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THE PRESIDENCY

No. 875 — 28 August 2009

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

No. 1 of 2009: Competition Amendment Act, 2009.

DIE PRESIDENSIE

No. 875 — 28 Augustus 2009

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

No. 1 van 2009: Wysigingswet op Mededinging, 2009.

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 26 August 2009.)

ACT

To amend the Competition Act, 1998, so as to provide certainty with regard to the concurrent jurisdiction between the Competition Commission and other regulatory authorities; to introduce provisions to address other practices that tend to prevent or distort competition in the market for any particular goods or services; to provide more guidance in relation to conducting market enquiries as a tool to identify, and make recommendations with respect to, conditions that tend to prevent, distort or restrict competition in the market for any particular goods or services; to introduce provisions to hold personally accountable those individuals who cause firms to engage in cartel conduct; and to authorise the Competition Commission to excuse a respondent to a complaint if the respondent has assisted the competition authorities in the detection and investigation of cartel conduct; 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 No. 89 of 1998, as amended by section 1 of Act 39 of 2000

1. Section 1 of the Competition Act, 1998 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the deletion in subsection (1) of the numbering preceding each definition;

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

"*(a)* that, as a result of a **[transaction in any circumstances set out]** merger as defined in section 12, would directly or indirectly acquire, or establish direct or indirect control over, the whole or part of the business of another *firm*;";

(c) by the insertion in subsection (1) after the definition of ***"Constitution"*** of the following definition:

'deserving of leniency', when used with respect to a *firm* contemplated in section 50, or a person contemplated in section 73A, means that the firm or person has provided information to the Competition Commission, or otherwise co-operated with the Commission's investigation of an alleged *prohibited practice* in terms of section 4(1)*(b)* to the satisfaction of the Commission;";

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 26 Augustus 2009.)

WET

Tot wysiging van die Wet op Mededinging, 1998, ten einde sekerheid oor die konkurrente regsbevoegdheid tussen die Mededingingskommissie en ander regulerende owerhede te verskaf; om bepalings in te voeg wat ander gebruike aanspreek wat neig om mededinging in die mark vir enige bepaalde goedere of dienste te verhoed of te verwring; om meer leiding te verskaf met betrekking tot die voer van markondersoeke as 'n meganisme om toestande, wat neig om mededinging in die mark vir enige goedere of dienste te verhoed, te verwring of te beperk, te identifiseer en aanbevelings ten opsigte daarvan te doen; om bepalings in te voeg om daardie individue wat veroorsaak dat firmas in kartelbedrywighede betrokke raak, persoonlik verantwoordelik te hou; en om die Mededingingskommissie te magtig om 'n respondent te verskoon op 'n aanklag indien die respondent die mededingingsowerhede bygestaan het in die opsporing van en ondersoek na kartelbedrywighede; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

DIE PARLEMENT van die Republiek van Suid-Afrika verorden soos volg:—

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

1. Artikel 1 van die Wet op Mededinging, 1998 (hierna die Hoofwet genoem), word hierby gewysig—

(a) deur in subartikel (1) die nommering wat elke omskrywing voorafgaan, te skrap;

(b) deur in subartikel (1) die omskrywing van "**respondent**" deur die volgende omskrywing te vervang:

"'**respondent**' 'n *firma* teen wie 'n klagte van *verbode praktyk* ingevolge *hierdie Wet* aanhangig gemaak of voorgelê word;";

(c) deur in subartikel (1) die omskrywing van "**teikenfirma**" deur die volgende omskrywing te vervang:

"'**teikenfirma**' 'n *firma*—

(a) waarvan die geheel of 'n gedeelte van sy besigheid regstreeks of onregstreeks deur 'n *verkrygende firma* beheer word as gevolg van 'n **[transaksie in enige omstandighede]** samesmelting soos omskryf in artikel 12 **[uiteengesit]**;

(*d*) by the substitution in subsection (1) for the definition of **"prohibited practice"** of the following definition:

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

(*e*) by the substitution in subsection (1) for the definition of **"respondent"** of the following definition:

" **'respondent'** means a *firm* against whom a complaint of a *prohibited practice* has been initiated or submitted in terms of *this Act*;";

(*f*) by the substitution in subsection (1) for the definition of **"target firm"** of the following definition:

" **'target firm'** means a *firm*—

(*a*) the whole or part of whose business would be directly or indirectly controlled by an *acquiring firm* as a result of **[a transaction in any circumstances set out]** a merger as defined in section 12;

(*b*) that, as a result of a **[transaction in any circumstances set out]** merger as defined in section 12, would directly or indirectly transfer direct or indirect control of the whole or part of **[,]** its business to an *acquiring firm*; or

(*c*) the whole or part of whose business is directly or indirectly controlled**[,]** by a *firm* contemplated in paragraph (*a*) or (*b*);"; and

(*g*) by the addition of the following subsection:

"(4) For the purposes of this Act, a person is a historically disadvantaged person if that person—

(*a*) is one of a category of individuals who were disadvantaged by unfair discrimination on the basis of race before the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), came into operation;

(*b*) is an association, a majority of whose members are individuals contemplated in paragraph (*a*);

(*c*) is a juristic person, other than an association, in which the individuals contemplated in paragraph (*a*) own and control a majority of its issued share capital or members' interest and are able to control a majority of its votes; or

(*d*) is a juristic person or association in which the individuals contemplated in paragraph (*a*) own and control a majority of its issued share capital or members' interest and are able to control a majority of its votes.".

Amendment of section 2 of Act 89 of 1998

2. Section 2 of the principal Act is hereby amended by the deletion of the word "and" at the end of paragraph (*e*) and the addition of the following paragraphs after paragraph (*f*):

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

(*h*) to provide for consistent application of common standards and policies affecting competition within all markets and sectors of the economy.".

(b) wat, as gevolg van 'n **[transaksie in enige omstandighede]** samesmelting soos omskryf in artikel 12 **[uiteengesit]**, regstreeks of onregstreekse regstreekse of onregstreekse beheer van die geheel of 'n gedeelte van sy besigheid aan 'n *verkrygende firma* oordra; of

(c) waarvan die geheel of 'n gedeelte van sy besigheid regstreeks of onregstreeks beheer word deur 'n *firma* in paragraaf *(a)* of *(b)* beoog;";

(d) deur in subartikel (1) die volgende omskrywing na die omskrywing van "**teikenfirma**" in te voeg:

"**toegeeflikheidswaardig**", wanneer gebruik met betrekking tot 'n firma in artikel 50 beoog, of 'n persoon in artikel 73A beoog, dat die firma of persoon inligting aan die Mededingingskommissie verskaf het, of op 'n ander wyse saamgewerk het met die Kommissie se ondersoek na 'n beweerde verbode praktyk ingevolge artikel 4(1)*(b)*, ter bevrediging van die Kommissie;";

(e) deur in subartikel (1) die omskrywing van "**verbode praktyk**" deur die volgende omskrywing te vervang:

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

(f) deur in subartikel (1) paragraaf *(a)* van die omskrywing van "**verkrygende firma**" deur die volgende paragraaf te vervang:

"*(a)* wat, as gevolg van 'n **[transaksie in enige omstandighede]** samesmelting soos omskryf in artikel 12 **[uiteengesit]**, regstreeks of onregstreeks beheer verkry, of regstreeks of onregstreeks beheer bewerkstellig, oor die geheel of 'n gedeelte van die besigheid van 'n ander *firma*;"; en

(g) deur die volgende subartikel by te voeg:

"(4) Vir die doeleindes van hierdie Wet is 'n persoon 'n histories benadeelde persoon indien daardie persoon—

(a) een van 'n kategorie van individue is wat, voordat die Grondwet van die Republiek van Suid-Afrika, 1993 (Wet No. 200 van 1993), in werking getree het, benadeel is deur onregverdige diskriminasie op die grondslag van ras;

(b) 'n vereniging is waarvan die meerderheid van lede individue is in paragraaf *(a)* beoog;

(c) 'n regspersoon is, behalwe 'n vereniging, en individue soos in paragraaf *(a)* bedoel, 'n meerderheid van die uitgereikte aandelekapitaal of ledebelang daarvan besit en beheer en in staat is om 'n meerderheid van die stemme daarvan te beheer; of

(d) 'n regspersoon of vereniging is, en die individue in paragraaf *(a)* beoog die meerderheid van die uitgereikte aandelekapitaal of ledebelang besit en beheer, en in staat is om 'n meerderheid van die stemme daarvan te beheer.".

Wysiging van artikel 2 van Wet 89 van 1998

2. Artikel 2 van die Hoofwet word hierby gewysig deur die skrapping van die woord "en" aan die einde van paragraaf *(e)* en die byvoeging van die volgende paragrawe na paragraaf *(f)*:

"*(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, 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

(h) voorsiening te maak vir konsekwente toepassing van gemeenskaplike standaarde en beleid wat mededinging in al die markte en sektore van die ekonomie raak.".

Substitution of section 3 of Act 89 of 1998, as amended by section 2 of Act 39 of 2000

3. The following section is hereby substituted for section 3 of the principal Act:

"Application of Act

3. (1) Despite anything to the contrary in any other legislation, public regulation or agreement, *this Act* applies to all economic activity within, or having an effect within, the Republic, subject to subsections (2) and (3).

(2) This Act does not apply to—

(a) collective bargaining within the meaning of section 23 of the Constitution and the Labour Relations Act, 1995 (Act No. 66 of 1995);

(b) a collective agreement as defined in section 213 of the Labour Relations Act, 1995; or

(c) concerted conduct designed to achieve a non-commercial socio-economic objective or similar purpose.

(3) In so far as this Act applies to any conduct arising within an industry or sector of an industry that is subject to the jurisdiction of another *regulatory authority* in terms of any other legislation—

(a) *this Act*, and that other legislation, must be construed as establishing concurrent jurisdiction in respect of any such conduct that is regulated in terms of both *this Act*, and that other national legislation, subject to paragraph *(b)*, such that—

(i) any other *regulatory authority* contemplated in this subsection will exercise primary authority to establish conditions within the industry that it regulates as required to give effect to the relevant legislation in terms of which that authority functions, and *this Act*; and

(ii) the Competition Commission will exercise primary authority to detect and investigate alleged *prohibited practices* within any industry or sector, and to review mergers within any industry or sector, in terms of *this Act*; and

(b) details of the administrative manner in which any concurrent jurisdiction contemplated in paragraph *(a)* is to be exercised, must be determined by an agreement between the Competition Commission and that other *regulatory authority*, as provided for in sections 21(1)*(h)* and 82(1).".

Insertion of Chapter 2A in Act 89 of 1998

4. The following Chapter is hereby inserted in the principal Act after section 10:

"Chapter 2A

Complex Monopoly Conduct

Complex monopoly conduct

10A. (1) Complex monopoly conduct subsists within the market for any particular goods or services if—

(a) at least 75% of the goods or services in that market are supplied to, or by, five or fewer firms;

(b) any two or more of the firms contemplated in paragraph *(a)* conduct their respective business affairs in a conscious parallel manner or co-ordinated manner, without agreement between or among themselves; and

(c) the conduct contemplated in paragraph *(b)* has the effect of substantially preventing or lessening competition in that market,

unless a firm engaging in the conduct can prove that any technological, efficiency or other pro-competitive gain resulting from it outweighs that effect.

Vervanging van artikel 3 van Wet 89 van 1998, soos gewysig deur artikel 2 van Wet 39 van 2000

3. Artikel 3 van die Hoofwet word hierby deur die volgende artikel vervang:

"**Toepassing van die Wet**

3. (1) Ten spyte van enigiets tot die teendeel in enige ander wetgewing, openbare regulasie of ooreenkoms, is *hierdie Wet* van toepassing op alle ekonomiese aktiwiteite binne, of wat 'n uitwerking het binne, die Republiek, behoudens subartikels (2) en (3).

(2) Hierdie Wet is nie van toepassing nie op—

(a) kollektiewe bedinging soos bedoel in artikel 23 van die Grondwet en die Wet op Arbeidsverhoudinge, 1995 (Wet No. 66 van 1995);

(b) 'n kollektiewe ooreenkoms soos omskryf in artikel 213 van die Wet op Arbeidsverhoudinge, 1995; of

(c) gesamentlike optrede wat daarop gemik is om 'n nie-kommersiële sosiaal-maatskaplike oogmerk of soortgelyke doel te bereik.

(3) In die mate waarin hierdie Wet van toepassing is op enige optrede wat ontstaan in 'n nywerheid of sektor van 'n nywerheid wat onderhewig is aan die regsbevoegdheid van 'n ander *regulerende owerheid* kragtens enige ander wetgewing—

(a) moet *hierdie Wet*, en daardie ander wetgewing, uitgelê word sodat konkurrente regsbevoegdheid daargestel word ten opsigte van enige sodanige optrede wat gereguleer word kragtens beide *hierdie Wet* en daardie ander nasionale wetgewing, behoudens paragraaf *(b)*, sodat—

(i) enige ander *regulerende owerheid* in hierdie subartikel bedoel, primêre gesag sal uitoefen om voorwaardes te bepaal binne die nywerheid wat dit reguleer wat vereis word om gevolg te gee aan die tersaaklike wetgewing waarkragtens daardie owerheid funksioneer, en *hierdie Wet*; en

(ii) die Mededingingskommissie primêre gesag sal uitoefen om kragtens *hierdie Wet*, beweerde *verbode praktyke* binne enige nywerheid of sektor op te spoor en te ondersoek, en om samesmeltings binne enige nywerheid of sektor te hersien; en

(b) moet besonderhede van die administratiewe wyse waarop enige konkurrente regsbevoegdheid in paragraaf *(a)* beoog, uitgeoefen moet word, bepaal word deur 'n ooreenkoms tussen die Mededingingskommissie en daardie ander *regulerende owerheid*, soos voorgeskryf in artikels 21(1)*(h)* en 82(1).".

Invoeging van Hoofstuk 2A in Wet 89 van 1998

4. Die volgende Hoofstuk word hierby in die Hoofwet na artikel 10 ingevoeg:

"**Hoofstuk 2A**

Komplekse monopolie optrede

Komplekse monopolie optrede

10A. (1) Komplekse monopolie optrede bestaan in die mark vir enige bepaalde goedere of dienste indien—

(a) ten minste 75% van die goedere of dienste in daardie mark verskaf word deur of aan vyf of minder *firmas*;

(b) enige twee of meer van die *firmas* in paragraaf *(a)* beoog hul onderskeie besigheidsaangeleenthede op 'n bewustelik parallelle wyse of gekoördineerde wyse bedryf, sonder ooreenkoms onderling of tussen hulle; en

(c) die optrede in paragraaf *(b)* beoog die uitwerking het om mededinging in daardie mark wesenlik te verhoed of te verminder,

tensy 'n firma wat op sodanige wyse optree, kan bewys dat enige tegnologiese, doeltreffendheids- of ander pro-mededingende gewin wat daaruit voortspruit, daardie uitwerking oortref.

(2) For the purposes of subsection (1)*(b)* 'conscious parallel conduct' occurs when two or more *firms* in a concentrated market, being aware of each other's action, conduct their business affairs in a cooperative manner without discussion or agreement.

(3) If the Competition Commission has reason to believe that complex monopoly conduct subsists within a market—

(a) the Commission may investigate any conduct within that market without initiating or having received a complaint in terms of Chapter 5; and

(b) Parts A and B of Chapter 5, and section 49D, each read with the changes required by the context, apply to an investigation in terms of paragraph *(a)*.

(4) After conducting an investigation in terms of subsection (3), the Competition Commission may apply to the Competition Tribunal for a declaratory order contemplated in subsection (5) against two or more *firms* if—

(a) at least one of the *firms*—

(i) has at least 20% of the relevant market; and

(ii) are engaged in complex monopoly conduct as described in subsection (1); and

(b) the conduct of the *firms* has resulted in—

(i) high entry barriers to that market;

(ii) exclusion of other *firms* from the market;

(iii) excessive pricing within that market;

(iv) refusal to supply other *firms* within that market; or

(v) other market characteristics that indicate co-ordinated conduct.

(5) If the Tribunal, after conducting a hearing in the manner required by Part D of Chapter 5, read with the changes required by the context, is satisfied that the requirements of subsection (4) are satisfied, the Tribunal may make an order reasonably requiring, prohibiting or setting conditions upon any particular conduct by the firm, to the extent justifiable to mitigate or ameliorate the effect of the complex monopoly conduct on the market, as contemplated in subsection (4)*(b)*.

(6) Contravention by a *firm* of an order contemplated in subsection (5) is a *prohibited practice*.".

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

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

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

"*(c)* investigate and evaluate alleged contraventions of Chapter 2 or 3;";

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

"*(f)* negotiate and conclude consent orders in terms of section **[63]** 49D;";

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

"(1A) The Competition Commission may exercise jurisdiction by way of an agreement contemplated in section 3(3) and subsection (1)*(h)*."; and

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

"(3) The *Minister* must table in **[the National Assembly]** Parliament any report submitted in terms of subsection (1)*(k)* or section 43C(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*—

(a) within **[10]** 30 business days after receiving that report from the Competition Commission; or

(b) if Parliament is not then sitting, within **[10]** 30 business days after the commencement of the next sitting.".

(2) Vir die doeleindes van subartikel (1)*(b)* vind 'bewustelik parallelle optrede' plaas wanneer twee of meer *firmas* in 'n gekonsentreerde mark, bewus van mekaar se optrede, hul besigheidsaangeleenthede op 'n gekoördineerde wyse behartig sonder bespreking of ooreenkoms.

(3) Indien die Mededingingskommissie rede het om te glo dat komplekse monopolie optrede in 'n mark bestaan—

(a) kan die Kommissie enige optrede in daardie mark ondersoek sonder aanmelding of ontvangs van 'n klagte ingevolge Hoofstuk 5; en

(b) is Deel A en B van Hoofstuk 5, en artikel 49D, elk gelees met die veranderinge deur die konteks vereis, op 'n ondersoek ingevolge paragraaf *(a)* van toepassing.

(4) Na die voer van 'n ondersoek ingevolge subartikel (3), kan die Mededingingskommissie by die Mededingingstribunaal aansoek doen vir 'n verklarende bevel in subartikel (5) bedoel teen twee of meer *firmas* indien—

(a) ten minste een van die *firmas*—

(i) oor ten minste 20% van die tersaaklike mark beskik;

(ii) betrokke is by komplekse monopolie optrede soos in subartikel (1) omskryf; en

(b) die optrede van die *firmas*—

(i) hoë toetredingsversperrings tot daardie mark;

(ii) uitsluiting van ander *firmas* uit die mark;

(iii) buitensporige prysvasstelling in daardie mark;

(iv) weiering om aan ander *firmas* in daardie mark te voorsien; of

(v) ander markeienskappe wat op gekoördineerde optrede dui,

tot gevolg gehad het.

(5) Indien die Tribunaal, na die hou van 'n verhoor op die wyse deur Deel D van Hoofstuk 5 vereis, gelees met die veranderinge deur die konteks vereis, tevrede is dat die vereistes van subartikel (4) nagekom is, kan die Tribunaal 'n bevel maak wat redelikerwys vereis, verbied of voorwaardes stel ten opsigte van enige besondere optrede deur die firma, in die mate wat geregverdig is om die effek van die komplekse monopolie optrede op die mark, soos in subartikel (4)*(b)* beoog, te versag of te verlig.

(6) Oortreding deur 'n *firma* van 'n bevel in subartikel (5) beoog, is 'n *verbode praktyk*.".

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

5. Artikel 21 van die Hoofwet word hierby gewysig—

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

"*(c)* ondersoek en evaluering van beweerde oortredings van Hoofstuk 2 of 3;";

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

"*(f)* onderhandeling en afhandeling van toestemmingsbevele ingevolge artikel **[63]** 49D;";

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

"(1A) Die Mededingingskommissie kan regsbevoegdheid uitoefen by wyse van 'n ooreenkoms beoog in artikel 3(3) en subartikel (1)*(h)*."; en

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

"(3) Die *Minister* moet enige verslag voorgelê ingevolge subartikel (1)*(k)* of artikel 43C(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*—

(a) binne **[10]** 30 besigheidsdae na ontvangs van die verslag van die Mededingingskommissie; of

(b) indien die Parlement nie dan in sitting is nie, binne **[10]** 30 besigheidsdae na aanvang van die daaropvolgende sitting.".

Insertion of Chapter 4A in Act 89 of 1998

6. The following Chapter is hereby inserted in the principal Act after section 43:

"Chapter 4A

Market inquiries

Interpretation and Application of this Chapter

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

Initiating market inquiries

43B. (1) 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)—

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

(ii) to achieve the purposes of this Act.

(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 to the market inquiry.

(3) The Competition Commission may conduct a market inquiry in any manner but, for greater certainty, the provisions of—

(a) sections 44 to 45A, each read with the changes required by the context, apply to the conduct of the market inquiry and to the publication of the report of a market inquiry in terms of subsection (4);

(b) sections 46 to 49 do not apply in respect of the conduct of a market inquiry;

(c) section 49A, read with the changes required by the context, applies to the conduct of a market inquiry;

(d) section 54*(b)*, *(e)* and *(f)*, each read with the changes required by the context, apply to the conduct of a market inquiry, but for the purpose of this section, a reference in any of those sections to the "Tribunal" or to a person "presiding at a hearing" must be regarded as referring to the Competition Commission; and

(e) sections 72 and 73(2)*(a)*, *(b)*, *(c)*, *(d)* and *(f)* apply to the conduct of a market inquiry, but a reference in any of those sections to 'an investigation' must be regarded as referring to the market inquiry.

(4) 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.

(5) The Competition Commission may amend the terms of reference, including the scope of the inquiry, or the time within which it is expected to be completed, by further notice in the *Gazette*.

(6) The Competition Commission must complete a market inquiry by publishing a report contemplated in section 43C, within the time set out in the terms of reference contemplated in subsection (2).

Invoeging van Hoofstuk 4A in Wet 89 van 1998

6. Die volgende Hoofstuk word hierby in die Hoofwet na artikel 43 ingevoeg:

"Hoofstuk 4A

Markondersoeke

Uitleg en Toepassing van hierdie Hoofstuk

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

Inisiëring van markondersoeke

43B. (1) 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)—

(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.

(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 aan die markondersoek te verskaf.

(3) Die Mededingingskommissie kan die markondersoek op enige wyse doen, maar vir groter sekerheid is die bepalings van—

(a) artikels 44 tot 45A, elk gelees met die veranderinge deur die konteks vereis, van toepassing op die uitvoer van die markondersoek en op die publikasie van die verslag van 'n markondersoek ingevolge subartikel (4);

(b) artikels 46 tot 49 nie van toepassing ten opsigte van die uitvoer van 'n markondersoek nie;

(c) artikel 49A, gelees met die veranderinge deur die konteks vereis, van toepassing op die uitvoer van 'n markondersoek;

(d) artikel 54*(b)*, *(e)* en *(f)*, elk gelees met die veranderinge deur die konteks vereis, van toepassing op die voer van 'n markondersoek, maar vir die doeleindes van hierdie hierdie artikel, word 'n verwysing in enigeen van daardie paragrawe na die "Tribunaal" of na 'n persoon "wat by 'n verhoor voorsit" geag 'n verwysing na die Mededingingskommissie te wees; en

(e) artikels 72 en 73(2)*(a)*, *(b)*, *(c)*, *(d)* en *(f)* van toepassing op die voer van 'n markondersoek, maar 'n verwysing in enige van daardie artikels na ''n ondersoek' word geag na 'n markondersoek te verwys.

(4) Die verwysingsraamwerk ingevolge subartikel (2) vereis moet insluit, as minimum, 'n verklaring van die omvang van die ondersoek en die verwagte tyd van afhandeling.

(5) Die Mededingingskommissie kan die verwysingsraamwerk wysig, insluitend die omvang van die ondersoek, of die verwagte tyd van afhandeling, by verdere kennisgewing in die *Staatskoerant*.

(6) Die Mededingingskommissie moet 'n markondersoek afhandel deur publikasie van 'n verslag in artikel 43C beoog, binne die tyd uiteengesit in die verwysingsraamwerk in subartikel (2) beoog.

Outcome of market inquiry

43C. (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 or without recommendations, which may include, but 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.".

Amendment of section 49B of Act 89 of 1998, as amended by section 15 of Act 39 of 2000

7. Section 49B of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections:

"(1) The **[Commissioner]** Competition Commission may initiate a complaint against an alleged *prohibited practice* or an alleged implementation of a merger contrary to Chapter 3.

(2) Any person may—

(a) submit information concerning an alleged *prohibited practice*, or an alleged implementation of a merger contrary to Chapter 3, to the Competition Commission**[,]** in any manner or form; or

(b) submit a complaint against an alleged *prohibited practice*, or an alleged implementation of a merger contrary to Chapter 3, to the Competition Commission **[,]** in the *prescribed* form.".

Amendment of section 50 of Act 89 of 1998, as amended by section 15 of Act 39 of 2000

8. Section 50 of the principal Act is hereby amended—

(a) by the substitution for subsections (1) and (2) of the following subsections:

"(1) At any time after **[initiating a complaint, the Competition Commission may refer the complaint to the Competition Tribunal.]**—

(a) receiving or initiating a complaint, the Competition Commission may certify, in the prescribed manner and form, and with or without conditions, that any particular respondent, or any particular person contemplated in section 73A, is *deserving of leniency* in the circumstances, and

(b) initiating a complaint, the Commission may refer the complaint to the Competition Tribunal in respect of any respondent, to the extent that the respondent has not been certified as being *deserving of leniency* in terms of paragraph *(a)*.

Gevolg van markondersoek

43C. (1) Na afhandeling van 'n markondersoek moet die mededingingskommissie 'n verslag van die markondersoek in die *Staatskoerant* publiseer, en moet die verslag aan die *Minister* voorlê, met of sonder aanbevelings, 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 konteks vereis, is van toepassing op 'n verslag aan die *Minister* ingevolge subartikel (1).

(3) Op die basis van inligting verkry tydens die markondersoek, kan die Mededingingskommissie—

(a) 'n klag aanhangig maak en 'n toestemmingsbevel aangaan met enige respondent, in ooreenstemming met artikel 49D, met of sonder die uitvoer van enige verdere ondersoek;

(b) 'n klag aanhangig maak teen enige *firma* vir verdere ondersoek, in ooreenstemming met Deel C van Hoofstuk 5;

(c) 'n klag aanhangig maak en dit direk verwys na die Mededingingstribunaal sonder verdere ondersoek;

(d) enige ander optrede onderneem binne sy magte ingevolge *hierdie Wet* soos aanbeveel in die verslag van die markondersoek; of

(e) geen verdere stappe doen nie.".

Wysiging van artikel 49B van Wet 89 van 1998, soos gewysig deur artikel 15 van Wet 39 van 2000

7. Artikel 49B van die Hoofwet word hierby gewysig deur subartikels (1) en (2) deur die volgende subartikels te vervang:

"(1) Die **[Kommissaris]** Mededingingskommissie kan 'n klagte teen 'n beweerde *verbode praktyk* of 'n beweerde implementering van 'n samesmelting strydig met Hoofstuk 3 aanhangig maak.

(2) Enige persoon kan—

(a) inligting rakende 'n beweerde *verbode praktyk*, of 'n beweerde implementering van 'n samesmelting strydig met Hoofstuk 3, aan die Mededingingskommissie voorlê op enige wyse of in enige vorm; of

(b) 'n klagte teen 'n beweerde *verbode praktyk*, of 'n beweerde implementering van 'n samesmelting strydig met Hoofstuk 3, aan die Mededingingskommissie voorlê in die voorgeskrewe vorm.".

Wysiging van artikel 50 van Wet 89 van 1998, soos gewysig deur artikel 15 van Wet 39 van 2000

8. Artikel 50 van die Hoofwet word hierby gewysig—

(a) deur subartikels (1) en (2) deur die volgende subartikels te vervang:

"(1) Op enige tydstip na **[die klagte aanhangig gemaak is, kan die Mededingingskommissie die klagte na die Mededingingstribunaal verwys.]**—

(a) ontvangs of aanmelding van 'n klagte, kan die Mededingingskommissie op die voorgeskrewe wyse en vorm, en met of sonder voorwaardes, sertifiseer dat enige besondere respondent, of enige besondere persoon in artikel 73A bedoel, in die omstandighede *toegeeflikheidswaardig* is; en

(b) aanmelding van 'n klagte, kan die Kommissie die klagte na die Mededingingstribunaal verwys ten opsigte van enige respondent, tot die mate wat die respondent nie as *toegeeflikheidswaardig* ingevolge paragraaf *(a)* gesertifiseer is nie.

(2) Within one year after a complaint was submitted to it, or such longer time as may be agreed or allowed in terms of subsection (4), the **[Commissioner]** Competition Commission must—

(a) **[subject to subsection (3),]** refer the complaint to the Competition Tribunal, subject to subsection (3), in respect of any respondent, to the extent that the respondent has not been certified as being *deserving of leniency*, if the Commission **[it determines]** has determined that a prohibited practice, or the implementation of a merger contrary to Chapter 3, has been established; or

(b) in any other case, issue a notice of non-referral to the complainant in the prescribed form.";

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

"*(b)* must issue a notice of non-referral as contemplated in subsection (2)*(b)* in respect of any particulars of the complaint **[not referred to the Competition Tribunal]** that have not been either—

(i) referred to the Competition Tribunal in terms of subsection (2)*(a)*; or

(ii) certified as *deserving of leniency*.";

(c) by the substitution in subsection (4) for paragraph *(b)* of the following paragraph:

"*(b)* on application by the Competition Commission made before the end of the period **[contemplated in]** set out in subsection (2), or such longer period as agreed in terms of paragraph *(a)* or previously granted in terms of this paragraph, the Competition Tribunal may extend that period.";

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

"(5) If the Competition Commission has not **[referred a complaint to the Competition Tribunal, or issued a notice of non-referral]** taken any action contemplated in subsection (3) within the time contemplated in subsection (2), or the extended period contemplated in subsection (4), the Commission must be regarded as having issued a notice of non-referral on the expiry of the relevant period."; and

(e) by the addition of the following subsections:

"(6) A decision by the Competition Commission in terms of this section to certify that a respondent, or any other person, *is deserving of leniency* does not preclude the complainant, if any, from applying for—

(a) a declaration in terms of section 58(1)*(a)*(v) or (vi); or

(b) an award of civil damages in terms of section 65.

(7) Nothing in this section directly or indirectly establishes any right of a person to—

(a) be certified as being *deserving of leniency*, in whole or in part, or with or without any conditions; or

(b) require or demand that the Competition Commission issue such a certificate, or consider doing so.".

Amendment of section 58 of Act 89 of 1998, as amended by section 15 of Act 39 of 2000

9. Section 58 of the principal Act is hereby amended by the addition in subsection (1)*(a)* of the following subparagraph:

"(viii) imposing appropriate conditions;".

Amendment of section 59 of Act 89 of 1998, as amended by section 15 of Act 39 of 2000

10. Section 59 of the principal Act is hereby amended by the substitution in subsection (1) of paragraphs *(a)* and *(b)* of the following paragraphs:

"*(a)* for a *prohibited practice* in terms of section 4(1)*(b)*, 5(2) **[or]** , 8*(a)*, *(b)* **[or]**, *(d)* or 10A(5);

(2) Binne een jaar nadat 'n klagte aan hom voorgelê is, of sodanige langer tydperk as waarop ooreengekom is of toegelaat word ingevolge subartikel (4), moet die **[Kommissaris]** Mededingingskommissie—

(a) **[behoudens subartikel (3)]** die klagte na die Mededingingstribunaal verwys, ten opsigte van enige respondent, in die mate waartoe die respondent nie as toegeeflikheidswaardig gesertifiseer is nie, indien hy beslis het dat 'n *verbode praktyk*, of die implementering van 'n samesmelting strydig met Hoofstuk 3, bewys is; of

(b) in enige ander geval, 'n kennisgewing van nie-verwysing, in die voorgeskrewe vorm, aan die klaer uitreik.";

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

"*(b)* moet hy 'n kennisgewing van nie-verwysing uitreik soos in subartikel 2*(b)* beoog ten opsigte van enige besonderhede van die klagte wat nie **[na die Mededingingstribunaal verwys is nie]** —

(i) na die Mededingingstribunaal ingevolge subartikel (2) verwys is nie; of

(ii) as *toegeeflikheidswaardig* gesertifiseer is nie.";

(c) deur in subartikel (4) paragraaf *(b)* deur die volgende paragraaf te vervang:

"*(b)* op aansoek van die Mededingingskommissie wat gedoen is voor die einde van die tydperk in subartikel (2), of sodanige langer tydperk soos ooreengekom volgens paragraaf *(a)* beoog, of voorheen toegestaan volgens hierdie paragraaf, kan die Mededingingstribunaal die tydperk verleng.";

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

"(5) Indien die Mededingingskommissie nie **['n klagte na die Mededingingstribunaal verwys het nie, of 'n kennisgewing van nie-verwysing uitgereik het nie]** enige optrede in subartikel (3) beoog gedoen het binne die tydperk in subartikel (2) beoog of die verlengde tydperk in subartikel (4) beoog nie, word geag dat 'n kennisgewing van nie-verwysing by die verstryking van die tersaaklike tydperk, deur die Kommissie uitgereik is."; en

(e) deur die volgende subartikels in te voeg:

"(6) 'n Beslissing deur die Mededingingskommissie ingevolge hierdie artikel om te sertifiseer dat 'n respondent, of enige ander persoon, *toegeeflikheidswaardig* is, verhoed nie die *klaer*, indien enige, om aansoek te doen om—

(a) 'n verklaring ingevolge artikel 58(1)*(a)*(v) of (vi) nie; of

(b) 'n toekenning van privaatregtelike skadevergoeding ingevolge artikel 65 nie.

(7) Niks in hierdie artikel, regstreeks of onregstreeks, vestig enige reg van 'n persoon om—

(a) ten volle of gedeeltelik, of met of sonder enige voorwaardes, as *toegeeflikheidswaardig* gesertifiseer te word nie; of

(b) van die Mededingingskommissie te verwag of te vereis om sodanige sertifikaat uit te reik of om te oorweeg om dit te doen nie.".

Wysiging van artikel 58 van Wet 89 van 1998, soos gewysig deur artikel 15 van Wet 39 van 2000

9. Artikel 58 van die Hoofwet word hierby gewysig deur in subartikel (1)*(a)* die volgende subparagraaf by te voeg:

"(viii) oplegging van gepaste voorskrifte;".

Wysiging van artikel 59 van Wet 89 van 1998, soos gewysig deur artikel 15 van Wet 39 van 2000

10. Artikel 59 van die Hoofwet word hierby gewysig deur in subartikel (1) paragrawe *(a)* en *(b)* deur die volgende paragrawe te vervang:

"*(a)* vir 'n *verbode praktyk* ingevolge artikel 4(1)*(b)*, 5(2) **[of]**, 8*(a)*, *(b)* **[of]**, *(d)* of 10A(5);

(b) for a *prohibited practice* in terms of section 4(1)*(a)*, 5(1), 8*(c)* or 9(1), if the conduct is substantially a repeat by the same *firm* of conduct previously found by the Competition Tribunal, or previously acknowledged by the firm in a consent order, to be a *prohibited practice*;".

Amendment of section 73 of Act 89 of 1998

11. Section 73 of the principal Act is hereby amended by the substitution in subsection (2) for paragraphs *(c)* and *(d)* of the following paragraphs:

"*(c)* does anything in connection with an investigation that would have been contempt of court or an obstruction of the course of justice if the proceedings had occurred in a court of law;

(d) knowingly provides false information to the Commission or the Tribunal;".

Insertion of section 73A in Act 89 of 1998

12. The following section is hereby inserted in the principal Act after section 73:

"**Causing or permitting *firm* to engage in *prohibited practice***

73A. (1) A person commits an offence if, while being a director of a *firm* or while engaged or purporting to be engaged by a *firm* in a position having management authority within the *firm*, such person—

(a) caused the *firm* to engage in a *prohibited practice* in terms of section 4(1)*(b)*; or

(b) knowingly acquiesced in the *firm* engaging in a *prohibited practice* in terms of section 4(1)*(b)*.

(2) For the purpose of subsection (1)*(b)*, 'knowingly acquiesced' means having acquiesced while having actual knowledge of the relevant conduct by the firm.

(3) Subject to subsection (4), a person may be prosecuted for an offence in terms of this section only if—

(a) the relevant *firm* has acknowledged, in a consent order contemplated in section 49D, that it engaged in a *prohibited practice* in terms of section 4(1)*(b)*; or

(b) the Competition Tribunal or the Competition Appeal Court has made a finding that the relevant *firm* engaged in a *prohibited practice* in terms of section 4(1)*(b)*.

(4) The Competition Commission—

(a) may not seek or request the prosecution of a person for an offence in terms of this section if the Competition Commission has certified that the person is *deserving of leniency* in the circumstances; and

(b) may make submissions to the National Prosecuting Authority in support of leniency for any person prosecuted for an offence in terms of this section, if the Competition Commission has certified that the person is *deserving of leniency* in the circumstances.

(5) In any court proceedings against a person in terms of this section, an acknowledgement in a consent order contemplated in section 49D by the firm or a finding by the Competition Tribunal or the Competition Appeal Court that the *firm* has engaged in a *prohibited practice* in terms of section 4(1)*(b)*, is *prima facie* proof of the fact that the *firm* engaged in that conduct.

(6) A *firm* may not directly or indirectly—

(a) pay any fine that may be imposed on a person convicted of an offence in terms of this section; or

(b) indemnify, reimburse, compensate or otherwise defray the expenses of a person incurred in defending against a prosecution in terms of this section, unless the prosecution is abandoned or the person is acquitted.".

(*b*) vir 'n *verbode praktyk* ingevolge artikel 4(1)(*a*), 5(1), 8(*c*) of 9(1), indien die optrede wesenlik die herhaling deur dieselfde *firma* is van optrede wat vantevore deur die Tribunaal 'n verbode praktyk bevind is, of wat voorheen deur die firma erken is in 'n toestemmingsbevel;".

Wysiging van artikel 73 van Wet 89 van 1998

11. Artikel 73 van die Hoofwet word hierby gewysig deur in subartikel (2) paragrawe (*c*) en (*d*) deur die volgende paragrawe te vervang:

"(*c*) enigiets doen in verband met 'n ondersoek wat minagting van die hof of regsverydeling sou wees indien die verrigtinge in 'n geregshof sou plaasvind;

(*d*) bewustelik, valse inligting aan die Kommissie of die Tribunaal verskaf.".

Invoeging van artikel 73A in Wet 89 van 1998

12. Die volgende artikel word hierby in die Hoofwet na artikel 73 ingevoeg:

'Veroorsaak of instem dat *firma* in *verbode praktyk* deelneem

73A. (1) 'n Persoon pleeg 'n misdryf wanneer hy of sy, as direkteur van 'n *firma*, of terwyl hy of sy in diens is of voorgee om in diens te wees van 'n *firma* in 'n posisie met bestuursmagtiging in die *firma*, sodanige persoon—

(*a*) veroorsaak het dat die *firma* deelneem in 'n *verbode praktyk* ingevolge artikel 4(1)(*b*); of

(*b*) wetend ingestem het dat die *firma* deelneem aan 'n verbode praktyk ingevolge artikel 4(1)(*b*).

(2) Vir doeleindes van subartikel (1)(*b*), beteken 'wetend instem' daarin berus terwyl die persoon feitelike kennis gedra het van die tersaaklike optrede deur die *firma*.

(3) Behoudens subartikel (4), kan 'n persoon alleenlik vir 'n oortreding ingevolge hierdie artikel vervolg word indien—

(*a*) die tersaaklike *firma*, in 'n toestemmingsbevel soos beoog in artikel 49D, erken het dat hy deelgeneem het aan 'n *verbode praktyk* ingevolge artikel 4(1)(*b*); of

(*b*) die Mededingingstribunaal of die Mededingingsappèlhof bevind het dat die tersaaklike *firma* deelgeneem het aan 'n *verbode praktyk* ingevolge artikel 4(1)(*b*).

(4) Die Mededingingskommissie—

(*a*) mag nie die vervolging van 'n persoon vir 'n misdryf ingevolge hierdie artikel aanvra of versoek nie indien die Mededingingskommissie gesertifiseer het dat die persoon in die omstandighede *toegeeflikheidswaardig* is nie; en

(*b*) kan voorleggings aan die Nasionale Vervolgingsgesag doen ter ondersteuning van toegeeflikheid vir enige persoon wat vervolg word vir 'n misdryf ingevolge hierdie artikel, indien die Mededingingskommissie gesertifiseer het dat die persoon in die omstandighede *toegeeflikheidswaardig* is.

(5) In enige hofverrigtinge teen 'n persoon ooreenkomstig hierdie artikel, is 'n erkenning in 'n toestemmingsbevel soos beoog in artikel 49D deur die *firma* of 'n bevinding deur die Mededingingstribunaal of die Mededingingsappèlhof dat die *firma* deelgeneem het in 'n *verbode praktyk* ingevolge artikel 4(1)(*b*), *prima facie* bewys van die feit dat die *firma* by daardie optrede betrokke was.

(6) 'n *Firma* mag nie regstreeks of onregstreeks—

(*a*) enige boete wat 'n persoon wat skuldig bevind is aan 'n misdryf ingevolge hierdie artikel, opgelê kan word, betaal nie; of

(*b*) die uitgawes wat 'n persoon aangegaan het in die verdediging van 'n vervolging ingevolge hierdie artikel, kwytskeld, terugbetaal, vergoed of andersins bestry nie, tensy die vervolging laat vaar of die persoon onskuldig bevind word.".

Amendment of section 74 of Act 89 of 1998

13. Section 74 of the principal Act is hereby amended—

(a) by the deletion of "(1)" from the beginning of the section; and

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

"*(a)* in the case of a contravention of section 73(1), or section 73A, to a fine not exceeding R500 000-00 or to imprisonment for a period not exceeding 10 years, or to both a fine and such imprisonment; or".

Amendment of section 82 of Act 89 of 1998, as amended by Act 39 of 2000

14. Section 82 of the principal Act is hereby amended—

(a) by the deletion of subsection (2);

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

"In addition to the matters contemplated in section 21(1)*(h)*, an agreement contemplated in **[terms of]** subsection (1), section 3(3)*(b)* and section 21(1)*(h)* must—"; and

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

(a) identify and establish procedures including dispute resolution for the management of areas of concurrent jurisdiction;

(d) be published in the Gazette for public comment.".

Amendment of law

15. The law referred to in the Schedule is hereby amended to the extent specified in the third column thereof.

Short title and commencement of Act

16. This Act is called the Competition Amendment Act, 2009, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

Wysiging van artikel 74 van Wet 89 van 1998

13. Artikel 74 van die Hoofwet word hierby gewysig—

(a) deur die skrapping van "(1)" aan die begin van die artikel; en

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

"*(a)* in die geval van 'n oortreding van artikel 73(1), of artikel 73A, met 'n boete van hoogstens R500 000 of met gevangenisstraf vir 'n tydperk van hoogstens 10 jaar, of met beide die boete en gevangenisstraf; of".

Wysiging van artikel 82 van Wet 89 van 1998, soos gewysig deur Wet 39 van 2000

14. Artikel 82 van die Hoofwet word hierby gewysig—

(a) deur subartikel (2) te skrap;

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

"'n Ooreenkoms **[ingevolge]** in subartikel (1), artikel 3(3)*(b)* en artikel 21(1)*(h)* bedoel, moet, bykomend tot die aangeleenthede in artikel 21(1)*(h)* beoog—"; en

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

"*(a)* verrigtinge, insluitend dispuutbeslegting, identifiseer en instel vir die hantering van konkurrente regsgebiede;

(d) in die *Staatskoerant* vir openbare kommentaar gepubliseer word.".

Wetswysiging

15. Die Wet in die Bylae na verwys word hierby gewysig tot die mate bepaal in die derde kolom daarvan.

Kort titel en inwerkingtreding van Wet

16. Hierdie Wet heet die Wysigingswet op Mededinging, 2009, en tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* bepaal.

SCHEDULE

LAWS REPEALED OR AMENDED

(Section 14)

No. and year of Act	**Short title**	**Extent of amendment**
Act No. 36 of 2005	Electronic Communications Act, 2005	Section 67 is hereby amended by the substitution for subsection (9) of the following subsection: "(9) **[Subject to]** Despite the provisions of this Act, the Competition Act applies to competition matters in the electronic communications industry.".

BYLAE

WETTE HERROEP OF GEWYSIG

(Artikel 14)

No. en jaar van Wet	Kort titel	Mate van wysiging
Wet No. 36 van 2005	Wet op Elektroniese Kommunikasie, 2005	Artikel 67 word hierby gewysig deur subartikel (9) deur die volgende subartikel te vervang: "(9) **[Behoudens]** Ten spyte van die bepalings van hierdie Wet, is die Wet op Mededinging van toepassing op mededingingsaangeleenthede in die elektroniese kommunikasies nywerheid.".