South Africa has recently introduced two Acts which came into effect on the 1st April 2011, The Consumer Act and The Competition Act. Both of these Acts have quite a lot in common and both are here for the benefit of the Consumer and/or Client. However the Consumers Act has not been tested in court where the Competition Act has had a number of cases where Companies have had to pay out enormous fines and in some instances Directors have been removed from their jobs. Also this Act allows for Civil Damages as well. The negative effects relates to bad publicity, high legal costs, heavy demands on Managements’ times and Public disclosure to sensitive documents.

The main objectives of the Competition Act are to:

1. Describe the roles and powers of the Competition Authorities.
2. List the Penalties and other remedies under this Act.
3. Have a view as to what the Competition Act prohibits.

There are three Competition Authorities under this Act and they are:

- Competition Commissioner
- Competition Tribunal
- Competition Appeal Court

These three main Authorities are here to enforce the Act by investigating possible breaches and take steps to eliminate and encourage compliance to the Act. Adjudicating exemptions are:

1. Compel anyone to provide information
2. Require evidence under Oath
3. Enter any premises and inspect documents.

There are 8 objectives that fall under this Act and they are:

- Build South Africa’s economy
- Provide fair, competitive prices and produce choices
- Create jobs
- To increase opportunities for business to compete internationally
- Ensure small and medium businesses have a fair and equitable choice to operate in the local economy
- To promote a greater spread of business ownership in particularly previously disadvantaged people.

You are probably asking yourself why we need a Competition Compliance. Well, free markets do not always result in socially efficient quantities of goods and efficient prices, large businesses are in a position to abuse their powers and having this Act in place creates a level playing field for all businesses.

Anyone can play a role in ensuring everyone abides by this Act that is a Competitor, Supplier, Franchise or Franchisee and Customer.

The Act prohibits the following:

- Price Fixing
- Divisional Marketing – splitting regions between companies
- Collusive tendering – secret agreements to split up Government work between companies
- No agreement between suppliers, producers or traders if it prevents and lessens competition in a market place.

The Act also prohibits Abuse of Dominance. Companies often obtain dominant positions because it engages in strategic behaviour that is designed to exclude and prevent competition.

The penalties for infringing the Competition Act are serious!

- Fine of 10% of Annual Turnover
- Company can face civil Damages
- Directors/Managers can go to jail for 10 years and R500 000 fine, if they should know of any “cartel”

Price Fixing is a contract or agreement or understanding with the purpose or effect or likely effect of fixing, controlling or maintaining prices, discounts, allowances, rebates and credits in relation to goods or services bought or sold by any of the parties in competition with each other.

It does not need to be a written agreement – A simple “meeting of minds” is in most instances all that is required to commit price fixing.

Price fixing entails:

- Agreeing a level of retail prices
- Discounts
- Allowances
- Rebates
- Credits afforded to suppliers in respect of goods or services
- Direct – take place where competitors agree on a price, discount or rebate
- Indirect – generally takes place where firms exchange information which effectively enables them to co-ordinate a price.

Franchise Agreements can raise 3 issues relating to the Competition Act. They include Pricing, Geographic Restrictions and Prescription of supply lines. The Competition Act recognises the valuable role that franchise agreements play in the economy. Accordingly the terms and conditions of the franchise agreements are usually evaluated in terms of the conditionally prohibited conduct.

Note: however that not even Franchises may prescribe minimum resale prices to their franchisees.

This is only a very brief summary of the Act but one must remember that a Business that competes honestly will have the full backing from the Act. So Customers will get better value for their Rands and quality products which prevent cheating and abuse in power.

The results means:

- Better prices
- Quality of Products
- Quality of Services.

So in summary this Act is here to encourage, support and strengthen competition and free competition bring about efficient production and appropriate allocation of economical resources.

By Carol Macdonald