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**REPUBLIC OF SOUTH AFRICA**

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**COMPETITION  
AMENDMENT ACT**

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**REPUBLIEK VAN SUID-AFRIKA**

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**WYSIGINGSWET OP  
MEDEDINGING**

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**No           , 2000**

**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.
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## ACT

To amend the Competition Act, 1998, so as to alter the manner in which the Competition Appeal Court is constituted; to make fresh provision as to the Competition Appeal Court's powers of appeal and review and for the terms of office of the members of the Competition Appeal Court; and to provide for matters incidental thereto.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

### **Amendment of section 36 of Act 89 of 1998**

1. Section 36 of the Competition Act, 1998 (Act No. 89 of 1998) (hereinafter referred to as the principal Act), is amended— 5

- (a) by the substitution for subsection (2) of the following subsection: 5
- “(2) The Competition Appeal Court consists of at least three judges, appointed by the President on the advice of the Judicial Services Commission, each of whom must be a judge of the High Court.”; and
- (b) by the addition after subsection (2) of the following subsections: 10

“(3) The President must designate one of the judges of the Competition Appeal Court to be Judge President of the Court.

(4) The Minister of Justice, after consulting the Judge President of the Competition Appeal Court, may second any number of judges of the High Court to serve as acting judges of the Competition Appeal Court. 15

(5) When the office of Judge President of the Competition Appeal Court is vacant, or when the Judge President is temporarily unable to perform the functions of that office for any reason, the senior judge of the Court must perform the functions of Judge President.”.

### **Substitution of section 37 of Act 89 of 1998** 20

2. The following section is substituted for section 37 of the principal Act:

#### **“Functions of Competition Appeal Court**

37. (1) The Competition Appeal Court may—

- (a) review any decision of the Competition Tribunal; or
  - (b) consider an appeal arising from the Competition Tribunal in respect of—
    - (i) any of its final decisions other than a consent order made in terms of section 63; or
    - (ii) any of its interim or interlocutory decisions that may, in terms of this Act, be taken on appeal.
- (2) The Competition Appeal Court may give any judgment or make any order, including an order to—
- (a) confirm, amend or set aside a decision or order of the Competition Tribunal; or
  - (b) remit a matter to the Competition Tribunal for a further hearing on any appropriate terms.

### **Amendment of section 38 of Act 89 of 1998**

3. (1) Section 38 of the principal Act is amended—
- (a) by the substitution for paragraph (b) of subsection (1) of the following paragraph:
    - “(b) must preside at proceedings of the Court **[and]** or designate another judge of the Competition Appeal Court to preside at particular proceedings of the Court; and”;
  - (b) by the substitution for subsection (2) of the following subsection:
    - “(2) Subject to subsection (2A), the Judge President must assign each matter before the Court to a bench composed of three judges of the Court.”;
  - (c) by the insertion of the following subsection after subsection (2):
    - “(2A) The Judge President, or any other judge of the Competition Appeal Court designated by the Judge President, may sit alone to consider an—
      - (a) appeal against a decision of an interlocutory nature, as prescribed by the rules of the Competition Appeal Court;
      - (b) application concerning the determination or use of confidential information;
      - (c) application for leave to appeal, as prescribed by the rules of the Competition Appeal Court;
      - (d) application to suspend the operation and execution of an order that is the subject of a review or appeal; or
      - (e) application for procedural directions.”;
  - (d) by the substitution for subsection (3) of the following subsection:
    - “(3) The decision of a judge sitting alone in terms of subsection (2A), or of a majority of the bench hearing a particular matter, is the decision of the Competition Appeal Court.” and
  - (e) by the substitution for subsection (4) of the following subsection:
    - “(4) If a judge or any of the judges hearing a matter assigned in terms of subsection (2) is unable to complete the proceedings in that matter, the Judge President must—
      - (a) direct that the hearing of that matter proceed before the remaining judge or judges to whom the matter was assigned; or
      - (b) terminate the proceedings before that bench and constitute another bench, which may include a judge to whom the matter was originally assigned, and direct that bench to hear the matter afresh.”.

### **Substitution of section 39 of Act 89 of 1998**

4. The following section is substituted for section 39 of the principal Act:

**“Term of office**

**39.** (1) The Judge President and any other judge of the Competition Appeal Court is appointed for a fixed term determined by the President at the time of the appointment and holds office until—

- (a) the expiry of the term;
- (b) the date the judge ceases to be a judge of the High Court; or
- (c) the judge resigns from the Court by giving written notice to the President.

(2) Section 33, read with the changes required by the context, applies to the Judge President and other judges of the Competition Appeal Court.

(3) The tenure of office, the remuneration, and the terms and conditions of service applicable to a judge of the High Court in terms of the Judges’ Remuneration and Conditions of Employment Act, 1989 (Act No. 88 of 1989), are not affected by the appointment and concurrent tenure of office of that judge who is appointed as a judge of the Competition Appeal Court.”

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**Transitional provision**

**5.** Anyone serving as Judge President or as a judge of the Competition Appeal Court immediately before this Act comes into operation continues to serve in that office after this Act comes into operation, subject to section 39 of the principal Act.

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**Short title and commencement**

**6.** This Act is called the Competition Amendment Act, 2000, and comes into operation on a date determined by the President by proclamation in the *Gazette*.