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ISSUES RELATED TO COMPETITION LAW OF PARTICULAR
RELEVANCE TO DEVELOPMENT

PREPARATIONS FOR A HANDBOOK ON
COMPETITION LEGISLATION

Handbook on Competition Legislation

Note by the UNCTAD secretariat

CONTENTS

	<u>Page</u>
INTRODUCTION	3
COMMENTARIES ON COMPETITION AND RESTRICTIVE BUSINESS PRACTICES LEGISLATION	4
I. Commentary by the Government of Colombia on Colombian Competition Legislation	4
II. Commentary by the Government of Japan on its Antimonopoly Act	11
III. Commentary by the Government of South Africa on South African Competition Legislation	23

Annexes

- I. Colombia
 - Ley 155 de 1959 por la cual se dictan algunas disposiciones sobre prácticas comerciales restrictivas
 - Decreto No. 1302 de 1 de junio de 1964 por el cual se reglamenta la Ley de 1959, en armonía con los Decretos 1653 de 1960 y 3307 de 1963
 - Decreto 2153 de diciembre 30 de 1992 por el cual se reestructura la Superintendencia de Industria y Comercio y se dictan otras disposiciones
- II. Japan
 - Antimonopoly Act Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade (Act No. 54 of 14 April 1947)
- III. South Africa
 - Maintenance and Promotion of Competition Act, 1979
 - Government Notice No. 801 of 2 May 1986 on the Maintenance and Promotion of Competition Act, 1979

INTRODUCTION

1. The Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, provides in section F.6 (c), for the compilation of a Handbook on Restrictive Business Practices Legislation.
2. Furthermore, the Expert Meeting on Competition Law and Policy, at its meeting in Geneva on 24-26 November 1997, requested the UNCTAD secretariat to continue to publish further issues of the Handbook on Competition Legislation, including regional and international instruments (see Agreed Conclusions, annex I, in TD/B/COM.2/9-TD/B/COM.2/EM/12).
3. Accordingly, the secretariat has prepared this note containing commentaries on and texts of competition legislation of Colombia, Japan and South Africa.*
4. Thus, to date the UNCTAD secretariat has issued notes containing commentaries on and texts of competition and restrictive business practices legislation of 36 countries: Algeria, Belgium, Brazil, Bulgaria, Canada, Chile, Colombia, Côte d'Ivoire, Czech Republic, Denmark, Finland, France, Germany, Hungary, Italy, Jamaica, Japan, Kenya, Lithuania, Mexico, Norway, Pakistan, Poland, Portugal, Republic of Korea, Romania, Slovak Republic, South Africa, Spain, Sri Lanka, Sweden, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela and Zambia.
5. The Secretary-General of UNCTAD, in his note of 8 March 1996, requested States which so far had not done so, or which had introduced new or amending competition legislation since their last communication to the UNCTAD secretariat, to provide the UNCTAD secretariat with their relevant legislation, court decisions and comments, on the basis of the format indicated (see below). (However, in the case of States adopting competition legislation for the first time, the commentary may not necessarily accord with the format.) In order to facilitate the reproduction of texts of legislation in more than one official language of the United Nations, States were invited to submit, if possible, the text of their legislation in one or more other languages of the United Nations.
6. The UNCTAD secretariat is grateful to the States which have contributed the material requested for the compilation of the Handbook, and once again requests States which have not yet done so to comply with the request of the Secretary-General of UNCTAD referred to above.

* The contributions are reproduced in the language and form in which they were submitted to the secretariat.

COMMENTARIES ON COMPETITION AND RESTRICTIVE
BUSINESS PRACTICES LEGISLATION

I. COMMENTARY BY THE GOVERNMENT OF COLOMBIA ON
COLOMBIAN COMPETITION LEGISLATION

A. Description of the reasons for the introduction of the legislation

Competition is a fundamental factor stimulating companies to achieve efficiency and to offer goods and services in ever-increasing numbers and at lower prices. In a competitive market efficient resource allocation and the well-being of the population are promoted.

B. Description of the objectives of the legislation and the extent to which they have evolved since the introduction of the original legislation

The objective of the legislation on commercial competition is the defence of the interests and of the quality of life of consumers. It aims to improve the efficiency of the production system, to ensure that a variety of prices and qualities of goods and services are available on the market, to guarantee consumers freedom of choice among those goods and services and to ensure that companies can operate freely in markets (section 1, paragraph 2, of Decree 2153 of 1992).

History

As early as 1959, Colombia adopted a law covering the subject of protection of competition in a context of restrictive commercial practices. However, owing to the general terms in which the rules were formulated, the procedures established for their application, the economic policies pursued over the last 30 years and the institutional capacity of the bodies charged with their implementation, the rules were not applied in practice.

In December 1992 Decree No. 2153 was adopted. It contains provisions concerning free competition and restrictive trade practices. It was a response both to the mandate given under the 1991 Constitution and the policy of modernization of the economy adopted by the Government. It was designed to stimulate competition in the market and to improve the efficiency of the economy and the well-being of entrepreneurs and consumers.

C. Description of the practices, acts or behaviour subject to control, indicating for each the type of control and the extent to which the practices, acts or behaviour mentioned are covered by that control

Article 1 of Law 155 of 1959, as amended by article 1 of Decree 3307 of 1963, prohibits agreements of any kind designed directly or indirectly to restrict the production, supply, distribution or consumption of raw materials, products, merchandise or services of domestic or foreign origin and, generally speaking, practices, procedures or systems of any kind, of a nature to restrict freedom of competition and to maintain or fix inequitable prices.

Article 46 of Decree 2153 of 1992 stipulates that, under the terms of Act 155 of 1959, all practices which affect freedom of competition in markets and are considered illegal under the Civil Code are prohibited.

Prohibited practices and their definitions

Arrangements (Decree 2153 of 1992, article 47). The Decree applies to all contracts, agreements, concertations, concerted practices or deliberately similar practices followed or entered into by two or more entrepreneurs. Those contrary to free competition include the following:

- Practices whose purpose or effect is direct or indirect price fixing;
- Practices whose purpose or effect is to establish conditions of sale or marketing which are discriminatory vis-à-vis third parties;
- Practices whose purpose or effect is the sharing of markets among producers or distributors;
- Practices whose purpose or effect is the allocation of production or supply quotas;
- Practices whose purpose or effect is the assignment, sharing or limiting of sources of supply of production inputs;
- Practices whose purpose or effect is to limit technical development;
- Practices whose purpose or effect is making the supply of a product contingent on the acceptance of additional obligations which by their nature bear no relation to the purpose of the transaction, without prejudice to any other provisions in that regard;
- Practices whose purpose or effect is a refusal to produce a product or service or to influence their levels of production;
- Practices whose purpose or effect is to bring about collusion in bidding or tendering or which has the effect of distributing contract awards, bid rigging or fixing the terms of offers.

Acts (Decree 2153 of 1992, article 48). The Decree applies to all behaviour by persons practising an economic activity which:

- Infringes the legal provisions on advertising contained in the consumer protection regulations;
- Exerts influence on a company to make it raise the prices of its products or services or to discourage it from carrying out its intention to reduce its prices;

- Involves refusal to sell or furnish services to a company, or to discriminate against it, when such action may be considered as retaliation against that company's price policy.

The following practices constitute abuse of a dominant market position where the latter exists (Decree 2153 of 1992, article 50):

- A lowering of prices below cost if the intention is to eliminate one or more competitors or to prevent the entry or expansion of competitors;
- The application of discriminatory conditions for equivalent transactions, thereby placing a consumer or a supplier at a disadvantage vis-à-vis another comparable consumer or supplier;
- Practices whose purpose or effect is to make the supply of a product contingent on the acceptance of additional obligations which by their nature bear no relation to the purpose of the transaction, without prejudice to any other provisions in that regard;
- Sale to one purchaser on conditions different from those offered to another purchaser where the intention is to reduce or eliminate competition in the market;
- The sale or supply of services in one part of the country at a price different from that offered in another part of the country, where the intention or effect is to reduce or eliminate competition in that part of the country and the price is not in keeping with the cost structure of the transaction concerned.

D. Description of the scope of application of the legislation

The Law and the Decree are applicable to all public and private companies carrying on entrepreneurial activities - firstly, because the Law makes no distinction between the two types of company; and secondly, because the Decree specifically stipulates that the Superintendent's terms of reference provide for supervision of all entities carrying on economic activity, irrespective of the type of activity or the legal character of the entity carrying on that activity.

General supervision is exercised to guarantee free competition in national markets, without prejudice to the powers assigned in current legislation to other authorities, such as the Household Public Services, which, under Law 140 of 1993, is the tutelary body of the Public Services Supervisory Board. In the financial sector, under Decree-Law 663 of 1992 and Decree 2159 of 1995, responsibility for supervision and control lies with the Banking Supervisory Board.

The Decree, while prohibiting all practices contrary to freedom of competition, specifically excepts agreements to further research and

development activities, agreements on compliance with rules, standards and measures and agreements relating to the use of procedures, methods and systems.

E. Description of the enforcement machinery (administrative or judicial), indicating any notification and registration agreements and the principal powers of the body or bodies concerned

The Office of the Supervisor for Industry and Trade is a technical body attached to the Ministry of Economic Development. It enjoys administrative, financial and budgetary autonomy for the purposes of the functions assigned to it. The latter include:

- Ensuring compliance with the provisions concerning the promotion of competition and on restrictive trade practices in the domestic market, without prejudice to the powers assigned to other authorities under current legislation; receiving complaints concerning matters affecting competition in the markets and taking action on those which are of significance, in pursuance, inter alia, of the following ends: improving the efficiency of national production system; ensuring that consumers have free choice and access to the markets for goods and services; ensuring that enterprises can operate freely in the markets; and ensuring that there is a variety of prices and qualities of goods and services available;
- Imposing the appropriate penalties for breaches of the regulations concerning restrictive practices and the promotion of competition and for failure to comply with the instructions given by the Office in the performance of its duties;
- Making inspection visits to verify compliance with the legal provisions for which it has supervisory responsibilities and taking appropriate measures as required by law;
- Advising the central Government, and participating in the framing of policies, on all subjects relevant to consumer protection, the promotion of competition and industrial property and other areas within the ambit of its functions;
- Explaining to the entities with which it has dealings how to comply with the legal provisions relating to the areas mentioned in the previous paragraph, establishing benchmarks to facilitate compliance and indicating procedures for full implementation;
- Where considerations of public interest make that course advisable, taking exclusive responsibility for investigations and the imposition of penalties for breaches of the regulations on price control and supervision.

Functions of the Supervisor of Industry and Trade (ibid, art. 4)

The Supervisor of Industry and Trade, as the head of his department, is required to perform the following functions:

- To ensure compliance by his department with the legal provisions relating to it, and the efficient performance of its technical and administrative functions;
- To ensure compliance with the provisions on the promotion of competition and on restrictive trade practices laid down in Act 155 of 1959, the provisions complementing it (and in particular those of the present Decree), by all entities carrying on economic activity, regardless of their legal form or nature, which fall within the ambit of the first paragraph of article 2 of the Decree;
- As a conservatory measure, to order the immediate discontinuance of practices which may prove contrary to the provisions referred to in the previous paragraph;
- To decide to terminate investigations into suspected infringements of the provisions referred to in paragraph 10 of this article when in his opinion the alleged offender provides sufficient guarantees that the practice which gave rise to the investigation will be discontinued or changed;
- To order offenders to change or discontinue practices contrary to the provisions on the promotion of competition and on restrictive trade practices referred to in this decree;
- To decide on mergers, consolidations, amalgamations and takeovers of companies;
- To impose fines of up to the equivalent of 2,000 times the legal minimum monthly wage in force at the time of imposition of the penalty for infringements of the provisions on the promotion of competition and on restrictive trade practices referred to in this Decree;
- To impose fines of up to 300 times the legal monthly minimum wage in force at the time of the imposition of the penalty on managers, directors, legal representatives, tax auditors and other natural persons who authorize, execute or tolerate practices which violate the rules on the promotion of competition and on restrictive trade practices referred to in this Decree. The fines are payable to the national treasury;
- To publicize the policies of his department.

Functions of the Manager of the Office for the Promotion of Competition (ibid. art. 11)

- To initiate preliminary inquiries, ex officio or at the request of a third party, into infringements of the provisions on the promotion of competition and on restrictive trade practice referred to in paragraph 10 of article 4 of the Decree;
- To decide on the admissibility of complaints received under the terms of the previous paragraph;
- To conduct preliminary inquiries and investigation proceedings seeking to establish whether infringements of the provisions concerning the promotion of competition and on restrictive trade practices referred to in Decree 2153 of 1992 have been committed;
- To keep a register of the investigations conducted, the penalties imposed and the commitments received as a result of the procedures relating to the provisions concerning the promotion of competition and on restrictive trade practices;
- To decide on appeals for reconsideration and applications for annulment of its decisions.

Functions of the Division for the Promotion of Competition (ibid., art. 12)

- To support the manager of the Office for the Promotion of Competition in the conduct of preliminary inquiries and investigations in cases concerning infringements of the provisions concerning the promotion of competition and on restrictive trade practices;
- To attend to complaints filed by individuals, and, if in that process possible violations of the rules on trade practices restricting competition are identified, to propose to the manager of the Office for the Promotion of Competition, if the importance of the behaviour or practice justifies it, to initiate the appropriate procedures;
- To give advice on request on matters falling within its competence;
- To examine applications for consolidations, amalgamations or mergers and takeovers in the manner prescribed by law;
- To prepare draft decisions comprising the imposition of penalties for violations of the rules concerning trade practices restricting freedom of competition;
- To conduct investigations undertaken to verify compliance with the regulations relevant to its field of competence;

- To obtain and keep up to date relevant information on the different domestic and international markets, classified under the technical coding;
- To prepare the economic and technical studies needed for the discharge of the functions of the Office of the Delegate for the Promotion of Competition;
- Other tasks which may be assigned to it and are relevant to its remit.

F. Description of any parallel or supplementary legislation, including treaties or understandings with other countries, involving cooperation or procedures for resolving disputes in the area of restrictive business practices

Decision 285 of the Commission of the Cartagena Agreement, signed in Lima (Peru) on 21 March 1991, contains regulations to prevent or correct distortions to competition caused by practices restrictive of free competition within the Andean Group, which consists of Bolivia, Colombia, Ecuador, Peru and Venezuela. The Free Trade Agreement between the Group of Three (G3), in paragraph (a) of article 16-03, provides for the creation of a Competition Committee with a specific mandate relating to subjects with a bearing on competition policies and trade in the free trade zone. The Committee is composed of representatives of the three G3 countries (Colombia, Mexico and Venezuela).

G. Description of the major decisions taken by administrative and/or judicial bodies, and the specific issues covered

Act 155 of 1959 laid down certain general premises requiring the preparation of a compendium of case law or of precise regulations specifying practices deemed to be anti-competitive. The subject being a new one, no compendium of case law exists in Colombia; it is hoped that one will be prepared in future years.

H. Short bibliography citing sources of legislation and principal decisions, as well as explanatory publications by Governments, or legislation, or particular parts thereof

Decree 2153 of 1992

Law 155 of 1959

Decree 1302 of 1964 (regulations to implement Law 155).

Hacia un nuevo régimen de promoción de la competencia/Bogotá, Chamber of Commerce, July 1993.

II. COMMENTARY BY THE GOVERNMENT OF JAPAN ON ITS ANTIMONOPOLY ACT

A. Reasons for the Introduction of Antimonopoly Legislation in Japan

In pre-Second World War Japan, economic power was concentrated in the huge "zaibatsu" (family-controlled combines) and lawful cartel organizations and the power was used to strengthen State control over economic activities. According to some commentators, this economic system impeded the sound development of the economy and society of Japan.

After the War, in order to develop the economic basis needed to support a democratic society, the industrial democratization policy, composed of specific measures including the dissolution of the zaibatsu, deconcentration of economic power and disbanding of private control bodies, was implemented. It was intended to create an institutional structure in which private firms would have equal opportunities to exercise their capabilities and engage in free competition. The Antimonopoly Act, proposed as a permanent measure for industrial democratization that would maintain fair and free competition among private firms for the future Japanese economy, was enacted in 1947.

B. Objectives of the Legislation

The Antimonopoly Act is aimed at promoting free and fair competition, stimulating the creative initiative of firms, encouraging the business activities of firms, raising employment levels and people's real income, and thereby promoting the democratic and wholesome development of the national economy as well as ensuring consumers' benefits. This Act sets forth the basic rules concerning business activities in order to maintain economic order in a free economic community (Section 1; hereinafter parenthesized numerals refer to pertinent sections and/or subsections of the Antimonopoly Act).

The Antimonopoly Act, to attain the above objectives, (1) prohibits private monopolization, unreasonable restraints of trade and unfair trade practices; (2) prevents excessive concentration of economic power; and (3) eliminates unjust restrictions of business activities.

C. Practices Subject to Control by the Antimonopoly Act

1. Unreasonable Restraint of Trade

The Antimonopoly Act provides that no firm shall carry out any unreasonable restraints of trade.

Unreasonable restraints of trade refer to cartels among firms. Cartels usually mean agreements or mutual understandings to fix prices and limit the volume of production and sales, among others.

"Unreasonable restraint of trade" shall be found when a firm,

1. by contract, agreement, or any other concerted activities,
2. mutually restricts or conducts its business activities with other firms,

3. in such a manner as to fix, maintain, or increase prices, or limit production, technology, products, facilities, or customers or suppliers,
4. thereby substantially restrains competition,
5. in any particular field of trade,
6. contrary to the public interest.

The Antimonopoly Act, in addition to prohibiting cartels as "unreasonable restraints of trade", has special provisions to prohibit unreasonable restraints of trade formed by trade associations and cartels between domestic and foreign firms (international cartels).

2. Monopoly and Oligopoly

If a small number of firms control almost the entire market, competition cannot function effectively. Consequently, regarding such monopoly or oligopoly, the Antimonopoly Act:

1. Prohibits conduct that excludes or controls the business activities of other firms and causes a substantial restraint of competition (prohibition of private monopolization) (Section 3);
2. Prevents the emergence of a situation whereby the effect of a merger and acquisition may be substantially to restrain competition in any particular field of trade (Sections 15-16); and
3. Provides for measures to restore competition when undesirable market performances exist in certain oligopolistic markets (Section 8-4).

In addition, the Act provides that the Fair Trade Commission may require submission of a report explaining the reasons for a price raise when parallel price increases occur in certain oligopolistic markets (Section 18-2).

3. Mergers and Acquisitions

Chapter IV of the Antimonopoly Act stipulates various restrictions on mergers and acquisitions. Thus, it prohibits stockholding by firms or other juridical entities, interlocking directorates in competing companies, and mergers of companies and acquisitions of business if the effect of such actions is to restrain competition substantially. Furthermore, in order to prevent excessive concentration of economic power, the Antimonopoly Act prohibits holding companies and limits the total amount of stockholdings by major non-financial firms and stockholdings by financial companies.

As for the prohibition of holding companies, from the viewpoint of promoting restructuring of enterprises and developing venture businesses, necessary reviews will be made and measures will be taken to lift the ban on holding companies, to the extent consistent with the antimonopoly policy. The

restriction on stockholdings by major non-financial firms will be studied to the extent that it is necessary in accordance with this review.

Filing of advance notifications with the Fair Trade Commission is mandatory regarding mergers and business acquisitions, and in the case of stockholding and interlocking directorates, post-factum notification and reporting are required.

See following Fair Trade Commission Guidelines on Merger and Stockholding:

1. Interpretations of the Application of the Provisions of Section 9 of the Antimonopoly Act with Respect to Venture Capital Firms (Fair Trade Commission, 23 August 1994)
2. Administrative Procedure Standards for Examining Stockholding by Companies (Fair Trade Commission, 11 September 1981, as amended)
3. Administrative Procedure Standards for Authorization of Stockholding by Financial Companies (Fair Trade Commission, 20 June 1994)
4. Administrative Procedure Standards for Examining Mergers, etc. by Companies (Fair Trade Commission, 15 July 1980, as amended)
5. Approach to Examination of Merger, etc. in the Retailing Sector (Fair Trade Commission, 24 July 1981)

4. Unfair Trade Practices

For the market mechanism to function and enhance the efficiency of the national economy, fair competition must take place by offering goods and services of high quality and at reasonable prices. In the light of this need, the Antimonopoly Act prohibits conduct which might impede fair competition as "unfair trade practices". Sixteen categories of conduct are defined as possible "unfair trade practices". The Fair Trade Commission may designate as "unfair trade practices" some activities in the categories which tend to impede fair competition (Section 2 (9)).

Some activities are designated under "general designation", which applies to all industries, while others are designated under "specific designation", which applies to specified industries such as the marine transportation industry and the department store industry.

The "general designation" cites the following 16 types of conduct as unfair trade practices ("Unfair Trade Practices", Fair Trade Commission Notification No. 15, 18 June 1982).

1. Concerted Refusal to Deal

Without proper justification, performing an act specified in one of the following paragraphs concertedly with another firm which is in a competitive relationship with oneself (hereinafter referred to as a "competitor"):

- (i) Refusing to deal with a certain firm or restricting the quantity or substance of a commodity or service involved in the transaction with a certain firm; or
 - (ii) Causing another firm to perform an act which comes under the preceding paragraph.
2. Other Refusal to Deal

Unjustly refusing to deal, or restricting the quantity or substance of a commodity or service involved in the transaction with a certain firm, or causing another firm to perform any act which comes under one of these categories.

3. Discriminatory Pricing

Unjustly supplying or accepting a commodity or service at prices which discriminate between regions or between the other parties.

4. Discriminatory Treatment in Transaction Terms, etc.

Unjustly affording favourable or unfavourable treatment to a certain firm in regard to the terms or execution of a transaction.

5. Discriminatory Treatment in a Trade Association, etc.

Unjustly excluding a specific firm from a trade association or from a concerted activity, or unjustly discriminating against a specific firm in a trade association or a concerted activity, thereby causing difficulties in the business activities of the said firm.

6. Unjust Low Price Sales

Without proper justification, supplying a commodity or service continuously at a price which is excessively below the cost incurred in the said supply, or otherwise unjustly supplying a commodity or service at a low price, thereby tending to cause difficulties for the business activities of other firms.

7. Unjust High Price Purchasing

Unjustly purchasing a commodity or service at a high price, thereby tending to cause difficulties for the business activities of other firms.

8. Deceptive Customer Inducement

Unjustly inducing customers of a competitor to deal with oneself by causing them to misunderstand that the substance of a commodity or service supplied by oneself, or terms of the transaction, or other matters relating to such transaction are much better or more favourable than the actual one or than those relating to the competitor.

9. Customer Inducement by Unjust Benefits

Inducing customers of a competitor to deal with oneself by offering unjust benefits in the light of normal business practices.

10. Tie-in Sales, etc.

Unjustly causing the other party to purchase a commodity or service from oneself or from a firm designated by tying it to the supply of another commodity or service, or otherwise coercing the said party to deal with oneself or with a firm designated by oneself.

11. Dealing on Exclusive Terms

Unjustly dealing with the other party on condition that the said party shall not deal with a competitor, thereby tending to reduce transaction opportunities for the said competitor.

12. Resale Price Maintenance (Restriction)

Supplying a commodity to the other party which purchases the said commodity from oneself while imposing, without proper justification, one of the restrictive terms specified below:

- (i) Causing the said party to maintain the sales price of the commodity that one has determined, or otherwise restricting the said party's free decision on sales prices of the commodity; or
- (ii) Having the said party cause a firm which purchases the commodity from the said party to maintain the sales price of the commodity that one has determined, or otherwise causing the said party to restrict the said firm's free decision on the sales price of the commodity.

13. Dealing on Restrictive Terms

Other than any act coming under the preceding two paragraphs, dealing with the other party on conditions which unjustly restrict any transaction between the said party and the other transacting party or other business activities of the said party.

14. Abuse of Dominant Bargaining Position

Performing any act specified in one of the following paragraphs unjustly in the light of the normal business practices, by making use of one's dominant bargaining position in relation to the other party:

- (i) Causing the said party in continuous transaction to purchase a commodity or service other than the one involved in the said transaction;
- (ii) Causing the said party in continuous transaction to provide for oneself money, service or other economic benefits;

- (iii) Setting or changing transaction terms in a way disadvantageous to the said party;
- (iv) In addition to any act coming under the preceding three paragraphs, imposing a disadvantage on the said party regarding the terms or execution of a transaction; or
- (v) Causing a company which is one's other transacting party to follow one's direction in advance, or to secure one's approval, regarding the appointment of officers of the said company (meaning those as defined by Subsection 3 of Section 2 of the Act Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade [the Antimonopoly Act]).

15. Interference with a Competitor's Transaction

Unjustly interfering with a transaction between another firm which is in a competitive relationship in Japan with oneself or with the company of which one is a stockholder or an officer and its other party to such transaction, by preventing the formation of a contract, or by inducing the breach of a contract, or by any other means whatsoever.

16. Interference with the Internal Operation of a Competing Company

Unjustly inducing, abetting, or coercing a stockholder or an officer of a company which is in a competitive relationship in Japan with oneself or with a company of which one is a stockholder or an officer, to perform an act disadvantageous to such company by the exercise of voting rights, transfer of stock, divulging of secrets, or any other means whatsoever.

These conducts can be classified into three broad categories:

1. Conduct which may restrain free competition: refusal to deal, discriminatory pricing, discriminatory treatment in transaction terms, resale price maintenance, etc.
2. Competition which in itself cannot be considered fair: inducement of customers by deceptive methods or offers of excessive premiums, tying arrangements, etc.
3. Conduct of large firms forcing unreasonable demands on clients by taking advantage of dominant bargaining positions: abuse of dominant bargaining position, etc.

Some of these practices are illegal in principle, such as resale price maintenance, whereas in the case of others it is determined on a case-by-case basis whether they are impeding fair competition.

The "specific designation" activities are limited by their terms to particular industries and employed by the Fair Trade Commission where very specific rules are warranted resulting from particular situations or other special factors in an industry.

5. Activities of Trade Associations

"Substantially restraining competition in any particular field of trade" by any trade association, which is a combination or federation of combinations of two or more firms, is prohibited (Section 8).

In addition, trade associations are prohibited from limiting the number of firms in any particular field of business, unjustly restricting the functions or activities of member firms, or having firms perform acts that constitute unfair trade practices (Section 8).

See the Antimonopoly Act Guidelines Concerning the Activities of Trade Associations. (Fair Trade Commission, 30 October 1995)

6. Restrictive International Contracts, etc.

The Antimonopoly Act regulates anticompetitive conducts under agreements or contracts between Japanese and foreign firms (Section 6). First, it prohibits international agreements or contracts which involve unreasonable restraint of trade (i.e. participation in any international cartel). Also, it prohibits firms from entering into any international agreement or contract which contains matters that constitute unfair trade practices.

D. Scope of the Legislation

1. Exemptions

The Antimonopoly Act applies to all industries. However, the following fields and acts are exempted from application of the Act:

1. Natural Monopoly (Section 21: "Such acts relating to the production, sale, or supply as are done in the proper course of business by a person engaging in railway, electricity, gas, or any other business constituting a monopoly by the inherent nature of the said business.")
2. Acts under intangible property rights (Section 23: "Such acts recognizable as the exercise of rights under the Copyright Act, the Patent Act, the Utility Model Act, the Design Act or the Trademark Act.")
3. Certain acts of cooperatives (including a federation of cooperatives) such as the agricultural cooperative and the consumer cooperative (Section 24)
4. Exempted Cartels

In principle, the Antimonopoly Act prohibits cartels by firms and trade associations; however, certain cartels are exempted from the Act if they meet specified conditions provided by law. Special provisions permitting such exemptions are set forth not only in the Antimonopoly Act itself, but also separately in individual laws such as the Small and Medium Sized Enterprises

Organization Act. As a rule, the formation of exempted cartels requires notification to, or authorization by, the Fair Trade Commission or the relevant authorities.

Even in the areas where exemption cartels are allowed, the Antimonopoly Act will be applied to those cases in which unfair trade practices are employed, or competition in any particular field of trade is substantially restrained, resulting in an unjust rise in prices.

Cartels currently exempted from the Antimonopoly Act are being reviewed by the relevant ministries and agencies from the standpoint of abolishing them in principle.

5. Exemption of Resale Price Maintenance

The Fair Trade Commission may designate commodities by a notification as to which resale price maintenance can be permitted (Section 24-2(1)). Resale price maintenance for copyrighted works is also permitted in the Antimonopoly Act (Section 24-2(4)).

In order for the Fair Trade Commission to designate, commodities should be for daily use by consumers in general and of uniform quality that can be easily identifiable. Free competition should exist with regard to commodities (Section 24-2(1)). Certain kinds of cosmetics and medicines sold "over the counter" are currently designated by the Fair Trade Commission. However, the Fair Trade Commission will take the necessary steps to revoke all exemptions granted to these items by the end of fiscal year 1997.

2. Geographical Scope

The Antimonopoly Act applies to conducts within Japan. It is applicable to conducts by firms resident outside Japan, as long as the conducts occur within Japan.

E. Description of the enforcement machinery

1. Organization

The Fair Trade Commission has exclusive authority to enforce the Antimonopoly Act.

The Fair Trade Commission is established as an administrative organ to implement the Antimonopoly Act and competition policy. The Fair Trade Commission, which is administratively attached to the Prime Minister, is positioned in the administrative organization of the State as an extraministerial body of the Prime Minister's Office; however, it exercises its authority independently without being directed or supervised by anyone else. The Fair Trade Commission is required to inform the Diet of its activities every year in an annual report.

The Fair Trade Commission consists of a Chairman and four Commissioners. The Chairman and the Commissioners are appointed by the Prime Minister, for five-year terms, with the consent of both Houses of the Diet. The status of

the Chairman and the Commissioners while in office is firmly guaranteed. The General Secretariat (staff office) executes the Commission's day-to-day operation.

2. Authority

As an administrative agency, the Fair Trade Commission has the power to conduct investigations with respect to any suspected Antimonopoly Act violations, to render a cease and desist order or to issue a complaint to initiate a hearing procedure, and to file a criminal accusation with prosecutors. It has a duty to receive various reports filed by anyone. It may authorize exemptions from application of the Antimonopoly Act such as depression cartels, rationalization cartels, or exceptional stockholdings upon a petition by related firms.

The Fair Trade Commission also has the character of a quasi-legislative and quasi-judicial organ.

As a quasi-legislative power, the Fair Trade Commission can establish the procedures for handling cases and for hearing procedures. It can determine the form of reports to be filed with it and any necessary attachments thereto. It also has a rule-making power to designate unfair trade practices and designate commodities for which resale price maintenance is permissible.

As a quasi-judicial power, the Fair Trade Commission will issue a decision after hearing procedures. If an illegal cartel pertaining to price has been formed, the Fair Trade Commission will impose surcharges to collect the unlawful gains from the firms involved, in addition to issuing an order to cease and desist. An appeal against the Fair Trade Commission's decision goes directly and exclusively to the Tokyo High Court.

The Fair Trade Commission also has the power to accuse individuals and corporations that are involved in major offences against the Antimonopoly Act and to file the cases with the Public Prosecutor's Office for indictment. A criminal procedure against any major offence under the Antimonopoly Act (offence under any part of sections 89-91) can be initiated only after an accusation is filed by the Fair Trade Commission with the Public Prosecutor General (section 96).

F. Description of Supplementary Legislations

1. Act Against Delay in Payment of Subcontract Proceeds, etc., to Subcontractors

This Act, abbreviated to the Subcontract Act, was enacted in 1956 as a special law to supplement the Antimonopoly Act. It aims at ensuring fair transactions between parent firms and subcontractors and protecting the interests of subcontractors, who are in weak positions economically, by promptly and effectively regulating the conduct of parent firms that abuse their dominant bargaining positions in subcontracting transactions.

The Subcontract Act regulates unfair trade practices in subcontracting transactions, such as parent firms' unreasonable refusal of acceptance (of goods), unreasonable reductions of payments due to subcontractors, unreasonable delay in payment of subcontract proceeds, unreasonable return of goods, unreasonable beating down of prices, unreasonable coercion to buy, and payment in bills difficult to discount.

2. Act Against Unjustifiable Premiums and Misleading Representations

The Premiums and Misrepresentations Act (the Act Against Unjustifiable Premiums and Misleading Representations), a special law that supplements the Antimonopoly Act, was enacted in 1962 to protect the interests of general consumers by ensuring fair competition. It regulates offers of excessive premiums and misleading advertising promptly and effectively, among unjustifiable conduct to induce customers, as prohibited under the Antimonopoly Act as unfair trade practices.

This Act, besides prohibiting offers of excessive premiums which are harmful, forbids advertising which could mislead general consumers into believing that the contents of goods or services, or the conditions of transaction, are significantly good or advantageous to them (misleading advertising). If any such violation is detected, the Fair Trade Commission will issue a cease and desist order.

From 1972 onwards, part of the authority to take measures against violations of the Act was entrusted to prefectural governors, and the Act is now partly enforced by prefectural governments. They may give the necessary instruction against violations of the Antimonopoly Act.

Furthermore, to prevent violations such as sales with offers of excessive premiums or by misleading advertising, firms or trade associations can promulgate Fair Competition Codes, which become their autonomous rules, subject to approval by the Fair Trade Commission.

G. Major cases

1. Chemical Companies Cartel Case

The Chemical Companies Cartel Case is one of the most serious criminal cases in recent years.

The Fair Trade Commission found that eight chemical companies had jointly decided to effect, and had actually implemented, an increase in the sales price of polyvinyl chloride stretch films for industrial use, starting with the shipments in September and November 1990. As these companies were suspected of having engaged in a criminal violation of section 3 (unreasonable restraint of trade) of the Antimonopoly Act, the Fair Trade Commission on 6 November 1991 filed criminal accusations with the Prosecutor General against eight companies as well as eight officials in charge of marketing in these companies, and again on 19 December 1991 against seven officials in charge of marketing in seven companies. The accused eight companies and 15 officials were indicted on 20 December of the same year.

Besides criminal procedure, the Fair Trade Commission on 8 January 1992 concluding that this case was a violation of section 3 of the Antimonopoly Act, issued a decision (cease and desist order) (Fair Trade Commission Decision, 8 January 1992, Shinketsushu, vol. 38, p. 150 (1991)). The Fair Trade Commission on 26 March 1992 also issued orders to eight companies to pay surcharges totalling 449,780,000 yen (Fair Trade Commission Surcharge Payment Order, 26 March 1992, Shinketsushu, vol. 38, p. 265 (1991)).

On 21 May 1993, the Tokyo High Court found the defendants guilty. The companies were fined 6-8 million yen and individuals were sentenced to 6-12 months' imprisonment with a stay of execution for two years (Tokyo High Court Decision, 21 May 1993, Hanreijiho, No. 1474, p. 31 (1994)).

2. Cases against dealers in electrical household appliances

Matsushita Electronics Co., Ltd., Hitachi Home Appliances Co., Ltd., Sony Network Sales Co., Ltd., and Toshiba East Japan Life Electronics Co., Ltd. (which were dealers selling from 25 to 100 per cent of the electrical household appliances made by Matsushita, Hitachi, Sony and Toshiba respectively) were separately found to be in violation of section 19 (prohibition of unfair trade practices) of the Antimonopoly Act for demanding that discount retailers, in regard to the selling of newly introduced consumer electronic goods, not quote prices below a certain level in newspaper flier advertisements and storefront price labelling. The Fair Trade Commission issued a decision (cease and desist orders) on 8 March 1993 (Fair Trade Commission Decision, 8 March 1993, Shinketsushu, vol. 39, pp. 236/241/246/251).

H. Bibliography

1. Japanese antimonopoly legislation

- Act Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade (Antimonopoly Act) (Act No. 54 of 14 April 1947)
- Act against Delay in Payment of Subcontract Proceeds, etc. to Subcontractors (Act No. 120 of 1 June 1956)
- Act against Unjustifiable Premiums and Misleading Representations (Act No. 134 of 15 May 1962)
- Unfair Trade Practices (Fair Trade Commission Notification No. 15 of 18 June 1982)

2. Main guidelines issued by Fair Trade Commission

- Administrative Procedure Standards for Examining Mergers, etc. by Companies (Fair Trade Commission, 15 July 1980, as amended)
- Approach to Examination of Merger, etc. in the Retailing Sector (Fair Trade Commission, 24 July 1981, as amended)

- Administrative Procedure Standards for Examining Stockholding by Companies (Fair Trade Commission, 11 September 1981)
- The Antimonopoly Act Guidelines Concerning Distribution Systems and Business Practices (Fair Trade Commission, 1 July 1991)
- Administrative Procedure Standards for Authorization of Stockholding by Financial Companies (Fair Trade Commission, 20 June 1994)
- The Antimonopoly Act Guidelines Concerning Administrative Guidance (Fair Trade Commission 30 June 1994)
- The Antimonopoly Act Guidelines Concerning the Activities of Firms and Trade Associations in Relation to Public Bids (Fair Trade Commission, 5 July 1994)
- Interpretations of the Application of the Provisions of section 9 of the Antimonopoly Act with Respect to Venture Capital Firms (Fair Trade Commission, 23 August 1994)
- The Antimonopoly Act Guidelines Concerning the Activities of Trade Associations (Fair Trade Commission, 30 October 1995)

3. Explanatory publications and booklets

- (1) FTC Japan/Views (Fair Trade Commission) An official bulletin that will provide up-to-date information on the policies and enforcement of the Fair Trade Commission
- (2) Antimonopoly Act Guidebook (Fair Trade Commission) A pamphlet that provides a rough sketch of the Japanese Antimonopoly Act
- (3) The Antimonopoly Laws and Policies of Japan (H. Iyori and A. Uesugi; Federal Legal Publications Inc.)
- (4) Introduction to Japanese Antimonopoly Law (Mitsuo Matsushita with John D. Davis; Yuhikaku)

III. COMMENTARY BY THE GOVERNMENT OF SOUTH AFRICA ON
SOUTH AFRICAN COMPETITION LEGISLATION

1. Description of the reasons for the introduction of the legislation ¹

The historical background to current (1997) competition legislation may be described as follows:

Prior to 1955 the legislation regarding anti-competitive practices was of an incidental and fragmentary nature, and the common law, which followed British law, proved largely ineffective. At the time, the court's ineptness to cope effectively with monopoly problems in the absence of adequate legislation was described in the *South African Journal of Economics* (Cowen, D. V., "A survey of the law relating to the control of monopoly in South Africa", June 1950) as follows: "The failure of the criminal branch of our law to control monopoly put the whole burden of protecting the public upon the civil or private branches, namely the law of contract, and, to a lesser extent, the law of tort or delict. Experience has proved, however, that this is a task which these branches of the law are not fitted to bear ... the net effect of the civil law is to facilitate the path of the monopolist and to leave the interests of the general public very much in the air".

In 1949 the Undue Restraint of Trade Act (No. 59 of 1949) was passed which, inter alia added a specific administrative procedure to deal with resale price maintenance and with other types of activities (such as combinations or trusts) which placed restraints on trade.

In 1955 the first proper piece of competition law was put in place with the passing of the Regulation of Monopolistic Conditions Act, 1955 (Act No. 25 of 1955). This Act was based on the following guiding principles:

- the wholesale condemnation of monopolistic tendencies is unrealistic and not justified (the advocacy of an ad hoc rather than a per se approach);
- market structure is not in itself a measure of economic effect;
- control should be entrusted to expert bodies rather than the courts;
- restrictive agreements should be controlled, not prohibited;
- large businesses or business groups should not be subject to dissolution;
- legal barriers to entry may cause monopolistic conditions and should be studied by the body responsible for administering trade practices policy; and
- State enterprises should be subject to the same monopoly control as private firms.

Competition policy within South Africa was administered in terms of this Act, which became law on 1 January 1956 and remained in place until 31 December 1979. It was regarded as the first comprehensive legislation for the regulation of anti-competitive behaviour in the country. However, in spite of recommendations that the Act be amended to include investigations into acquisitions and mergers, its scope remained narrowly defined to the control of anti-competitive practices.

The provisions of the 1955 Act did not apply to rights received in terms of the immaterial property rights acts, agreements between labour organizations and employers and the regulatory agricultural marketing and/or control board.

The Act was an enabling Act. The competent authority, the Board of Trade and Industry (BTI), was empowered to undertake investigations on the instructions of the responsible Minister. He, in turn, was empowered to either accept or reject the recommendations of the BTI.

A number of investigations were undertaken, the most significant being an investigation into resale price maintenance which gave rise to a general prohibition of this practice in 1968.

In 1975, the Government appointed a Commission to inquire into, to report on and to submit recommendations regarding the amendment of the 1955 Act. In particular, the Commission was instructed to report on existing and future concentrations of economic power as well as the efficacy of that Act as an instrument to ensure competition in the national economy.

In its 1977 report,² the Commission recommended a major revamp of the existing dispensation to add more emphasis to competition policy. As a result of the recommendations contained in this report, a new piece of legislation was introduced which came into effect on 1 January 1980. This Act, the Maintenance and Promotion of Competition Act, 1979 (Act. No. 96 of 1979), remains in force today, although a number of amendments have been made to it to widen its scope and application.

The key characteristic of the Act is that it is an enabling act, with no restrictive practices or economic structures or acquisitions being prohibited per se. It merely sets a framework in terms of which these aspects of competition law may be addressed on an ad hoc basis. It is administered by a separate statutory authority, the Competition Board.

B. Objectives of the legislation and the extent to which they have evolved since the introduction of the original (1979) legislation

The objectives of the Act may be gleaned from the short title of the Maintenance and Promotion of Competition Act, 1979 ("the Competition Act") namely, to provide for the maintenance and promotion of competition in the economy, for the prevention or control of restrictive practices, acquisitions and monopoly situations, and for matters connected therewith.

The "Report of the Commission of Inquiry into the Regulation of the Monopolistic Conditions Act, 1955", referred to in the opening paragraphs, identified the following objectives and principles of competition policy:

- A competition policy based on free enterprise, embracing the total economy, is essential for achieving the country's overall economic objectives, such as the optimum utilization of economic resources, the creation of employment, improving the balance of payments and stimulating economic growth.
- The need for cooperation between the public and private sectors is considered to be essential in achieving these objectives.
- Legislation should be structured to protect the economy and thus the public interest from abuse or misuse of economic power and should provide the appropriate sanctions.

In accepting the Commission's recommendations that existing concentrations of economic power should not be condemned, the Competition Act in its 1979 form did not include any reference to such concentrations. However, the Competition Act did provide that acquisitions and mergers which were anti-competitive (and could give rise to greater economic concentrations) could be investigated and prohibited.

The 1979 version of the Competition Act excluded investigations into restrictive practices and acquisitions in the financial and agricultural sectors of the economy without the express approval of the relevant Ministers responsible for these two sectors. Moreover, the provisions of the Competition Act could not be construed as limiting the rights acquired in terms of the various immaterial property acts, excepting as so far as it could not be construed that any person would retain or be granted any right of maintaining or enhancing prices or any other consideration in a manner contemplated in the definition of a restrictive practice.

As a general rule, restrictive practices taken up in other Acts of Parliament are immune from action in terms of the Competition Act. For this reason, an advocacy function is included in section 6 of the Competition Act to provide for the coordination of competition policy by the Competition Board.

A number of significant changes have been made to the Competition Act. In 1985 the restriction relating to the agricultural and financial sectors of the market was removed. In 1986 the Act was amended to allow for the investigation of monopoly situations, although the wording of the Act is such that such situations (in practice, dominant positions) are deemed to be in the public interest (whereas a rebuttable presumption exists that restrictive practices and acquisitions³ are against the public interest).

In 1990, the definition of a restrictive practice was rephrased to allow for greater clarity.

C. Description of the practices, acts or behaviour subject to control

Restrictive practices

Provision is made in the Competition Act for general prohibitions (per se) as well as for ad hoc or case-by-case prohibitions. Although the Act itself contains no prohibitions, provision is made in section (10 (1) for investigations which could give rise to ad hoc or per se prohibitions.

In 1986 (Government Notice 801 of 1 May 1986 published in *Government Gazette* No. 10211) five collusive practices involving suppliers were prohibited per se, namely:

- vertical price collusion (resale price maintenance);
- horizontal price collusion;
- horizontal collusion on conditions of supply;
- horizontal collusion on market sharing; and
- collusive tendering.

However, provision was made for the granting of exemptions from any one, or more, of the prohibitions, whilst certain forms of collusion are excluded from the prohibitions. Such exclusions include:

- vertically recommended resale prices;
- collusion between wholly owned subsidiaries; and
- collusion on exports beyond the borders of the Southern African Customs Union.

It is important to note that the prohibition applies to professionals. However, the prohibition has been worded in such a way that professional associations may recommend tariffs of fees and conditions of supply to their members.

A number of ad hoc prohibitions affecting specific parties or applicable to certain specific industries have also been published. The types of practices which have typically been prohibited include:

- unjustifiable refusals to deal;
- tying arrangements;
- boycott actions by suppliers;
- price leadership (conscious parallelism);
- certain agreements between suppliers and customers which effectively restricted entry into markets;

- certain activities of trade associations (in particular where membership of certain trade associations was a prerequisite to do business);
- discriminatory pricing policies; and
- collusive purchases.

Acquisitions and mergers

Acquisitions and mergers between competitors are handled on a case-by-case basis. Although no notification procedure is currently in place, parties to proposed acquisitions regularly consult with the Competition Board to obtain clearance for these transactions. In certain instances the Board would give clearance without reverting to a formal investigation in terms of the Competition Act. ⁴

Consumer protection is not a facet of current South African competition law. The Harmful Business Practices Act, 1988 supplies a framework similar in scope and application to the Competition Act to address consumer-related business practices. Aspects such as misleading advertizing, and pyramid selling would be addressed in terms of this act.

(It will be noted that the majority of the practices, acts or behaviour identified in Section D, paragraphs 3 and 4, of the Set of Principles and Rules have been included in South African competition law.)

The Competition Act, being of an enabling nature, relies on a recommendation by the Competition Board to that effect, and the acceptance of the said recommendation by the Minister of Trade and Industry, for a particular restrictive practice or acquisition or merger to be prohibited. Provision is made for appeals to a special court against decisions by the Minister to prohibit certain actions. Such appeals have to be lodged within six weeks of a prohibition being published in the *Government Gazette*.

The legal process also provides that parties affected by prohibitions may challenge the validity of the said prohibitions in the courts.

D. Scope and application of the legislation

(a) The definition of a "commodity" in the Competition Act includes any make or brand of any commodity, any book, periodical, newspaper or other publication, any building or structure and any service, whether personal, professional or otherwise, including any storage, transportation, insurance or banking service.

(b) The Act is applied in such a way that any activity which may have an effect on competition within the boundaries of South Africa may be targeted for attention.

(c) The law applies to any agreement, understanding, business practice or method of trading, irrespective of whether the agreement etc. has been put into effect.

Any anti-competitive behaviour which is legislated for in terms of a specific act of parliament cannot be addressed in terms of the competition law instrument. Many such examples exist in the South African economy. The plethora of laws governing professionals (such as medical practitioners, pharmacists, attorneys, architects, engineers) contain many restraints on competition. In a similar vein, many agricultural products are controlled (although this is changing rapidly) with, for example, fixed or minimum or maximum prices, central marketing councils, and surplus removal schemes. The price of petrol is controlled.

Although there has been a fairly widespread liberalization of business licences and business hours, many restraints on entry into markets remain in place. These restraints have to be addressed in terms of the Competition Board's advocacy function, and not the competition law instrument.

E. Enforcement mechanisms

The enforcement of competition law in South Africa rests with the South African Police Service and the Attorneys-General. Maximum penalties are R 100,000 (approximately US\$ 22,000) or five years' imprisonment, or both.

F. Parallel or supplementary legislation

Mention has already been made of the Harmful Business Practices Act, 1988. Three industry regulators exist, namely in the telecommunications, electricity supply and airports industries. They have been specifically instructed to monitor anti-competitive conduct within the specific industries, whilst the Competition Board has concurrent jurisdiction in certain instances.

There are no treaties or understandings with other countries involving cooperation or procedures for resolving disputes in the area of restrictive business practices. On the contrary, in many instances, they either condone or instigate anti-competitive practices.

G. Major decisions taken

The most important recommendations by the Competition Board to be accepted by the Government revolved around the general prohibition on collusion (1986). During the Board's 17 years as the body responsible for administering the competition law, the Government has rarely rejected its recommendations. In one instance, the Minister rejected the Board's recommendation that a particular acquisition in the hosiery industry be put aside, and the Government also rejected certain recommendations by the Board relating to the liquor industry in 1983.

In terms of its advocacy function, the board was tasked in the early 1980s, with conducting investigations into the abolition of price controls over a large variety of commodities. Its recommendations that the controls be abolished were accepted in every instance. These investigations specifically related to the price controls exercised in terms of the Price Control Act, 1964 and did not include investigations into regulatory controls over prices in terms of other legislation (such as agriculture, gasoline, sugar and wine).⁵

H. Bibliography

(a) The principal act is the Maintenance and Promotion of Competition Act, 1979; Government Printer.

(b) Collusion (cartelization or concerted action by suppliers) is prohibited in Government Notice No. 801 in *Government Gazette* No. 10211 of 2 May 1986; Government Printer.

(c) Competition Board Report No. 15, "Investigation into collusion on prices and conditions, market sharing and tender practices", 1995; Competition Board, Private Bag X720, Pretoria 0001, South Africa. (This investigation gave rise to the general prohibition on collusion and resale price maintenance.)

(d) Competition Board Report No. 22, "Investigation into restrictive practices and monopoly situations in the gypsum industry"; Competition Board, Private Bag X720, Pretoria 0001, South Africa. (This investigation gave rise to a prohibition on unjustifiable refusal to deal and discriminatory pricing in the gypsum industry.)

(e) Competition Board Report No. 26, "Investigation into restrictive practices in the distribution of pre-recorded video tapes to video-hire stores"; Competition Board, Private Bag X720, Pretoria 0001, South Africa. (This investigation gave rise to a prohibition on discriminatory pricing and tying in the video industry, taking the immaterial property element into account.)

(f) Competition Board Report No. 30, "Investigation to determine whether the purchase of additional shares in Goldfields of South Africa Ltd by Anglo-American Corporation of South Africa Ltd and De Beers Consolidated Mines Ltd or their associated companies since June 1989 constitutes a restrictive practice or acquisition or gives rise to a monopoly situation"; Competition Board, Private Bag X720, Pretoria 0001, South Africa. (This investigation concentrated on a number of complex issues and set forth the Competition Board's approach to monopoly situations, acquisitions, restrictive practices and interlocking directorates in rival firms, drawing extensively on international experience in the field.)

(g) Competition Board Report No. 46, "Investigation into whether the current service station rationalization plan involving the Department of Mineral and Energy Affairs, the respective oil companies operating in South Africa, and the Motor Industries' Federation, constitutes a restrictive practice"; Competitive Board, Private Bag X720, Pretoria 0001, South Africa. (This investigation focused on the regulatory environment in which the liquid fuels industry operates, price controls and restrictive practices.)

(h) Competition Board Report No. 52, "Investigation to determine whether any restrictive practices as defined in Section 1 of the Maintenance and Promotion of Competition Act, 1979 (Act No. 96 of 1979) exists or may come into existence in the supply and distribution of medicine in the Republic of South Africa"; Competition Board, Private Bag X720, Pretoria 0001, South Africa. (This investigation focused on restrictive practices in the

health-care field, with special reference to the distribution of medicine at retail level in the context of preferred provider networks.)

(i) Competition Board Annual Reports; Competition Board, Private Bag X720, Pretoria 0001, South Africa.

(j) Various other reports by the Competition Board; Competition Board, Private Bag X720, Pretoria 0001, South Africa.

(k) "Report of the Commission of Inquiry into the Regulation of the Monopolistic Conditions Act, 1955"; Competition Board Private Bag X720, Pretoria 0001, South Africa.

Notes

1. Taken from the "Report of the Commission of Inquiry into the Regulation of the Monopolistic Conditions Act, 1955", dated March 1997, Chap. 1.

2. See note 1.

3. An acquisition as defined in the Competition Act has a narrow focus in that it concentrates on horizontal mergers or acquisitions (that is, between competitors) which are likely to have the effect of restricting competition directly or indirectly. It does not focus on vertical or conglomerate acquisitions, even when these are anti-competitive. Such transactions are, perforce, handled in terms of their being potential restrictive practices.

4. A "formal" investigation denotes an investigation of which notice has been given in the *Government Gazette*, this being a prerequisite before action may be taken by the Minister of Trade and Industry, acting on the recommendation of the Competition Board, to prohibit the acquisition.

5. Sugar and wine are controlled in terms of their own acts, whilst other agricultural products were - historically - controlled in terms of the (Agricultural) Marketing Act, 1978.