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## the *competition act*: a guide for trade unions



competitioncommission  
south africa

### *The Competition Act:* a guide for trade unions

#### MERGERS AND ACQUISITIONS A RIGHT TO INFORMATION • A RIGHT TO PARTICIPATE

##### 1. INTRODUCTION

In terms of the Competition Act No 89 of 1998, trade unions have a right to information and participation in merger proceedings. This pamphlet aims to provide trade unions with basic information on their rights, merger proceedings and the procedures for trade union participation.

##### 2. HOW DOES THE COMPETITION ACT BENEFIT TRADE UNIONS?

The Competition Act requires that merging companies notify the Competition Commission of a pending merger and may not implement the transaction until they have obtained the approval of the Competition Authorities. The Act also requires merging parties to notify the registered trade unions, or in cases where there are no trade unions, to notify employee representatives of the pending merger. In terms of the Act, trade unions have an explicit right to participate in the merger proceedings. The Competition Act therefore confers on trade unions both a right to information, as well as a right to participate in proceedings.

##### 3. THE ROLE OF TRADE UNIONS IN MERGER PROCEEDINGS

In terms of the Competition Act, the registered trade unions should receive a Merger Notice on Form CC4(1), containing the details of the merging companies, as well as a copy of the Merger Information Form CC4(2), including information describing the transaction, as well as a summary of the effect of the proposed merger on employment, from the merging parties.

In terms of Section 37 of the Competition Commission Rules, the trade union may, upon receipt of the above information, file with the Competition Commission a Notice of Intention to Participate on Form CC5 (1) within 5 business days. Filing such a Notice will entitle trade unions to participate in any merger hearings before the Competition Tribunal. Furthermore, it gives the Competition Commission a clear indication that the trade union would like to make inputs on the merger. A Form CC5(1) should be accompanied by the contact details of the relevant trade union official, as well as a brief description of the representation the trade union wishes to make. Form CC5(1) is available on the Commission's website. Faxed copies of the forms can also be requested.

Trade union participation and inputs into merger evaluations are very important. A merger evaluation consists of four main steps:

- i. The Commission must first consider whether the proposed transaction falls within the ambit of the Act, i.e. whether the transaction constitutes a merger, as defined in the Act, and whether it falls within the thresholds.
- ii. If the merger falls within the ambit of the Act, the Commission considers the competitive effects of the proposed transaction.
- iii. If the merger has potential anti-competitive effects, the Commission will consider whether economic efficiency gains will result from the transaction. Any efficiency gains must be greater than the potential anti-competitive effect.
- iv. Irrespective of the competitive effects of the merger, the Commission must consider public interest issues. The Competition Act sets out 4 public interest grounds, one of which is the effect the transaction will have on employment. It is on this point that trade union input is essential. Very often, the Commission only has the information provided by the merging parties on projected employment losses at its disposal. Trade unions can provide useful information to assist in this evaluation.

#### 4. SERVICES RENDERED TO LABOUR ORGANISATIONS

In order to assist trade unions in making meaningful inputs into competition proceedings, the Competition Commission offers the following forms of assistance:

##### *i Training*

The Commission conducts training sessions for trade union officials, organizers and shop stewards on:

- The Competition Act and the related institutions
- The role of labour in merger proceedings
- A merger analysis and case study.

The workshops can either be held at the Competition Commission or at trade union offices.

##### *ii Meetings*

When a merger is filed with the Competition Commission, a notice will be served on the trade union as well. The Competition Commission or the trade union representative handling a particular merger may request a meeting to provide inputs into a merger or to request assistance.

##### *iii Information*

On request, the Commission will provide trade unions with education materials, and any documents they might need for a particular case, within the constraints imposed by confidentiality claims.

Trade unions may further lodge a complaint with the Competition Commission if the parties to the merger have not notified them or, if a merger was approved subject to certain conditions, and the parties do not adhere to those conditions.

##### *iv Advice*

The Labour Liaison division follows all merger notifications submitted by companies and may contact the relevant trade unions if they have not filed a Notice of Intention to Participate. This is to clarify the following:

- The time-frames for receiving the notice from the parties
- How this notice should be received
- Why it is important for the trade union to file a Notice of Intention to Participate in a particular case.

#### 5. WHERE TO GET HOLD OF US

For further information, please contact the Labour Liaison division. The Labour Liaison division will provide information and advice. It will also present information sessions on request.

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