribunal also judges whether parties have been involved in what the Act defines as a prohibited practice. It can impose penalties on parties that have been involved in a prohibitive practice.

The Tribunal may also hear appeals on decisions of the Competition Commission in respect of intermediate mergers and exemption procedures.

The Competition Appeal Court

The Competition Appeal Court hears all appeals on competition matters. It may confirm, change or set aside a decision or order that the case is subject to appeal or review.

Significance for labour

The Competition Act requires that merging parties notify trade unions or employee representatives of the proposed

merger. The Competition Act further provides that trade unions may participate in the merger proceedings. In order to do so, a trade union must file a Notice of Intention to Participate with the Competition Commission. This means that trade unions may make the Commission aware of opposition or support for merger.

Benefits

It:

- preserves unions' right to be heard before the Competition Tribunal;
- allows labour to tip the balance in favour of merger approval or denial;
- can be used as a bargaining chip for wages/retrenchment packages, training and education programmes.

The Act is therefore very significant for labour because it offers:

- a chance to protect jobs;
- an opportunity to negotiate better deals;
- acknowledges labour's role in business;
- labour the chance to play a vital role in the review process, functioning and administering of the Act.

If you have any questions about the Competition Act, require training or a presentation, or if you have been notified of a merger by the parties, please contact Rhorho Cloete at:

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