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An Evaluation of the Restraint of Trade to Contracts for the Sale of a Business Undertaking in South Africa

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ABSTRACT Agreements in restraint of trade prohibit the contracting party to exercise the choice in performing the profession or business activities. As a general rule, agreements in restraint of trade are prima facie valid and enforceable unless they are against public policy. The constitution is the supreme law and grants the right to freedom of trade, occupation and profession to citizens only. Public policy is enshrined in the constitution and requires that contracts must be respected. The restraint of trade must have protectable interests. Parties to the contracts in sale of business goodwill enjoy the equal bargaining power in their transactions. The area and time of restraint of trade should be reasonable to allow the buyer to establish his or her business. Court should carefully scrutinise contracts in restraint of trade in sale of business to ensure that they do not completely eliminate competition.