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Cartels

South Africa

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SOUTH AFRICA

Law and Practice

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1. Basic Legal Framework

1.1 Statutory Bases for Challenging Cartel Behaviour/Effects

Cartel conduct is prohibited in terms of Section 4 of the Competition Act, No 89 of 1998, as amended (the Act).

1.2 Public Enforcement Agencies and Scope of Liabilities, Penalties and Awards

The South African competition authorities consist of the Competition Commission (Commission), Competition Tribunal (Tribunal) and the Competition Appeal Court (CAC).

The Commission acts as the investigative arm and is the primary point of contact between the competition authorities and the public at large. The Commission is the recipient in the first instance of merger filings and complaints relating to alleged prohibited practices. In investigating matters, the Commission may invoke its very broad investigative powers, which include the right to issue summonses and to conduct search and seizure operations, commonly known as dawn raids.

The Tribunal acts as the adjudicative arm of the competition authorities and, although its procedures are less formal, operates in a manner similar to a civil court. A Tribunal hearing is presided over by a panel of generally three members who have the required qualifications and experience in business, law, economics or industry. The Tribunal adjudicates on prohibited practices and imposes penalties for non-compliance with the Act.

The CAC is the specialist appeal and review authority in competition matters. The CAC may hear appeals arising from Tribunal decisions and may issue any order it considers appropriate; including confirming, amending or setting aside a decision or order of the Tribunal, or remitting the matter back to the Tribunal.

The Tribunal may impose an administrative penalty (fine) in relation to a prohibited practice that may not exceed 10% of the relevant firm's annual turnover in South Africa and its exports from South Africa during the firm's preceding financial year. In the case of a repeat offence, the Tribunal may impose an administrative penalty not exceeding 25% of the relevant firm's annual turnover in South Africa and its exports from South Africa during the firm's preceding financial year.

The Tribunal may increase the administrative penalty to include the turnover of any firm or firms that control a firm that has been found to have engaged in a prohibited practice, if the controlling firm or firms knew or reasonably should have known that the controlled firm was engaging in a prohibited practice, and may order that the controlling firm or firms be jointly and severally liable for payment of the administrative penalty.

Any person or firm who has suffered loss or damage as a result of a prohibited practice may institute action through civil court proceedings for the assessment and awarding of damages.

A person commits an offence if, while being a director of a firm or while engaged or purporting to be engaged in a position of management authority, he or she causes a firm to engage in cartel conduct or knowingly acquiesced in the firm engaging in cartel conduct. A person convicted of such an offence is liable to a fine not exceeding ZAR500,000 or to imprisonment for a period not exceeding ten years.

1.3 Private Challenges of Cartel Behaviour/Effects

If the Commission, after investigating a complaint submitted by any party in relation to an alleged prohibited practice, decides that the complaint cannot be sustained or is without sufficient merit and does not refer the complaint for adjudication to the Tribunal, such a party may itself refer the complaint for adjudication to the Tribunal.

1.4 Definition of "Cartel Conduct"

While the Act does not expressly refer to or define "cartels" or "cartel conduct", Section 4 of the Act prohibits certain conduct by firms or associations of firms in a horizontal relationship (ie, competitors or potential competitors).

Although not expressly defined, cartel conduct is understood to occur where competitors, or potential competitors, agree or develop a practice or understanding to co-operate rather than compete with one another in relation to certain business activities.

Cartel conduct can occur through an agreement or a concerted practice. The concept of "an agreement" is interpreted widely and, when used in relation to a prohibited practice, includes a contract, arrangement or understanding, whether or not legally enforceable. A "concerted practice" is defined as co-operative or co-ordinated conduct between firms, achieved through direct or indirect contact, that replaces their independent action, but which does not amount to an agreement.

Section 4(1)(a) of the Act prohibits an agreement or concerted practice between firms, or a decision by an association of firms, in a horizontal relationship that has the effect of substantially preventing or lessening competition unless any technological, pro-competitive or efficiency gains that outweigh the anti-competitive effect can be proven. As such, Section 4(1)(a) allows for a "rule of reason" analysis and an "efficiency defence" based on any technological, pro-competitive or efficiency gains resulting from certain conduct that may outweigh the anti-competitive effects of such conduct.

Section 4(1)(b) prohibits any agreement, concerted practice or decision if it involves the following restrictive horizontal practices:

- directly or indirectly fixing a purchase or selling price, or any other trading condition;
- dividing markets by allocating market shares, customers, suppliers, territories or specific types of goods or services; or
- collusive tendering.

These prohibited practices are deemed “per se” offences, as conduct falling within the provisions of Section 4(1)(b) is not subject to a rule of reason analysis. The anti-competitive effects of a per se offence are presumed to exist and cannot be justified or defended on the basis of any alleged technological, efficiency or other pro-competitive gains flowing from the relevant conduct. An efficiency defence is, therefore, not available under Section 4(1)(b).

The Act applies to all economic activity within, or having an effect within, the Republic of South Africa. Legitimate joint ventures between competitors or potential competitors and concerted conduct designed to achieve a non-commercial, socio-economic objective or similar purpose does not amount to a violation of the Act.

The Act and Regulations do not identify specific sectors or industries that are exempt from the provisions of the Act. However, Section 10 provides that firms may apply to the Commission for an exemption from the application of the provisions prohibiting certain conduct between competitors or potential competitors.

Section 10 stipulates that an exemption may be granted in respect of agreements or practices that relate to the exercise of IP rights or that contribute towards the following objectives:

- maintenance or promotion of exports;
- promotion of the effective entry into, participation in or expansion within a market by small and medium-sized businesses, or firms controlled or owned by historically disadvantaged persons;
- change in productive capacity necessary to stop decline in an industry;
- the economic development, growth, transformation or stability of any industry designated by the Minister responsible for the administration of the Act, after consulting the Minister responsible for that particular industry; or
- competitiveness and efficiency gains that promote employment or industrial expansion.

1.5 Limitation Periods

Section 67 of the Act provides that a complaint in respect of prohibited practices (including cartel conduct) that ceased more than three years before the complaint was initiated may not be referred to the Tribunal.

The three-year period does not commence on the date of the conclusion of the agreement or the date of the concerted practice, but from the date that the effects and consequences of the agreement or concerted practice are no longer felt and experienced in the market.

A party who wishes to rely on prescription in litigation proceedings is required to raise it as a special plea.

1.6 Extent of Jurisdiction

The Act applies to all economic activity within, or having an effect within, the Republic of South Africa. In the context of Section 4, the Act applies to agreements concluded outside South Africa, but that have an effect within South Africa. In practice, it may be difficult for the competition authorities to act against firms domiciled outside their jurisdiction, but whose conduct has an effect in South Africa, especially where foreign firms have no local office or physical presence in the country.

In a recent decision of the CAC in relation to the Commission’s complaint referral against a number of banks involved in foreign currency trading, the CAC held that the Commission may establish personal jurisdiction over foreign banks or offshore corporations with no presence or business operations in South Africa if the Commission is able to allege adequate connecting factors between the relevant forum adjudicating the dispute (ie, the Tribunal) and the conduct sought to be adjudicated upon (ie, cartel conduct) that would tie the conduct to that forum.

The Commission generally accepts the submission of documents electronically as well as the submission of written statements of individuals, where individuals may not be available in the country.

1.7 Principles of Comity

Section 1(2)(b) prescribes that the Act must be interpreted in compliance with the international law obligations of the Republic of South Africa.

The CAC has considered and been cognisant of the principles of international comity in its adjudication of cases that affect foreign firms. In the Ansac/Botash appeal to the CAC, the CAC considered whether principles of comity would argue against the exercise of jurisdiction by the South African authorities in the prosecution of the cartel conduct of foreign firms. The CAC noted that Ansac did not operate in the USA and if it

had, its activities would have been in breach of the Sherman Act. Accordingly, it held that there was no conflict between South African and US law, and therefore no reason to find that international comity precluded the South African competition authorities from exercising their jurisdiction in terms of the Act.

In the *Ansac/Botash* appeal to the CAC and in the appeal to the Supreme Court of Appeal (SCA), the courts indicated that there was no real conflict of the legal requirements imposed on the parties and that there may be very little room to deny jurisdiction to the South African authorities on the basis of comity.

The Tribunal noted in *Ansac/Botash* that it is easy to appreciate the dangers of differential treatment of foreign firms. Those who wished to collude in the local market would simply find themselves an offshore cartel haven and collude to trade in South Africa knowing that evasion would be simpler than if they were located domestically and it seems unlikely that the legislature could have intended to favour foreign firms with a defence not available to domestic firms.

2. Procedural Framework for Cartel Enforcement – Initial Steps

2.1 Initial Investigatory Steps

Initial investigatory steps include researching the relevant market, issuing requests for information or summonses to industry participants and conducting dawn raids.

2.2 Dawn Raids

The Act provides for the Commission to conduct unannounced visits and searches at a firm's premises, referred to as dawn raids. The Act provides mechanisms by which the Commission may enter and search premises with a warrant, or, in limited circumstances, without a warrant. A judge or magistrate may issue a warrant to enter and search any premises if, from information on oath or affirmation, there are reasonable grounds to believe that a prohibited practice has taken place, is taking place or is likely to take place on or in those premises or if anything connected with an investigation in terms of the Act is in the possession of a person who is on or in those premises.

2.3 Restrictions on Dawn Raids

A dawn raid may only be executed during the day, unless the warrant determines otherwise (a warrant generally provides the Commission 24 hours within which it must complete the raid) and must be conducted with strict regard to decency, freedom, security and privacy, and in accordance with the rights afforded through the Constitution of the Republic of South Africa. A firm may refuse to permit the inspection or removal of an article or document on the grounds that it contains privileged information.

2.4 Spoliation of Information

It is an offence to:

- hinder, obstruct or unduly influence any person exercising a power conferred by the Act;
- fail to produce a book, document or other item as ordered;
- give false evidence or information to the Commission, knowing or believing it to be false;
- do anything calculated to influence the authorities improperly; or
- do anything that would have been contempt of court if proceedings were conducted in such a forum.

2.5 Procedure of Dawn Raids

During a dawn raid, the Commission may enter premises, examine and copy documents (both in hard and electronic format), seal business premises and ask for explanations from staff in order to obtain information on suspected infringements. The Commission may attach and remove any documentation or article and may use or require the assistance of any person on the premises to use any computer system to:

- search any data contained in or available to that computer system;
- reproduce any record from the data; and
- seize any output from that computer for examination and copying.

In most cases the Commission's investigators copy the hard drives of the computers of key personnel.

2.6 Role of Counsel

Section 1(2)(a) prescribes that the Act must be interpreted in a manner consistent with the Constitution of the Republic of South Africa. Respondents under investigation by the Commission are afforded all the constitutional rights available to any participant in judicial proceedings, including the right to be represented and assisted by counsel. A firm's in-house counsel may perform this role.

2.7 Requirement to Obtain Separate Counsel

The Act does not prescribe respondents or individuals to obtain separate counsel.

2.8 Initial Steps Taken by Defence Counsel

Principal steps to undertake during the initial phase of a Commission investigation or complaint referral include obtaining all the relevant facts and corroborating evidence, and obtaining clarity from the Commission as regards the conduct being investigated and the time period relevant to the complaint. If any concerns are identified during the initial phase, consideration should be given to applying for immunity in terms of the

Commission's Corporate Leniency Policy or engaging in "without prejudice" settlement negotiations with the Commission.

2.9 Enforcement Agency's Procedure for Obtaining Evidence/Testimony

The Commission can issue requests for information, which recipients can elect to respond to on a voluntary basis. The Commission can also utilise its statutory investigative powers, such as conducting dawn raids and issuing summonses to firms, entities and individuals requiring them to provide documents and/or appear for interrogation by the Commission's investigators.

The Commission also obtains information, documents and evidence from leniency applicants, informants and respondents who have settled or are engaged in settlement negotiations with the Commission.

2.10 Procedure for Obtaining Other Types of Information

The Commission can obtain oral evidence through issuing summonses or through oral submissions or proffers provided by immunity applicants and informants.

In most dawn raids, the Commission's investigators will copy the hard drives of the computers of key personnel.

2.11 Obligation to Produce Documents/Evidence Located in Other Jurisdictions

The Act applies to agreements or concerted practices concluded outside South Africa by foreign firms, in so far as they have an effect within South Africa. Foreign firms have a duty to reply to requests for documents and information. In general, firms are required to produce documents and evidence in their possession and located within the Republic of South Africa.

2.12 Attorney-Client Privilege

The Commission's powers of inspection are subject to claims of privilege. Privileged documents are not required to be produced during discovery or in response to a summons. If a firm claims privilege over a document during a dawn raid, the Commission may request that the registrar or sheriff of the High Court remove the document for safe custody until the court determines whether such a document is indeed privileged.

2.13 Other Relevant Privileges

Individuals may be summoned to provide documents and respond to questions from the Commission. However, a question does not have to be answered if it is self-incriminating. The only criminal proceedings in which self-incriminating information may be used are those relating to perjury or proceedings in which a person is tried for failing to answer fully and truthfully

or for causing or permitting a firm to engage in a prohibited practice.

2.14 Non-cooperation with Enforcement Agencies

Firms under investigation generally co-operate voluntarily with the Commission. In the event that firms elect not to co-operate or respond to requests for information, the Commission can utilise its investigative powers, such as issuing summonses or conducting dawn raids. A firm's degree of co-operation with the competition authorities is one of the factors taken into consideration by the Tribunal in determining the quantum of an appropriate penalty.

2.15 Protection of Confidential/Proprietary Information

When submitting information to the Commission, firms may claim all or part of that information as confidential by describing the confidential information and explaining the reasons why the information is confidential. The Act defines confidential information as trade, business or industrial information that belongs to a firm, has a particular economic value and is not generally available to or known by others.

2.16 Procedure for Defence Counsel to Raise Arguments Against Enforcement

The validity and scope of a summons can be challenged upon receipt of that summons. The validity and scope of a dawn raid can be challenged during or at the conclusion of that raid. Arguments against the merits of a complaint referral, including special pleas, are raised after the Commission has concluded its investigation and after the complaint has been referred for adjudication to the Tribunal.

2.17 Leniency, Immunity and/or Amnesty Regime

The Commission has issued a Corporate Leniency Policy (CLP) that serves as a framework for the granting of immunity from prosecution to cartel participants in exchange for information and co-operation with the Commission. The decision to grant immunity (or enter into a settlement agreement, where applicable) is at the discretion of the Commission, provided that certain requirements and conditions are met by the cartel member. The CLP is applicable in respect of agreements among competing firms to engage in price-fixing, division or allocation of markets, or collusive tendering. These cartel activities need not have been entered into in South Africa, but must have had an effect within South Africa.

There is a reasonable degree of certainty regarding the outcomes following a leniency application. Where a leniency applicant dutifully provides the Commission with all available information and documents, and complies with the requirements set out in the CLP, leniency is granted.

Only a firm that is first to apply may qualify for immunity by:

- providing complete and truthful disclosure of all the information available to it;
- offering full, expeditious and continued co-operation to the Commission (such co-operation should be continuously offered until the Commission's investigations are finalised and the subsequent proceedings in the Tribunal or the CAC are completed);
- immediately ceasing the cartel activity or acting as directed by the Commission;
- not alerting former cartel members that it has applied for leniency;
- not acting to destroy, falsify or conceal information, evidence and documents relevant to any cartel activity; and
- not making a misrepresentation concerning the material facts of any cartel activity or act dishonestly.

Leniency applications must be made in writing to the Commission. Leniency applications must contain sufficient information to allow the Commission to identify the cartel conduct and participants. The CLP does not allow for blanket immunity and an applicant is required to specify the cartel conduct in respect of which it seeks leniency. The leniency applicant must submit to the Commission all relevant information, evidence (whether written or oral) and documents relating to the cartel activity.

The CLP allows for the submission of a marker, which must be made in writing and must clearly indicate that a request for a marker is being made. A marker is typically sought where the firm is aware that prohibited, cartel conduct has taken place but requires time to source documentary evidence in support of its leniency application.

3. Procedural Framework for Cartel Enforcement – When Enforcement Activity Proceeds

3.1 Obtaining Information Directly from Employees

The Commission may direct requests for information to employees and may issue summonses to employees.

3.2 Obtaining Documentary Information from Target Company

The Commission may direct requests for information to firms and may issue summonses to firms.

3.3 Obtaining Information from Entities Located Outside this Jurisdiction

The regulations provide for an order of substituted service in instances where it is not possible to serve and issue a summons to a peregrinus (an entity not domiciled within South Africa).

3.4 Inter-agency Co-operation/Co-ordination

There is significant inter-agency interaction between the Commission and other regulators. In so far as the Act applies to an industry or sector that is subject to the jurisdiction of another regulatory authority, the Act must be construed as establishing concurrent jurisdiction. The Commission has concluded memoranda of understanding with several sector regulators.

3.5 Co-operation with Foreign Enforcement Agencies

South African competition authorities frequently engage with their international counterparts, particularly in the case of international cartel conduct that impacts several jurisdictions. The Commission has received assistance from the US Department of Justice and Federal Trade Commission, and has looked to the practice of US authorities in the exercise of its investigative functions.

Both the Commission and Tribunal are active participants in the International Competition Network (ICN) and the Commission has previously been granted "observer status" by the Competition Division of the OECD.

3.6 Procedure for Issuing Complaints/Indictments in Criminal Cases

Criminal prosecution is not conducted by the competition authorities, but through the National Prosecuting Authority (NPA) and the criminal justice system. The Commission may not seek or request the prosecution of a firm or person who is deserving of leniency and may make submissions to the NPA in support of leniency for a person prosecuted for an offence if the Commission has certified that person as deserving of leniency.

The law relating to criminal prosecution for cartel conduct is undeveloped in South Africa. There are no reported decisions relating to criminal prosecution for cartel conduct in South Africa.

3.7 Procedure for Issuing Complaints/Indictments in Civil Cases

Any person or firm who has suffered loss or damage as a result of a prohibited practice may institute action through civil court proceedings for the assessment and awarding of damages. When instituting action in a civil court, a plaintiff must file with the registrar of the relevant court a notice from the Tribunal:

- certifying that the conduct constituting the basis for the action has been found to be a prohibited practice in terms of the Act;
- stating the date of the finding; and
- setting out the section of the Act in terms of which the finding has been made.

3.8 Enforcement Against Multiple Parties

Enforcement actions involving cartels are typically brought against multiple parties (including the relevant trade association) in a single proceeding.

3.9 Burden of Proof

The standard of proof is a balance of probabilities, similar to the standard of proof in civil law matters.

3.10 Finders of Fact

The Commission acts as the principal finder of facts. Parties who have been granted the right to intervene and participate in Tribunal litigation proceedings may, subject to the discretion of the Tribunal, produce and discover additional documents, and may call for further discovery by other participants in the proceedings.

3.11 Use of Evidence Obtained from One Proceeding in Other Proceedings

The Tribunal may accept as evidence any relevant oral testimony, document or article, whether or not it is given or proven under oath or affirmation, or whether or not it would be admissible as evidence in court.

The Tribunal may conduct its hearings informally or in an inquisitorial manner, but must at all times conduct its hearings in accordance with the principles of natural justice.

3.12 Rules of Evidence

Please refer to **3.11 Use of Evidence Obtained from One Proceeding in Other Proceedings**.

3.13 Role of Experts

Experts are frequently used by the Commission, respondent firms and interveners to provide economic analysis in Tribunal hearings.

3.14 Recognition of Privileges

Privileged documents are not required to be produced during discovery or in response to a summons. A question does not have to be answered if it is self-incriminating. The law regarding a witness's privilege in a criminal case in a court of law applies equally to a person who provides information during a Tribunal hearing.

In terms of Section 56(3), the Tribunal may order a person to answer any question or produce an article or document, even where such evidence is self-incriminating.

3.15 Possibility for Multiple Proceedings Involving the Same Facts

It is well established in civil court proceedings that evidence of alleged "similar facts" that seeks to establish other unlawful conduct on the part of the respondent is not a proper basis for relevance because it is highly prejudicial to the respondent and may raise numerous collateral issues that are not probative of the specific complaint in question. However, the Tribunal has a wide discretion to regulate its own hearings and accept as evidence oral testimony, documents and other articles, whether or not these would have been admissible in court proceedings.

4. Sanctions and Remedies in Government Cartel Enforcement

4.1 Imposition of Sanctions

The Tribunal may adjudicate on prohibited conduct and impose any remedy or sanction provided for in the Act, including:

- levying fines;
- interdicting any prohibited practice;
- ordering a party to supply or distribute goods or services to another party on terms reasonably required to end the prohibited practice;
- ordering access to an essential facility on terms reasonably required; and/or
- declaring the whole or part of an agreement to be void.

4.2 Procedure for Plea Bargaining or Settlement

During, on or after completion of a Commission investigation or a market inquiry, respondent firms can agree on the terms of an appropriate settlement. Settlement agreements between respondents and the Commission have to be confirmed by the Tribunal as consent orders. The terms of settlement agreements are the subject of negotiation between the Commission and the respondents concerned, but will usually include an admission of guilt, provision for the payment of a fine and the development of a compliance programme.

4.3 Collateral Effects of Establishing Liability/Responsibility

A finding that a firm has engaged in cartel conduct could result in civil damages claims and criminal prosecution.

4.4 Sanctions and Penalties Available in Criminal Proceedings

A person commits an offence if, while being a director of a firm or while engaged or purporting to be engaged in a position of management authority, he or she causes a firm to engage in cartel conduct or knowingly acquiesces in the firm engaging in cartel conduct. A person convicted of such an offence is liable to a fine not exceeding ZAR500,000 or to imprisonment for a period not exceeding ten years.

4.5 Sanctions and Penalties Available in Civil Proceedings

Any person or firm who has suffered loss or damage as a result of a prohibited practice may institute action through civil court proceedings for the assessment and awarding of damages.

4.6 Relevance of “Effective Compliance Programmes”

The existence of and the extent to which a firm has applied a compliance programme may be a factor taken into consideration by the Tribunal in determining the quantum of an appropriate penalty.

4.7 Mandatory Consumer Redress

The Act does not provide for mandatory consumer redress.

4.8 Available Forms of Judicial Review or Appeal

Decisions of the Tribunal may be taken on appeal or review. Appeals to the CAC initiated by the Commission and respondent firms are fairly common.

5. Private Civil Litigation Involving Alleged Cartels

5.1 Private Right of Action

If the Commission, after investigating a complaint submitted by any party in relation to an alleged prohibited practice, decides that the complaint cannot be sustained or is without sufficient merit and does not refer the complaint for adjudication to the Tribunal, that party may itself refer the complaint for adjudication to the Tribunal.

5.2 Collective Action

Class actions are possible within the South African legal system. However, the substantive and procedural aspects of class action suits have only recently begun to be tested by the country's courts. In terms of procedure, litigants must apply for a certification of the action, the class must be appropriately defined, there must be a triable issue and there must be common elements to the claims of the members of the class (although all the claims need not be identical).

5.3 Indirect Purchasers and “Passing-On” Defences

The law relating to civil damages claims is undeveloped in South Africa, with only two reported decisions. The underlying objective of damages claims and of the civil court's determination of the quantum of damages is to return the plaintiff to the position that it would have been in, had it not been for the competition law infringement.

5.4 Admissibility of Evidence Obtained from Governmental Investigations/Proceedings

The Tribunal has a wide discretion and may accept as evidence any relevant oral testimony, document or article, whether or not it is given or proven under oath or affirmation, or whether or not it would be admissible as evidence in court.

5.5 Frequency of Completion of Litigation

The law relating to civil damages claims is undeveloped in South Africa, with only two reported decisions.

5.6 Compensation of Legal Representatives

Costs are awarded according to the discretion of the court and are typically awarded to the successful party.

5.7 Obligation of Unsuccessful Claimants to Pay Costs/Fees

Costs are awarded according to the discretion of the court and are typically awarded to the successful party.

5.8 Available Forms of Judicial Review of Appeal of Decisions Involving Private Civil Litigation

Decisions of the civil courts in relation to civil damages claims may be appealed or reviewed in accordance with the High Court Rules.

6. Supplementary Information

6.1 Other Pertinent Information

There are no other items of information that are pertinent to an understanding of the process, scope and adjudication of claims involving alleged cartel conduct in South Africa.

6.2 Guides Published by Governmental Authorities

The Commission issues guidelines from time to time, but these are not binding on the Commission or Tribunal.

7. COVID-19

7.1 Cartels and COVID-19

A national state of disaster was declared on 15 March 2020 and South Africa has been in lockdown since 27 March 2020. Recently, the lockdown was extended until the end of April 2020. In accordance with the lockdown regulations, Commission officials are working remotely and are currently unable to, for example, conduct dawn raids or face-to-face interrogations. All external meetings have been cancelled until further notice and critical interactions will be arranged electronically via teleconference or videoconference. The Commission has had to scale down its operations and is currently prioritising COVID-19 matters and, in particular, complaints relating to abuse of dominance, exploitative practices and collusive behaviour which artificially inflate prices or exploit consumers. Complaints relating to COVID-19 will be handled by a dedicated team comprising members of the Commission and the National Consumer Commission. New complaints are being accepted. However, the Commission discourages the submission of complaints unrelated to COVID-19.

The Tribunal is also prioritising COVID-19 matters. In relation to cartel proceedings and investigations, hearings, pre-hearings and interlocutory proceedings set down for the lockdown period are postponed sine die. No new matters will be set down for hearing during the lockdown period, unless they relate to COVID-19 matters. Priority complaint referrals relating to COVID-19 matters will be heard by arrangement with the parties. Hearings in relation to COVID-19 matters will be conducted via teleconference or videoconference.

In response to COVID-19, the Minister of Trade and Industry has issued several regulations exempting specific categories of agreements and practices that may be entered into between competitors in the banking, healthcare and retail property sectors from the application of Section 4 the Act, dealing with horizontal prohibited practices.

Bowmans is a leading African law firm providing domestic and cross-border legal services in the fields of corporate law, banking and finance law, and dispute resolution. With seven offices in five African countries and over 400 specialised lawyers, Bowmans is differentiated by the independence and quality of the legal services it provides. The firm draws on its

unique knowledge of the African business environment and an in-depth understanding of the socio-political climate to advise clients on a wide range of legal issues. Clients include corporates, multinationals and state-owned enterprises across a range of industry sectors as well as financial institutions and governments.

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