

## Competition Law

## 1. Introduction to competition law

## 1.1 What is competition law and when does it apply

Guidance Note	Forms & Precedents	Checklists	Other Resources
1.1.1 Competition law in South Africa			
1.1.2 When does the Competition Act apply			

## 1.2 Market definition

Guidance Note	Forms & Precedents	Checklists	Other Resources
1.2.1 How to define the relevant market			
1.2.2 What is market power			

## 2. Prohibited practices

## 2.1 What is a practice

Guidance Note	Forms & Precedents	Checklists	Other Resources
2.1.1 Agreements, collusions and concerted practices		List of "red flag" clauses in agreements	Dos and don'ts for dealing with competitors

## 2.2 Horizontal restrictive practices

Guidance Note	Forms & Precedents	Checklists	Other Resources
2.2.1 Price fixing			
2.2.2 Market division			
2.2.3 Collusive tendering			How to prevent, detect and report collusive tendering
2.2.4 Assessing an agreement			
2.2.5 Information sharing			Guidelines for safe information sharing Guidelines for safe participation in trade associations
2.2.6 Single economic entity			
2.2.7 Joint ventures			Practitioner Update (Issue 3) – Joint ventures

## 2.3 Non-compliance with section 4

Guidance Note	Forms & Precedents	Checklists	Other Resources
2.3.1 Consequences of non-compliance with section 4			

## 2. Prohibited practices

## 2.4 Vertical restrictive practices

Guidance Note	Forms & Precedents	Checklists	Other Resources
2.4.1 What are vertical restrictive practices			Vertical practices – red flag clauses in agreements

## 2.5 Minimum resale price maintenance

Guidance Note	Forms & Precedents	Checklists	Other Resources
2.5.1 The practice of minimum resale price maintenance		Guidelines for managing resale prices	

## 2.6 "Rule of reason" practices

Guidance Note	Forms & Precedents	Checklists	Other Resources
2.6.1 Exclusivity arrangements		Checklist for reviewing exclusive arrangements	
2.6.2 Franchising	Examples of clauses – territorial restrictions		Franchising notice issued by Competition Commission
2.6.3 Dual distribution			
2.6.4 Restraints of trade			
2.6.5 Maximum resale price maintenance		Guidelines for managing resale prices	
2.6.6 Characterisation			

## 2.7 Rule of reason analysis

Guidance Note	Forms & Precedents	Checklists	Other Resources
2.7.1 What is the rule of reason analysis			
2.7.2 Intra v inter brand competition			
2.7.3 Gains that outweigh anti-competitive effects			

## 2.8 Non-compliance with section 5

Guidance Note	Forms & Precedents	Checklists	Other Resources
2.8.1 Consequences of non-compliance with section 5		List of "red flag" clauses in agreements	

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## 2. Prohibited practices

## 2.9 Abuse of dominance

Guidance Note	Forms & Precedents	Checklists	Other Resources
2.9.1 When is a firm dominant			
2.9.2 Excessive pricing			
2.9.3 Refusal to grant access to an essential facility			

## 2.10 Exclusionary acts

Guidance Note	Forms & Precedents	Checklists	Other Resources
2.10.1 What is an exclusionary act			Guidance on the European Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings (website)
2.10.2 Inducing a supplier or customer not to deal with a competitor			
2.10.3 Refusal to supply scarce goods			
2.10.4 Tying and bundling			
2.10.5 Predatory pricing			
2.10.6 Buying up a scarce resource			

## 2.11 Price discrimination

Guidance Note	Forms & Precedents	Checklists	Other Resources
2.11.1 What is price discrimination			
2.11.2 Justification for differential treatment			

## 2.12 Non-compliance with section 8 or 9

Guidance Note	Forms & Precedents	Checklists	Other Resources
2.12.1 Consequences of abuse of dominance			

## 2.13 Administrative penalties

Guidance Note	Forms & Precedents	Checklists	Other Resources
2.13.1 Calculating administrative penalties			

## 2. Prohibited practices

## 2.14 Exemptions

Guidance Note	Forms & Precedents	Checklists	Other Resources
2.14.1 When can an exemption be granted			DTI list of designated industries (website)
2.14.2 How to apply for an exemption	Form CC3(1) Form CC3(2) Form CC3(3)		

## 3. Merger control

## 3.1 What is a merger

Guidance Note	Forms & Precedents	Checklists	Other Resources
3.1.1 When is a transaction a merger			Practitioner Update (Issue 5) – Asset securitisation schemes Practitioner Update (Issue 4) – Risk mitigation transactions
3.1.2 Sole and joint control		List of “red flag” minority protections	

## 3.2 Types of mergers and notification thresholds

Guidance Note	Forms & Precedents	Checklists	Other Resources
3.2.1 Small, intermediate and large merger thresholds	Form CT 4 Form CC 9		Guideline on small merger notifications Merger threshold calculator (website)
3.2.2 What is the acquiring firm			
3.2.3 What is the target or transferred firm			
3.2.4 When is a joint venture a merger			Practitioner Update (Issue 3) – Joint ventures
3.2.5 Calculating asset value			
3.2.6 Calculating turnover			
3.2.7 Relevant time periods			Mergers & acquisitions divisions service standards
3.2.8 Filing fees			Notification fees (website)

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### 3. Merger control

#### 3.3 Prior implementation

Guidance Note	Forms & Precedents	Checklists	Other Resources
3.3.1 What is prior implementation			Tips on how to avoid prior implementation Tips on avoiding information sharing concerns
3.3.2 The risks of prior implementation			Tips on how to avoid prior implementation

#### 3.4 Content of a merger filing

Guidance Note	Forms & Precedents	Checklists	Other Resources
3.4.1 Guidelines for completing a merger filing	Competitiveness report Form CC 4(1): Merger notice Form CC 4(2): Statement of merger information Form CC 7: Confidentiality claim Merger filing cover letter	Merger filing checklist	Practitioner Update Issue 6: Complete merger filing requirements

#### 3.5 Merger assessment

Guidance Note	Forms & Precedents	Checklists	Other Resources
3.5.1 Effect on competition in the market			
3.5.2 Public interest issues			Background note to public interest guideline
3.5.3 Determining market share			Practitioner Update Issue 6: Complete merger filing requirements
3.5.4 Pro-competitive effects			

#### 3.6 Possible outcomes of merger assessment

Guidance Note	Forms & Precedents	Checklists	Other Resources
3.6.1 Decisions of the Commission or Tribunal			
3.6.2 Revoking a merger decision	Form CC 18 Form CC 12(1)(2)		
3.6.3 How to appeal a merger decision	Form CT 4: Request for consideration of small or intermediate merger		

### 4. Leniency

#### 4.1 Corporate leniency policy

Guidance Note	Forms & Precedents	Checklists	Other Resources
4.1.1 What is the leniency policy		Checklist for content of claim	
4.1.2 How to apply for leniency	Example of a leniency application Example of a marker application		Tips for prospective leniency applicants

### 5. Procedure

#### 5.1 The Competition Commission

Guidance Note	Forms & Precedents	Checklists	Other Resources
5.1.1 Powers and functions of the Competition Commission			

#### 5.2 The Competition Tribunal

Guidance Note	Forms & Precedents	Checklists	Other Resources
5.2.1 Powers and functions of the Competition Tribunal			
5.2.2 Referring a complaint to the Tribunal (new)			

#### 5.3 The Competition Appeal Court

Guidance Note	Forms & Precedents	Checklists	Other Resources
5.3.1 Powers and functions of the Competition Appeal Court			
5.3.2 Applying for interim relief (new)			

#### 5.4 Complaints

Guidance Note	Forms & Precedents	Checklists	Other Resources
5.4.1 How to lay a complaint	Form CC1: Complaint Form CC 7: Confidentiality claim		

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## 5. Procedure

## 5.5 Dawn raids and summons

Guidance Note	Forms & Precedents	Checklists	Other Resources
5.5.1 Powers of the Commission			Dawn raid warrant
5.5.2 What to do in a dawn raid			Record of documents seized in a dawn raid Record of questions asked by the Competition Commission during a dawn raid List of documents over which privilege is claimed Dawn raid warrant

## 5.6 Market enquires

Guidance Note	Forms & Precedents	Checklists	Other Resources
5.6.1 What is a market enquiry	Form LPG 1: Registration form for written submission		

## 5.7 Confidentiality

Guidance Note	Forms & Precedents	Checklists	Other Resources
5.7.1 What is confidential information and how can it be claimed	Form CC 7: Confidentiality claim		

## 6. International anti-trust

## 6.1 Getting the deal through guides

Guidance Note	Forms & Precedents	Checklists	Other Resources
6.1.1 Merger control			GTD T Merger control 2016: Albania, Argentina, Australia, Austria, Belgium, Bolivia, Bosnia, Brazil, Bulgaria, Canada, Chile, China, Colombia, COMESA, Croatia, Cyprus, Czech Republic, Denmark, Estonia, European Union, Faroe Islands, Finland, France, Germany, Greece, Greenland, Hong Kong, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Japan, Kenya, Latvia, Liechtenstein, Luxembourg, Macedonia, Malta, Mexico, Morocco, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Poland, Portugal, Russia, Saudi Arabia, Serbia, Singapore, Slovakia, Slovenia, South Africa, South Korea, Spain, Sweden, Switzerland, Taiwan, Thailand, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States, Uzbekistan, Zambia
6.1.2 Abuse of dominance			GTD T Dominance 2016: Australia, Austria, Belgium, Brazil, Canada, China, Colombia, Croatia, Denmark, Ecuador, European Union, Finland, France, Germany, Greece, Hong Kong, India, Indonesia, Ireland, Israel, Italy, Japan, Korea, Luxembourg, Malaysia, Mexico, Morocco, Netherlands, Norway, Portugal, Romania, Russia, Singapore, Slovenia, Spain, Switzerland, Turkey, United Kingdom, United States

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## 6. International anti-trust

## 6.1 Getting the deal through guides

Guidance Note	Forms & Precedents	Checklists	Other Resources
6.1.3 Cartel regulation			GTD T Cartel regulation 2016: Australia, Austria, Brazil, Canada, China, Cyprus, Denmark, Ecuador, European Union, Finland, France, Germany, Hong Kong, Hungary, India, Indonesia, Israel, Italy, Japan, Lithuania, Macedonia, Malaysia, Malta, Mexico, Netherlands, Nigeria, Norway, Portugal, Singapore, South Korea, Spain, Sweden, Switzerland, Taiwan, Turkey, Ukraine, United Kingdom, United States
6.1.4 Private anti-trust litigation			GTD T Private anti-trust litigation 2016: Australia, Austria, Canada, China, Denmark, England and Wales, France, Germany, Hong Kong, Israel, Italy, Japan, Lithuania, Netherlands, Scotland, South Africa, Sweden, Switzerland, Turkey, Ukraine, United States
6.1.5 Vertical agreements			GTD T Vertical agreements 2016: Australia, Austria, Brazil, Bulgaria, China, Colombia, Denmark, European Union, France, Germany, Greece, Hong Kong, Hungary, India, Ireland, Israel, Japan, Malaysia, Mexico, Mozambique, Norway, Poland, Romania, Russia, Serbia, Slovakia, Sweden, Switzerland, Turkey, Ukraine, United Kingdom, United States