



competitioncommission
south africa

pocket guide to competition

“Towards a fair and efficient economy for all”

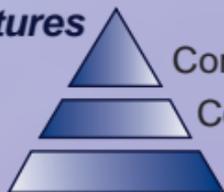
1. Purpose

The purpose of this guide is to provide a broad overview of the Competition Authorities, the Competition Act and the services provided by the Competition Commission.

Competition in the economy is a driving force of development and growth which ultimately leads to lower prices and more product and service choice for consumers.

The SA Competition Commission is an independent statutory authority, responsible for investigation and evaluation of prohibited practices, exemption applications and control of mergers and acquisitions. It also has a competition advocacy and education function.

***Institutional structures
in terms of the
Competition Act
(Act No. 89 of 1998)
("the Act")***



Competition Appeal Court

Competition Tribunal

Competition Commission

2. Why a Competition Act?

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 SA;
- expand opportunities for South African participation in world markets and recognize the role of foreign competition in SA;
- ensure that SME's have an equitable opportunity to participate in the economy;
- promote a greater spread of ownership, in particular to increase ownership of historically disadvantaged persons.

3. Prohibited Practices

The Act prohibits any agreement between parties that substantially prevents or lessens competition unless the agreement can be justified based on technology, efficiency or other pro-competitive gains.

Where these arrangements or agreements have a substantial negative effect on a particular sector, the onus is on parties to show that these agreements or arrangements are to the benefit of the consumer and the economy in general. The benefits should outweigh the harm of the agreements.

The Act prohibits any agreement or practice between competitors, which results in direct or indirect price fixing, allocation of markets between competitors, collusive tendering and setting or maintenance of minimum resale prices.

Some agreements or practices have been prohibited outright ("per se"), without the possibility of justifying them on economic grounds. To continue with these practices, parties must apply for an exemption.

Abuse of Dominance:

For a firm to be considered dominant the following thresholds have to be met:

- Firms with annual turnover or assets in excess of R5 million and are dominant in a market are prohibited by the Act from abusing their dominance or market power.
- In terms of the Act, a dominant firm has market share of:
 - at least 45%; or
 - at least 35%, but less than 45%, unless it can show that it does not have *market power; or
 - 35% with market power.

A dominant firm may not engage in the following practices:

- charge excessive prices;
- refuse access to an essential facility;
- engage in exclusionary acts, such as:
 - requiring or inducing a supplier or customer not to deal with a competitor;
 - refusing to supply scarce goods to a competitor;
 - tying unrelated goods or services or making them conditional; or
 - buying up scarce resources required by a competitor.
- engage in price discrimination if:
 - it prevents or lessens competition;
 - involves the equivalent sale of goods and services of like grade and quality to different customers; or
 - involves discrimination between customers in terms of price, discounts, allowances, rebates, credit, the payment for and provision of goods and services.

** Market power - is the ability of a firm to control prices or to act independently of its competitors, customers and suppliers.*

The Commission must investigate allegations of contraventions of prohibited practises as provided for in the Competition Act. The outcomes of these investigations are either non-referrals, referrals or consent orders / agreements. Referrals and consent orders are referred to the Competition Tribunal for final adjudication.

A consent order is an agreement between the Competition Commission and a party, in terms of which a firm being investigated or having been investigated admits to a contravention of the Act, and agrees to the remedies required by the Commission. Such agreement may be made an order of the Competition Tribunal.

4. Exemptions

An Exemption may be granted if an agreement or practice constitutes a prohibited practice, in terms of Chapter 2 of the Act, but is required for its contribution to:

- maintain or promote exports;
- promote the competitiveness of small business; or firms controlled or owned by historically disadvantaged persons;
- change the productive capacity to stop decline in an industry; or
- maintain economic stability of an industry designated by the Minister.

An Exemption may be defined as a licence to engage in activity that would otherwise not be allowed, offering protection from action by the Commission or any other party for potential breach of the Act.

Fees payable for an exemption application are as follows:

<i>Exemptions</i>	<i>Filing Fee</i>	<i>Annual Fee</i>
Single Exemption	R5 000 + vat	R500 per annum
Block Exemption	R100 000 + vat	R1 000 per annum
Schedule 1 Exemption	R100 000 + vat	

5. Mergers

The Act stipulates that the Commission must be notified of all mergers and acquisitions, where the transactions exceed applicable thresholds.

A merger is defined as a direct or an indirect acquisition or establishment of control over the whole or part of the business of another firm.

The most common types of merger transactions include the sale or acquisition of assets or shares in a firm and the amalgamation of two or more firms. Parties must notify the Commission at any time before the implementation of the transaction, where applicable thresholds are exceeded.

The Commission decides on the approval, conditional approval or prohibition of intermediate mergers but makes recommendation for approval, conditional approval or prohibition of large mergers to the Competition Tribunal.

In its analysis of merger transactions the Commission evaluates the competitive impact (whether the transaction substantially prevents or lessens competition in the market), efficiency gains and public interest issues that arise from the merger.

The public interest issues that the Commission takes into consideration are:

- a particular industrial sector or region;
- employment;
- the ability of small and black business to become competitive; and
- the ability of national industries to compete internationally.

Merging firms must notify registered trade unions representing the firm's employees or an employee representative in cases where there is no registered trade union. Proof of delivery of a merger notice to trade unions must be included with the notification of the merger to the Commission.

Thresholds and fees

Annual Turnover/Assets of acquiring and target firms

**Fee
(VAT Excl)**

Small Mergers:

No fee

Combined annual turnover or assets below R200 million **and** target firm below R30 million

** Parties are not obliged to notify the Commission of these transactions but may do so voluntarily. The Commission may require notification of small mergers if it believes there are competition or public interest concerns.*

Intermediate Mergers:

R75 000

Combined annual turnover or assets equal to or more than R200 million but below R3,5 billion **and** target firm equal to or more than R30 million

Large Mergers:

R250 000

Combined annual turnover or assets equal to or more than R3,5 billion **and** target firm equal to or more than R100 million

6. Advisory Opinions and Clarifications

In order to facilitate voluntary compliance with the provisions of the Act, the Commission assists parties through non-binding advisory opinions on whether the Commission should be notified of a transaction or if the implementation of a proposed agreement or practice may contravene the Act.

The fees for advisory opinions are as follows:

<i>Advisory Opinions</i>	<i>Fee</i>
Non binding written opinion	R2 500 +vat

The Commission also assists parties, through non-binding clarifications.

7. Services offered

For presentations on the Competition Act, workshops, publications, clarifications and advisory opinions please contact the Compliance Division of the Commission at the following:

Private Bag X23, Lynnwood Ridge, 0040

E-mail: ccsa@compcom.co.za

Tel: 012 482 9000

Fax: 012 482 9003

Website: www.compcom.co.za

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