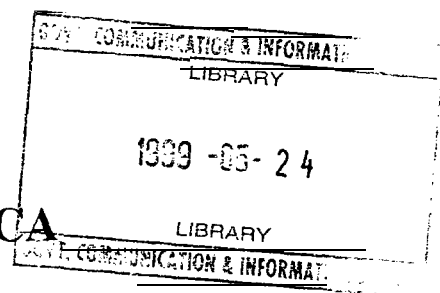




REPUBLIC OF SOUTH AFRICA



GOVERNMENT GAZETTE

STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

Registered at the Post Office as a Newspaper

As 'n Nuusblad by die Poskantoor Geregistreer

VOL 406

CAPE TOWN, 30 APRIL 1999

No. 19981

KAAPSTAD, 30 APRIL 1999

OFFICE OF THE PRESIDENT

No. 513.

30 April 1999

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

No. 35 of 1999: Competition Amendment Act, 1999.

KANTOOR VAN DIE PRESIDENT

No. 513.

30 April 1999

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

No. 35 van 1999: Wysigingswet op Mededinging, 1999.

GENERAL EXPLANATORY} NOTE:

- [
- 1
- 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 14 April 1999.)

ACT

To amend the Competition Act, 1998, so as to close an existing loophole in respect of merger control; to determine the status and validity period of a ministerial notice; to make pre-merger notification compulsory in certain instances; to make provision for certain matters on appeal; to provide for certain transitional arrangements; and to provide for matters connected therewith.

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

Amendment of Schedule 3 to Act 89 of 1998

1. Schedule 3 to the Competition Act, 1998, is hereby amended—
- (a) by the substitution for item 1 of the following item: 5
- “1. A ruling issued in terms of section [6(1)(a)] 6(2)(u) of the Maintenance and Promotion of Competition Act, 1979 [(Act No. 86 of 1979)] (Act No. 96 of 1979), or notice issued in terms of section 14(1)(c) of that Act, in relation to an “acquisition” as defined in that Act, must be regarded for the purposes of this Act, depending on the context, to be 10 either—
- (a) a conditional approval of a merger as if it had been granted after this Act came into operation, by the Competition Commission in terms of section 14(1)(b)@ or by the Competition Tribunal in terms of section [16(2)(b)] 15(2)(b); or 15
- (b) a prohibition of a merger as if it had been prohibited after this Act came into operation, by the Competition Commission in terms of section 14(1)(b)(iii) or by the Competition Tribunal in terms of section 15(2)(c).”; 15
- (b) by the insertion after item 3 of the following item: 20
- “3A. A notice issued by the Minister in terms of section 14(1)(c) of the Maintenance and Promotion of Competition Act, 1979 (Act No. 96 of 1979), in relation to a “restrictive practice” or a “monopoly situation” as defined in that Act, must be regarded as an order in terms of section 60(1)(a) of this Act and is valid for a period of 12 months from the date 25 on which this Act comes into operation.”;
- (c) by the addition to item 4 of the following paragraph:

- “(e) The chairperson of the Competition Board contemplated in section 3 of the Maintenance and Promotion of Competition Act, 1979 (Act No. 96 of 1979), must be regarded as a reference to either the Competition Commissioner contemplated in section 22 of *this Act*, or the chairperson of the Competition Tribunal contemplated in section 26 of *this Act*, as determined by the *Minister*.”; 5
- (d) by the insertion after item 4 of the following items:
- “4A. Any transaction that takes place between the date on which *this Act* is published and the date on which *this Act* comes into operation, and which would constitute an intermediate or large merger if it had taken place after *this Act* came into operation, is regarded for a period of 12 months after the date on which *this Act* comes into operation as a merger in contravention of Chapter 3 and is subject to the provisions of section 62(1), unless— 10
- (a) the transaction has been approved by the Competition Board in terms of the Maintenance and Promotion of Competition Act, 1979 (Act No. 96 of 1979); or 15
- (b) the transaction has been notified in terms of item 4B.
- 4B. Any party to a transaction contemplated in item 4A may, within three months after the date on which *this Act* comes into operation, notify the Competition Commission of the transaction in terms of section 13 as if it were an intermediate or large merger. 20
- 4C. The provisions of Chapter 3, with the changes required by the context, apply to a transaction that is notified under item 4B.
- 4D. After *this Act* comes into operation, any appeal pending before a special court contemplated in section 15 of the Maintenance and Promotion of Competition Act, 1979 (Act No. 96 of 1979), must be regarded as an appeal to the Competition Appeal Court contemplated in section 36 of *this Act* in the manner *prescribed*. 25
- 4E. Subject to items 1 to 3A, the Competition Appeal Court may, after hearing any appeal contemplated in item 4D, make any decision that the special court could have made in terms of section 15(10) of the Maintenance and Promotion of Competition Act, 1979 (Act No. 96 of 1979), and the provisions of *this Act* otherwise apply to that decision, as if it were a decision of the Competition Appeal Court in terms of *this Act*. 30 35
- 4F. (1) Notwithstanding sections 6 and 11, the first determinations of thresholds made by the *Minister* in terms of those sections must be made before the date on which *this Act* comes into operation.
- (2) Notwithstanding sections 6(2) and 11(2), the first determinations contemplated in subsection (1) take effect on the date on which *this Act comes into operation*.”; and 40
- (e) by the substitution for the expression “(Act No. 86 of 1979)”, wherever it appears, of the expression “(Act No. 96 of 1979)”.

Short title and commencement

2. This Act is called the Competition Amendment Act, 1999, and comes into operation 45 on a date determined by the President by proclamation in the **Gazette**.