

Index

- abuse of dominance 49–53, 73, 130–33, 142–4, 187–9, 266
 - exclusionary abuses 144–51, 159–61
 - British American Tobacco (BAT) case 142, 146, 150, 152–9
 - South African Airways (SAA) case 142, 143, 146, 147, 151–2, 157, 159
 - exploitative abuses 143
 - ArcelorMittal case 161–78
 - excessive pricing 161
 - Nationwide Poles case 178–87
 - resale price maintenance (RPM) 132, 134–5
 - Federal Mogul case 132, 135–42
- Adcock Ingram 20, 202
- AECI 20, 22, 106
- African National Congress (ANC) 7, 8, 228
- African Oxygen 113
- Afrox 82, 83, 84, 113
- agriculture 48
- Altech 85
- Amalgamated Beverage Industries (ABI) 116
- AME 85
- American Society of Composers, Authors and Publishers (Ascap) 199–200
- Anglo American Corporation 2, 5, 6
- Ansac 53, 197–202, 244
- apartheid system 4, 6, 8, 16
- ArcelorMittal 49, 131, 133, 142, 146, 149, 150, 187, 268–9, 270, 278
 - excessive pricing 161–78
- Armenia 73, 258–9, 260
- Ashton Canning 119, 120
- Asmal, Kader 40
- Avalon Cinemas 21–2
- Aveng Group 202
- AZ Friction Products 136
- Baldwin Steel 107
- banking sector 55–7, 59
- Banks Act 56
- BCX 80, 95
- Bellamy, Christopher 230
- beneficiation 268
- BHP Billiton 274
- Bidco 113
- black economic empowerment (BEE)
 - public interest test and impact of mergers 109, 112–17, 272
- Black Sash 193
- Bonakele, Thembinkosi 84
- Botswana Soda Ash (Botash) 198, 199
- Brazil 236, 252
- Brimstone 113
- British American Tobacco (BAT) 132
 - abuse of dominant position 142, 146, 150, 152–9
- Broadcast Music Inc (BMI) 199–200
- Brooks, Pierre 14, 20
- Business Day* (newspaper) 15
- Canada 104, 110–11, 243, 274
- Carrim, Yasmin 90
- cartels 11, 16, 52, 53, 73, 191–201, 263, 266
 - counter-attack 217–26
 - criminalisation 209–16
 - ‘Pandora’s Box’ metaphor 201–209
- Caxton 84–5
- cement 54
- Chalmers, Robyn 18
- China 243
- Cilliers, Fanie 153
- Clover 218, 219

- Cockrell, Alfred 101
- Coleus Packaging 116
- collegiality 90
- Comair 202
- Communications Workers Union (CWU) 119
- Competition Act (1998) 2, 3, 5, 12, 21, 22, 24, 263, 268, 272
- abuse of dominant position and 131, 133, 134, 142–4, 147, 150, 152, 159–60, 161, 164, 172, 174, 175, 178–86, 188
 - amendments 270–71
 - cartels 191–5, 200, 201, 208, 210, 211, 213–20, 222–6
 - institutional structure 41–3
 - building institutional culture 43–7
 - first period 48–60
 - see also* individual institutions
 - merger review 75, 77, 78, 91, 104, 108, 111, 113, 121, 126, 127
 - National Economic Development and Labour Council (Nedlac)
 - process and 30–39
 - Parliamentary process 39–40
 - policy document 25–30
- Competition Appeal Court 42, 43, 61–8, 263, 280, 281
- abuse of dominant position and 133, 152, 170, 173, 175, 177, 178, 179, 186, 187, 189
 - resale price maintenance (RPM) 140
 - cartels and 207, 211, 213, 217, 218, 219, 221, 222, 224, 225
 - merger review 77, 79, 80, 85, 86, 92–3, 97, 101, 102, 103, 125
- Competition Board 12–23, 38, 41, 45
- Competition Commission 2, 23, 41, 42, 62, 263, 265, 267, 269, 270, 275, 276, 277, 279, 280
- abuse of dominant position and 132, 149, 188
 - resale price maintenance (RPM) 138
 - cartels and 192, 193, 197, 202, 205–208, 212, 213, 215, 217, 219–23, 225
 - first period 48–60
 - institutional culture 45–6
 - measurement of impact 261
 - merger review 70, 74–5, 79, 80, 84, 94, 114, 117, 118, 122, 124
 - staff members 4
- competition culture 264
- competition institutional structure 41–3
- building institutional culture 43–7
 - first period 48–60
 - see also* individual institutions
- competition policy 1, 8, 10–11, 16, 262, 272
- policy document prior to Competition Act (1998) 25–30
- Competition Tribunal 2, 9, 23, 28, 41, 42, 61, 62, 230, 263, 268–9, 272, 276, 280, 281
- abuse of dominant position and 132, 146, 173, 174, 176, 180
 - cartels and 192, 199, 202, 204–207, 211, 213, 219, 220, 221, 223
 - first period 48–60
 - institutional culture 46–7
 - merger review 70, 78, 79, 80, 82, 85, 97, 101, 102, 103, 111, 114, 118–22, 124, 125, 126
 - staff members 4
- confidentiality in merger review process 81–2
- Congress of South African Trade Unions (Cosatu) 193
- Constitution of South Africa 52, 262, 266
- Constitutional Court 86, 211, 220, 223, 226, 264, 279
- constitutional law 3
- cooperatives 48
- coordination failures 10
- corporate structure 5–7, 8, 10, 14
- Creamer, Kenneth 33–4
- criminal offences 265
- cartels 209–16
- Crown Cork 116
- culture
- competition culture 264
 - institutional 43–7

- Davies, Rob 122
 Davis, Judge 66
 Dawn Trading 273
 De Beers 34, 39, 198
 de Villiers, Jannie 203
 delays 51
 Dennis, Nick 191, 193
 Department of Economic Development
 207, 208, 209, 269, 271, 273, 274,
 275, 277, 278
 Department of Finance 208
 Department of Trade and Industry 20–
 21, 24–5, 122, 126, 210, 213, 269,
 271, 275
 discriminatory pricing 58
 Distell 116, 141, 158
 Ditchley Park 235
 dominant position, abuse of *see* abuse of
 dominance

 Edcon 273
 efficiency 27
 merger review process and 104–108
 El Salvador 247
 electoral cycles 262
 Ellerine, Eric 72
 Ellerines 9, 72, 93
 Elliot, David 230
 employment
 public interest test and employment
 impact of mergers 109, 117–27,
 272–3
 Employment Equity Act 116
 enforcement of competition law 2, 20,
 133, 261, 262–3
 international 228–33, 257–60
 World Trade Organization (WTO)
 233–5
see also International Competition
 Network
 Engen 80, 83, 84, 96, 112–13, 141
 entry barriers 267
 Erasmus, Koos 136, 137
 Erwin, Alec 21, 22, 23, 25, 40, 122
 European Union (EU) 194, 228, 231–4,
 266
 Ewing, Ky 236
 exclusionary abuses 144–51, 159–61

 British American Tobacco (BAT)
 case 142, 146, 150, 152–9
 South African Airways (SAA) case
 142, 143, 146, 147, 151–2, 157,
 159
 exploitative abuses 143
 excessive pricing 161
 ArcelorMittal case 161–78
 Nationwide Poles case 178–87

 Federal Mogul 132, 135–42, 205
 Fels, Allan 236
Financial Times 274
 Finckenstein, Konrad von 241
 First, Harry 230
 Foodcorp 202
 Foot, Jim 179, 180, 185
 Fordham Conference 230, 239
 foreign direct investment 269, 274, 275,
 277
 Fourie, Frederick 25
 Fox, Eleanor 39, 229, 230
 France 110, 274
 Freedom Charter 7, 8
 Freeworld 271

 Gauntlett, Jeremy 87, 193
 Gear policy framework 31
 General Agreement on Trade and Tariffs
 (GATT) 234
 Germany 38, 110, 228
 Global Competition Initiative (GCI)
 238, 239
 Global Forum for Competition and
 Trade Policy 235
 Goldfields 52, 77, 78, 86, 88

 Harmony 52, 77, 78, 86, 88, 132, 162,
 163, 167, 169, 172, 173, 177, 178
 Hawk, Barry 236
 Hazlett, Thomas 228
 health insurance 96–103
 High Court 43, 62, 86
 Highveld Steel 116
 Hirsch, Alan 32
 hostile mergers 85–8
 Hungary 236

- Independent Communications
 - Authority of South Africa (Icasa) 39
- India 197, 234, 243
- Industrial Development Corporation 206, 208
- industrial policy 21, 28
- Industrial Strategy Project 27
- information asymmetries 10
- innovation 49, 166–7
- institutional culture 43–7
- insurance
 - health insurance 96–103
- interim relief 50–51
- International Bar Association Global Forum for Competition and Trade Policy 235
- International Competition Network (ICN) 199, 230
 - broadening ICN agenda 240–45
 - building virtual network 245–51
 - opening up to new competition regimes 236–40
 - origins 235
 - value of 251–7
- International Competition Policy Advisory Committee (ICPAC) 237, 241
- international enforcement of
 - competition law 228–33, 257–60
 - World Trade Organization (WTO) 233–5
 - see also* International Competition Network
- International Health Care Distributors 52
- international trade policy 21
- interpretation issues 63
- Iscor 49, 162
- Italy 110
- James, Charles 241
- Janow, Merit 230, 237
- Japan 249
- JD Group 9, 72, 93, 94
- Jenny, Frédéric 230, 233, 244, 255
- Joel, Solly 237
- Johnson, Lyndon 162
- JTI 152–3
- Judicial Service Commission 63
- Kansai 270–78
- Katz, Michael 18, 58
- Khaya FM 85
- Klein, Joel 237
- Knight, Phil 32, 58
- Kovacic, Bill 230, 258, 259
- Kriegler, Justice 265, 266
- Kumba 268
- Labour Relations Act 32, 118
- Langa, Pius 52
- Leegin 134–5, 137–40, 149
- Liberia 259, 260
- Liberty Life 5
- London Agreement 17
- McGregor, Robin 14, 20
- Macsteel Holdings 172
- Maduna, Penuell 112
- Maintenance and Promotion of Competition Act (1979) 17
- Malaysia 234
- Malherbe, Stephan 33, 34, 35, 37, 180
- Mandela, Nelson 8, 228
- Manoim, Norman 32, 44, 58, 77, 78, 90, 91, 107, 140, 217, 236
- Manuel, Trevor 1, 2, 25, 32
- market power 10, 12, 164–5
- Marketing and Agricultural Products Act 48
- Massmart 123, 126, 271, 274
- Mbeki, Thabo 163, 210, 214
- Mboweni, Tito 32, 228
- MCG Ltd 116, 117
- media 55
 - mergers and 80, 81
- Mediclinic 82, 83, 84, 113, 114
- Medicross 96
- merger regulation 11, 14, 19–20, 22, 57, 70–74, 261
 - review process 72, 74–6, 79–81, 271
 - change of control 76–9
 - confidentiality 81–2
 - efficiencies 104–108
 - hostile mergers 85–8

- public interest test 99, 100, 104, 109–28, 272
- substantial lessening of competition 89–103
- substantive review 88–128
- third-party interventions 82–5
- Mexico 236
- Midas 136, 137
- Milkwood 221
- Mittal, Lakshmi 162
- Moerane, Marumo 91
- Momentum 120, 122, 272
- monopolies 167, 176
 - mergers creating 107, 108
 - regulation of 10
 - see also* abuse of dominance
- Monti, Mario 247
- Moosa, Moosa 21
- Motaung, Lerato 13
- Motlanthe, Kgalema 214
- Mouton Commission 17
- Mpahlwa, Mandisi 122, 210
- MTN 17, 85, 196
- Murray & Roberts 202
- Mvelaphanda 113

- Naidoo, Jayendra 32
- Napp Pharmaceutical 168
- Naspers 84–5
- Natal Wholesale Chemists 51
- National Consumer Forum 193
- National Economic Development and Labour Council (Nedlac) 14, 24, 30–31
 - Competition Act (1998) and 30–39
- National Prosecuting Authority 212
- national security 274
 - mergers and 110
- nationalisation 7, 8, 9
- Nationwide Airlines 152
- Nationwide Poles 66, 133, 142, 178–87, 188
- Naudé, Stef 15, 33
- Nedbank 118
- Nedcor 55–6, 59
- Netcare 82, 83, 113
- Netherlands 39

- Netstar 133, 225, 226
- non-governmental advisers (NGAs) 246–7, 250
- Nu Metro 22

- Old Mutual Group 5, 6, 56
- Omnia 217, 218
- Oppenheimer, Nicholas 34
- Oppenheimer family 5, 34
- Organisation for Economic Co-operation and Development (OECD) 235, 236, 238, 241, 243, 256–7, 267
- ownership of conglomerates 5–7, 8, 10, 12, 14

- Parliament
 - Competition Act (1998) and 39–40
- Patel, Ebrahim 122, 207, 273, 276
- Pattison, Grant 126
- Pharmacare 20
- pharmaceuticals 22, 51, 53, 210, 268
- Philips South Africa 16–17
- Pick n Pay 39
- Pioneer Foods 196, 202–207, 277, 278
- Pitofsky, Bob 229
- Pittman, Russell 229
- Posner, Richard 92, 106
- Premier Foods 192
- Premier Group 202
- Pretoria Portland Cement (PPC) 54, 196, 217
- Pretorious, Willem 25
- prices
 - discriminatory pricing 58
 - Nationwide Poles case 178–87
 - excessive 58, 161
 - price fixing 17
 - resale price maintenance (RPM) 132, 134–5
 - Federal Mogul case 132, 135–42
- Prime Cure 67, 96
- Primedia 77, 78, 85
- profitability 168
- property rights 9, 265
- public interest 27, 33
 - mergers and 99, 100, 104, 109–12, 127–8, 272

- black economic empowerment (BEE) 109, 112–17, 272
- employment impact 109, 117–27, 272–3
- public opinion 3
- Quanta, Christine 14, 15, 90, 158, 159
- Rajan, Raghuram 9
- Ramburuth, Shan 31, 44
- Reclamation Group 202
- regulation
 - mergers *see* merger regulation
 - monopolies 10
- Regulation of Monopolistic Conditions Act (1955) 16, 17
- Rembrandt Group 5, 6
- resale price maintenance (RPM) 132, 134–5
 - Federal Mogul case 132, 135–42
 - Rheem Crown Plant 116–17
- Rogers, Owen 141
- Rothmans 158
- Rowley, Bill 235
- Ruiters, Alistair 24–5, 32, 41, 43, 44
- Rupert family 5
- Rustomjee, Zav 26
- Sanlam 5, 6
- Sarkozy, Nicolas 266
- Sasol 20, 22, 49, 80, 83, 84, 96, 106, 112–13, 131, 133, 141, 146, 149, 180, 182, 185–6, 194, 202
- Savage, Cedric 89
- Scalia, Antonin 148–9
- Schaub, Alex 247
- Schutz, Justice 55, 56, 58
- Senwes 146
- Shell South Africa 114–15, 118
- Shepherd, Geoff 228
- Simelane, Menzi 32, 43–4
- Skills Development Act 116
- small and medium-sized enterprises (SMEs) 181, 184
- Smith, Adam 61
- social policy 28, 269
- South African Airways (SAA) 18, 19, 49, 131, 132, 182, 183, 202, 205, 206
 - abuse of dominant position 142, 143, 146, 147, 151–2, 157, 159
- South African Breweries (SAB) 116–17, 131, 217–18, 251, 264
- South African Broadcasting Corporation (SABC) 15, 22
- South African Human Rights Commission 193
- South African Liquor Store Association 39
- South African Telecommunications Regulatory Authority 39
- Spicer, Michael 2, 33
- SSNIP test 92
- Standard Bank 118
- Standard Bank Investment Corporation (Stanbic) 55–6
- Staples 92
- Ster Kinekor 22
- Subel, Arnold 87
- substantial lessening of competition
 - merger review process and 89–103
- sugar industry 96
- SunAir 18, 19
- Supreme Court of Appeal 43, 52–8, 60, 63, 66, 67, 263
 - cartels and 191, 199–201, 217, 218, 222–5
 - merger review 80, 84, 86, 117–18
- Sussman, David 72
- Swanepoel, Bernard 86–8
- telecommunications sector 57–8
- Telkom 9, 49, 60, 80, 95, 118–19, 131, 146
- Tepeco Petroleum 114, 115, 118
- Thebe Investment Corporation 114–15
- third parties
 - merger review process and 82–5
- Tiger Brands 191, 192, 193–4, 206, 210
- Tongaat-Hulett 89
- trade unions 9, 27, 31, 216, 230, 280
 - merger review and 119, 120, 123, 125
- Transnet 9
- ‘trickle-down’ policy 27

- Trident Steel 75, 107, 108
Trinko 148, 165, 170
TSB Sugar 89
Turkey 236
- unilateral conduct *see* abuse of
 dominance
- United Brands 164
United Kingdom 38, 168, 261, 262
United Nations Conference on Trade
 and Development (UNCTAD)
 234–5, 236, 238, 243, 258
United States of America 34, 39, 82,
 228, 231, 241, 248, 274
 abuse of dominant position 148, 149,
 165
 cartels 197, 200, 209
 mergers 93, 104, 110
 price discrimination 179
 resale price maintenance (RPM)
 134–5, 139, 140
- Unterhalter, David 58, 64, 87, 101, 153
- Verizon 85
virtual networks 245–51
Vodacom 17, 196
- Wallis, Judge 133
Walmart 123, 125, 126, 128, 270–75,
 277, 279–81
Whish, Richard 230
Woodlands 217, 218, 219, 221, 225,
 263, 265
World Bank 229
World Trade Organization (WTO)
 233–5, 238, 239, 241, 256
- Yara 217, 218, 263
- Zuma, Jacob 214

