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## GENERAL NOTICE

NOTICE 1940 OF 1999

DEPARTMENT OF TRADE AND INDUSTRY

THE COMPETITION ACT, 1988 (ACT 89 OF 1998)

### **RULES FOR THE CONDUCT OF PROCEEDINGS IN THE COMPETITION TRIBUNAL**

In terms of section 27(2) of the Competition Act, 1998 (Act 89 of 1998), The Minister of Trade and Industry, in consultation with the Competition Tribunal, has made the following regulations relating to the functions of the Competition Tribunal to come into operation at the time that Chapters 2, 3 and 5 of the Act come into operation.

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# COMPETITION TRIBUNAL RULES

## REGULATING THE FUNCTIONS OF THE COMPETITION TRIBUNAL

### Part 1 – General Provisions

#### Division A – Interpretation

#### 1. Short title

These Regulations may be cited as the *Competition Tribunal Rules*.

#### 2. Interpretation

- (1) A word or expression that is defined in the Act, or in a chapter of the Act, bears the same meaning in these Rules as in the Act unless further defined in these Rules.
- (2) In these Rules,



- (a) a reference to a section by number refers to the corresponding section of the Act;
  - (b) a reference to a Rule by number refers to the corresponding item of these Rules; and
  - (c) a reference to a sub-rule or paragraph by number refers to the corresponding item of the Rule in which the reference appears.
- (3) In these Rules unless the context indicates otherwise,
- (a) "Act" means the *Competition Act*, 1998 (Act No.89 of 1998)
  - (b) "Answer" means a document as described in Rule 18 and filed by a respondent;
  - (c) "appellant" means a party who initiates an appeal from an Exemption decision of the Commission;
  - (d) "applicant" means a person who files an application in terms of Part 4 – Division B or E of these Rules;
  - (e) "Application" means a request submitted in terms of Part 4 – Division B or E of these Rules;
  - (f) "certified copy" of a document means a copy of the document certified by a Commissioner of Oaths;
  - (g) "chairperson" means the officer of the Tribunal appointed in terms of section 26;
  - (h) "Commission" means the body established by section 19;
  - (i) "Commissioner" means the office holder appointed in terms of section 22;
  - (j) "Competition Commission Rules" means the rules promulgated in terms of the Act for the regulation of procedures of the Commission;
  - (k) "complaint" means a matter initiated in terms of section 44;

- (l) "Complaint Referral" means an initiating document as described in Rule 17;
- (m) "complainant" in respect of a complaint referred to the Tribunal, means a person recognized as the complainant in terms of Rule 15(2).
- (n) "Court" means the Competition Appeal Court established by section 36;
- (o) "deliver" means to serve and file;
- (p) "Deputy Chairperson" means the officer appointed in terms of section 30;
- (q) "file", when used as a verb, means to deposit with the registrar;
- (r) "High Court Rules" means the *Rules Regulating the Conduct of the Several Provincial and Local Divisions of the High Court of South Africa*, published by Government Notice R48 in Government Gazette 999 of 12 January, 1965, as amended;
- (s) "initiating document", depending on the context, means either an Application, Complaint Referral, Notice of Appeal, Notice of Motion unless used to bring an interlocutory application in a matter before the Tribunal, or a Merger Referral;
- (t) "initiating party", depending on the context means either -
  - (i) in the case of a Complaint Referral, the Commissioner, or other person referred to in Rule 15(1)(b);
  - (ii) in the case of a Merger Referral, the Commission;
  - (iii) in the case of consideration of an intermediate merger, the party who files the Request for Consideration; or
  - (iv) in any other proceedings, the Applicant or the Appellant, as the case may be;
- (u) "intervenor" means any person who, in terms of the Act or Rule 47, has been granted standing to participate in particular proceedings before the Tribunal;

- (v) "Judge President" means the Judge President of the Court;
- (w) "member" means a person appointed to the Tribunal in terms of section 26;
- (x) "Merger Notice" means a notification required in terms of section 13;
- (y) "Merger Referral" means an initiating document as described in Rule 36;
- (z) "Notice of Appeal" means an initiating document as described in Rule 38;
- (aa) "Notice of Motion", depending on the context, means either –
  - (i) an initiating document described in Part 4 – Division B or E; or
  - (ii) a document used to bring an interlocutory application in a matter before the Tribunal;
- (bb) "panel" means the group of members assigned by the chairperson in terms of section 31(1) to hear any particular matter before the Tribunal;
- (cc) "party", when used in respect of particular proceedings before the Tribunal, means –
  - (i) the Initiating Party, the respondent, a complainant, or an Intervenor; or
  - (ii) a person representing a person referred to in sub-paragraph (i);
- (dd) "presiding member" means the member designated by the chair to preside over particular proceedings of the Tribunal;
- (ee) "public holiday" means a public holiday referred to in section 1 of the Public Holidays Act, 1994 (Act 36 of 1994);
- (ff) "registrar" means the officer of the Tribunal appointed in terms of Rule 5 and includes any acting or assistant registrar;
- (gg) "Reply" means a document as described in Rule 19 and filed by a respondent;
- (hh) "respondent" means –

- (i) in respect of an application, the firm against whom the relief is sought;
- (ii) in respect of a Complaint Referral, the firm against whom that complaint has been initiated;
- (iii) in respect of an appeal –
  - (aa) the Commission, and
  - (bb) the firm concerned, if that firm is not the appellant, or applicant, as the case may be;
- (ii) "Rule" includes any Table attached as an annexure, and referred to in a rule;
- (jj) "serve" means to serve in accordance with section 76 or rule 6 (1), and "service" has a corresponding meaning;
- (kk) "sheriff" means a person appointed in terms of section 2 of the Sheriff's Act, 1986 (Act 90 of 1986), and includes a person appointed in terms of section 5 and section 6 of that Act as an acting sheriff and a deputy sheriff, respectively; and
- (ll) "Tribunal", depending on the context, means either –
  - (i) the body established by section 26;
  - (ii) a panel of the Tribunal convened in terms of section 31(1); or
  - (iii) the registrar.

**Division B – Tribunal Office Functions****3. Office hours and address of Tribunal**

(1) The offices of the registrar are open to the public every Monday to Friday, excluding public holidays, from 08h30 to 13:00 and from 13h30 to 15h30.

(2) Despite sub-paragraph (1) –

(a) in exceptional circumstances the registrar may accept documents for filing on any day and at any time; and

(b) the registrar must accept documents for filing as directed by either the Tribunal or a member of the Tribunal assigned by its chairperson.

(3) Subject to Rule 6 and 7, any communication to the Tribunal, or a member of the staff of the Tribunal, may be –

(a) Delivered by hand to:

The registrar of the Competition Tribunal

Glenfield Office Park

Cnr. Glenwood Road and Oberon Steet

Faerie Glen, Pretoria

Republic of South Africa

(b) Addressed by post to:

The registrar of the Competition Tribunal

Private Bag X28

Lynnwood Ridge Pretoria 0040

Republic of South Africa

(c) Communicated by telephone on 27 012 482 9200



- (d) Transmitted by Fax on 27 012 482 9201; or
- (e) Transmitted by electronic mail to [ctsa@comptrib.co.za](mailto:ctsa@comptrib.co.za)

#### 4. Time limits

- (1) When a particular number of days is prescribed for doing an act, the number of days must be calculated by excluding the first day and including the last day.
- (2) When the time for doing an act expires on a public holiday, a Saturday or a Sunday, the act may be done on the next day that is not a public holiday, a Saturday, or a Sunday.<sup>1</sup>
- (3) When a particular number of business days is prescribed for doing an act, the provisions of sub-rule (1) apply, but public holidays, Saturdays and Sundays must not be included in the calculation of the time limit.
- (4) On good cause shown, a member of the Tribunal may condone late performance of an act in respect of which these rules prescribe a time limit, other than a time limit that is binding on the Tribunal itself.

#### 5. Registrar

The Chairperson of the Tribunal must appoint a suitably qualified person in terms of section 35 (a) to act as registrar of the Tribunal, with the authority to carry out the functions of that office in terms of these Rules.

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<sup>1</sup> Note that time periods in the Act are calculated in accordance with the Interpretation Act, which would not exclude Saturdays from the expiry date as does rule 4(2).

## Part 2 – Delivery of Documents

### 6. Delivery of documents

- (1) A notice or document that is required to be delivered, may be served as provided for in section 76 or in any way permitted in accordance with Table CTR 1.
- (2) Subject to sub-rule (3), a document delivered by a method listed in the second column of table CTR 1 will be deemed to have been delivered on the intended recipient on the date and at the time shown opposite that method, in the third column of that table.
- (3) If, in a particular matter, it proves impossible to serve a document in any manner provided for in these Rules, -
  - (a) If the Tribunal is required to serve the document, the registrar may apply to the High Court for an order of substituted service;
  - (b) In any other case, the person concerned may apply to the Tribunal for an order of substituted service.
- (4) Subject to Rule 3(2) if the date and time for the delivery of a document referred to in Table CTR 1 is outside of the office hours of the Tribunal as set out in Rule 3 (1), that document will be deemed to have been delivered on the next business day.
- (5) A document that is delivered by fax must include a cover page, and a document that is transmitted by electronic mail must accompany a cover message, in either case setting out –
  - (a) The name, address, and telephone number of the sender;
  - (b) The name of the person to whom it is addressed, and the name of that person's attorney, if it is being sent to the attorney for a participant;

- (c) The date and time of the transmission;
  - (d) The total number of pages sent, including the cover page; and
  - (e) The name and telephone number of the person to contact if the transmission is incomplete or otherwise unsuccessful.
- (6) Despite sub-rule (1) – (5), if, in terms of rule 8, a filing fee is required in respect of a document that has been filed, that document will be deemed to have been filed –
- (a) on the date and at the time indicated in Table CTR 1, if the filing fee is paid to the Tribunal within 3 business days of that time; or
  - (b) when the filing fee is paid to the Tribunal, if later.

#### **7. Filing documents**

- (1) The registrar must assign distinctive case numbers to each initiating document.
- (2) Before serving a copy of an initiating document on any person, the initiating party must -
  - (a) obtain a case number for that document from the registrar; and
  - (b) note the case number on every copy of that document.
- (3) The registrar must ensure that every document subsequently filed in respect of the same proceedings is marked with the same case number.
- (4) The registrar may refuse to accept a document from any party subsequently filed in respect of the same proceedings if the document is not properly marked with the assigned case number.

#### **8. Filing fees**

- (1) The fee for filing an initiating document, other than a Merger Referral, with the Tribunal is R100-00.

- (2) The registrar may determine a nominal fee for providing copies of any document or certifying any documents filed with the Tribunal.

#### **9. Form of Notices and Applications**

- (1) Whenever an initiating document, or other document is required to be filed for a purpose listed in column 2 of Table CTR 2, the document must be substantially in the form of the annexure listed opposite that section number in column 3 of that table, and must be produced subject to any conditions listed opposite that section number in column 4 of that table.
- (2) Whenever these Rules require a document to be in a form whose number is prefixed by the letters "CC", that document must be substantially in the corresponding form prescribed in the Competition Commission Rules.

#### **10. Form of Certificates and Notices**

- (1) Whenever the Tribunal is required to issue a document in terms of a section of the Act shown in column 1 of Table CTR 3, for a purpose listed in column 2 of that table, the document must be substantially in the form of the annexure listed opposite that section number in column 3 of that table.
- (2) Whenever the Tribunal is required, either in terms of the Act or these Rules, to publish a notice in the Gazette, that notice must contain at least the following information:
  - (a) The name of any firm, or other person directly affected by the notice.
  - (b) The file number assigned by the Tribunal to the relevant matter.
  - (c) The provision of the Act or Rules in terms of which the notice is required.
  - (d) A brief and concise description of the nature of the relevant matter.
  - (e) If the notice invites submissions, the last date on which submissions may be received.

- (f) If the notice reports a decision –
  - (i) a brief and concise description of the nature of that decision;
  - (ii) a statement indicating whether reasons for the decision have been published, and if so, how a copy of those reasons may be obtained; and
  - (iii) a statement of any right of review of, or appeal from, that decision, including the period during which a review or appeal may be lodged.

#### **11. Form of Annual Report**

The Annual Report to be submitted by the Tribunal in terms of section 42 must be divided into the following Parts:

- (a) **Statement of Progress**, being the statement required by section 41(1)(d).
- (b) **The Proceedings of the Tribunal**, being a summary report of matters that came before the Tribunal for decision.
- (c) **The Administrative Activities of the Tribunal**, being a summary report concerning the Tribunal's membership, staff, infrastructure, Rules and related matters.
- (d) **The Tribunal's Finances**, including the items required by section 41(1)(a) and (b).



**Part 3 - Access to Tribunal Records****12. Right of informants to claim confidentiality**

- (1) Any person, when submitting information to the Tribunal, may identify information that the person claims to be confidential information, but must support that claim, at the same time, with a written statement in Form CC 7 explaining why the information is confidential.
- (2) A person who seeks access to information that is subject to a claim that it is confidential information may apply to the Tribunal in terms of Rule 42, and the Tribunal may –
  - (a) determine whether the information is confidential information; and
  - (b) if it determines that it is, make any appropriate order concerning access to that confidential information.
- (3) At any time within 10 business days after an order of the Tribunal is made in terms of sub-rule (2), or in terms of Rule 13(2)(b) of the *Competition Commission Rules*, a concerned party may appeal against that decision to the Court, subject to its rules.
- (4) From the time information comes into the possession of the Tribunal, until a final determination has been made concerning it, the Tribunal must treat as confidential information –
  - (a) any information that it has determined is confidential information;
  - (b) any information that is the subject of a claim in terms of this Rule; and
  - (c) any information that the Commission has delivered to the Tribunal and has been identified as subject to a claim that it is confidential information.

- (5) Once a final determination has been made concerning any information, it is confidential only to the extent that it has been accepted to be confidential information either by the Tribunal, or by order of the Court.

**13. Access to, and use of, information**

- (1) Any person, upon payment of the prescribed fee, may inspect or copy any record of the Tribunal's proceedings –
- (a) if it is not confidential information; or
  - (b) if it is confidential information, to the extent permitted, and subject to any conditions imposed, by
    - (i) this Rule; or
    - (ii) an order of the Tribunal, or the Court
- (2) In addition to the provisions of sub-rule (1) the Tribunal may release confidential information to, or permit access to it by, only the following persons:
- (a) the person who provided that information to the Tribunal, or the Commission, as the case may be;
  - (b) the firm to whom the confidential information belongs;
  - (c) a person who requires it for a purpose mentioned in section 69(2)(a) or (b);
  - (d) a person mentioned in section 69(2)(c); or
  - (e) The Minister, if the information concerns a merger.
- (3) When the Tribunal supplies any information to the Minister, the registrar must identify to the Minister any information included in its submission –
- (a) in respect of which a claim has been made in terms of Rule 12(1) that has not yet been determined by the Tribunal; or

(b) that has been finally determined to be confidential information.

**Part 4 – Tribunal Procedures****Division A – Complaint Procedures****14. Complaint register**

The registrar must maintain a public record of all complaints that the Commission has reported as having been initiated or accepted, setting out in respect of each complaint –

- (a) The date that it was initiated or accepted;
- (b) The date by which the Commission is required to issue a Complaint Referral or Certificate of Non-referral; and
- (c) The date, if any, on which a Complaint Referral was filed, and the name of the person who filed it.

**15. Initiating complaint proceedings**

- (1) A Complaint Referral may be filed –
  - (a) by the Commissioner in Form CT 1(1); or
  - (b) by any person who is recognised as a claimant in that matter in terms of Rule 18 of the *Competition Commission Rules*, in Form CT 1(2), within 20 business days after the Commission has issued, or has been deemed to have issued, a Notice of non-referral in the matter; or
  - (c) by any party to an action in a civil court that has been referred to the Tribunal in terms of section 65(2), in Form CT 1(3).
- (2) For the purpose of section 53(b), the Tribunal must recognise any person who has filed a Complaint Referral in a particular matter in terms of sub-rule (1)(b) or (1)(c) as a complainant in respect of that matter.

- (3) If, in respect of a particular matter, more than one person files a Complaint Referral in terms of sub-rule (1)(b) the registrar must combine those referrals under a common case number.
- (4) The person who files a Complaint Referral must serve a copy of it within 3 days after filing on –
  - (a) The respondent;
  - (b) The Commission, if the Commission did not file the Referral; and
  - (c) On any other person who has previously filed a Complaint Referral in that matter.

**16. Declaration of material interest**

- (1) At any time after a complaint has been referred, and until the Tribunal has concluded a hearing in the matter –
  - (a) a person may file a Declaration of Material Interest in Form CC 2 in respect of that complaint if –
    - (i) the relevant practice has affected or is affecting a material interest of that person; and
    - (ii) the declaration is not frivolous.
- (2) Upon receiving a Declaration in terms of sub-rule (1), the registrar must refer it to either –
  - (a) A panel, if the matter is in a pre-hearing stage; or
  - (b) If the Tribunal has begun its hearing in that matter, to the Presiding member of the panel conducting the hearing.
- (3) Upon receiving a Declaration referred in terms of sub-rule (2), the Tribunal must either



- (a) accept the Declaration; or
  - (b) notify the person who made the Declaration that the Tribunal has rejected it, and provide a brief written explanation for that decision.
- (4) If the Tribunal has rejected a Declaration, the person who made it may request, within 10 business days after receiving a notice from the Tribunal in terms of sub-rule (3) (b), a review of the Tribunal's decision by the Court, subject to its Rules.
- (5) If, following a review in terms of sub-rule (4), the Court accepts the Declaration, the Tribunal must accept it.
- (6) In respect of a particular complaint, a person who has filed a Declaration of Material Interest that has been accepted in terms of this Rule or in terms of the *Competition Commission Rules*, -
- (a) is a complainant in that matter for the purposes of section 63; and
  - (b) is a claimant in that matter for the purposes of any further proceedings in terms of Rules 24 (3), 26, 27 or 28.

#### **17. Form of Complaint Referral**

- (1) A complaint proceeding may be initiated only by filing a Complaint Referral in Form CT 1(1), CT 1(2) or CT 1(3).
- (2) Subject to Rule 26 (1), a Complaint Referral must be supported by an affidavit setting out -
- (a) a detailed statement of the particulars of the complaint; and
  - (b) the material facts relevant to the complaint and relied on by the person making the referral.
- (3) A Complaint Referral may allege alternative prohibited practices based on the same facts.

**18. Answer**

- (1) A respondent who wishes to oppose a Complaint Referral filed by the Commission must -
  - (a) serve a copy of their Answer on the Commission; and
  - (b) file the Answer with proof of service within 20 business days after being served with a Complaint Referral.
- (2) A respondent who wishes to oppose a Complaint Referral filed by any other person must -
  - (a) serve a copy of their Answer on the Commission, on the person who filed the Referral, and on any other person who has previously filed a Complaint Referral in that matter; and
  - (b) subject to sub-rule (4), file the Answer with proof of service within 20 business days after being served with a Complaint Referral.
- (3) If more than one claimant has filed a Complaint Referral, the respondent, by Notice of Motion filed within the time referred to in sub-rule (2)(b), may request that the Tribunal order consolidation of the allegations, statements of issues and particulars that are to be answered.
- (4) If the Tribunal grants an order in terms of sub-rule (3), the respondent may file an Answer at any time within 20 business days after the date on which the respondent is served with a consolidation of the allegations, statements of issues and particulars that are to be answered.
- (5) An Answer that raises only a point of law must set out the question of law to be resolved.
- (6) Any other Answer must be in affidavit form, setting out in numbered paragraphs -
  - (a) a concise statement of the grounds on which the Complaint is opposed;
  - (b) the material facts or points of law on which the respondent relies; and

- (c) an admission or denial of each ground and of each material fact relevant to each ground set out in the Complaint Referral.
- (7) An allegation of fact set out in the Complaint Referral that is not specifically denied or admitted in an Answer will be deemed to have been admitted.
- (8) In an answer, the respondent must qualify or explain a denial of an allegation, if necessary in the circumstances.

## **19. Reply**

- (1) Within 15 business days after being served with an Answer that raises issues not addressed in the Complaint Referral, other than a point of law alone, the person who filed the Complaint Referral may –
  - (a) serve a Reply on the respondent and the Commission, if the Commission did not file the Referral, and on any other person who filed a Complaint Referral in the matter; and
  - (b) file a copy of the Reply and proof of service.
- (2) A Reply must be in affidavit form, setting out –
  - (a) an admission or denial of each new issue raised in the response, and of each allegation of fact relevant to each of those issues; and
  - (b) the position of the replying party on any point of law raised in the Answer.
- (3) If a person who filed a Complaint Referral does not file a Reply, they will be deemed to have denied each new issue raised in the Answer, and each allegation of fact relevant to each of those issues.

## **20. Amending documents**

- (1) The person who filed a Complaint Referral may apply to the Tribunal by Notice of Motion in Form CT 6 at any time prior to the end of the hearing of that complaint for

an order authorising them to amend their Form CT 1(1), CT 1(2) or CT 1(3), as the case may be, as filed.

- (2) If the Tribunal allows the amendment, it must allow any other party affected by the amendment to file additional documents consequential to those amendments within a time period allowed by the Tribunal.

## **21. Completion of complaint file**

Subject to any order made in terms of Rule 20 or Rule 42, the filing of documents is complete when a Complaint Referral or Answer has not been responded to within the time allowed.

## **22. Complaint hearings**

Proceedings in a complaint hearing, other than a hearing under section 63, will be governed by orders made in terms of Rule 23, except to the extent that the presiding member at the hearing rules otherwise.

## **23. Pre-hearing conferences**

- (1) Within 20 business days after the filing of documents is completed, a member of the Tribunal assigned by the Chairperson must convene a pre-hearing conference on a date and at a time determined by that member with -
  - (a) the Commission;
  - (b) each person recognised as a complainant in terms of Rule 15 (2); and
  - (c) the Respondent.
- (2) If a point of law has been raised, and it appears to the assigned member of the Tribunal at a pre-hearing conference to be practical to resolve that question before proceeding with the Conference, the member may -

- (a) direct the registrar to set only that question down for hearing by the Tribunal;  
and
  - (b) may adjourn the pre-hearing conference pending the resolution of that question by the Tribunal, and the Court, if applicable.
- (3) The assigned member of the Tribunal may adjourn a pre-hearing conference from time to time.
- (4) Pre-hearing conferences may be conducted in person or by telephone or both, need not follow formal rules of procedure, and are not open to the public.

**24. Other powers of member at pre-hearing conference**

- (1) At a pre-hearing conference, the assigned member of the Tribunal may -
- (a) establish procedures for protecting confidential information, including the terms under which participants may have access to that information;
  - (b) direct the Commission to investigate specific issues or obtain certain evidence;  
or
  - (c) give directions in respect of -
    - (i) technical or formal amendments to correct errors in any documents filed in the matter;
    - (ii) any pending Notices of Motion;
    - (iii) clarifying and simplifying the issues;
    - (iv) obtaining admissions of particular facts or documents;
    - (v) the production and discovery of documents whether formal or informal;
    - (vi) witnesses to be called by the Tribunal at the hearing, the questioning of witnesses and the language in which each witness will testify;



- (vii) a timetable for –
    - (aa) the exchange of summaries of expert opinions or other evidence that will be presented at the hearing; and
    - (bb) any other pre-hearing obligations of the parties;
  - (viii) determine the procedure to be followed at the hearing, and its expected duration;
  - (ix) a date, time and schedule for the hearing; or
  - (x) any other matters that may aid in resolving the complaint.
- (2) At any time during a pre-hearing conference, the assigned member of the Tribunal may require each participant to submit at a date to be determined, but prior to the hearing, a written statement summarising its argument, if any, with respect to the complaint, and identifying what it believes are the major issues not yet resolved.
- (3) Before concluding a pre-hearing conference, the assigned member of the Tribunal –
- (a) must convene or make arrangements to convene, a special session of the conference at which claimants may attend; and
  - (b) may make an appropriate order governing the manner in which those claimants, or classes of claimants, may exercise their rights in terms of section 53(d).
- (4) After concluding a pre-hearing conference, the assigned member of the Tribunal must issue an order recording any agreements or rulings arising from matters considered at the pre-hearing conference.
- (5) The previously assigned member of the Tribunal may schedule a further pre-hearing conference on its own motion, and the provisions of this rule apply to such a conference.

**25. Settlement conference**

At any time before the Tribunal makes a final order in a complaint proceeding, the Tribunal, on its own initiative or at the request of the participants, may order an adjournment of the proceedings to allow the participants to attempt to reach agreement on any outstanding issue.

**26. Initiating consent hearings**

- (1) If a Complaint Referral is to be proceeded with in terms of section 63 –
  - (a) Rules 15(4), 17(2) and 18 – 25 inclusive, do not apply to the Complaint Referral; and
  - (b) the person filing the Complaint Referral must attach the following documents to it:
    - (i) a Notice of Motion in Form CT 6, for a consent order to be made;
    - (ii) a consent in Form CT 2 signed by the Commission and the Respondent;
    - (iii) a copy of each Form CT 3 filed with the Commission in respect of the matter, if any; and
    - (iv) a draft order in the terms agreed.
- (2) At any time before the Tribunal makes a final order in a complaint proceeding, a party may request the Tribunal to make a consent order by filing a Notice of Motion in Form CT 6 with the documents listed in sub-rule (1)(b).

**27. Consent hearings**

- (1) Upon receiving –
  - (a) a Complaint Referral in terms of Rule 26(1), the registrar must convene a hearing of the Tribunal at the earliest possible date; or

- (b) a Notice of Motion in terms of Rule 26(2), the registrar must –
  - (i) convene a hearing of the Tribunal at the earliest possible date; and
  - (ii) serve a notice of that hearing, with a copy of the referral and draft order, on each claimant at least 10 business days before the date set for the hearing, inviting that claimant to inform the Tribunal in writing within 5 business days after receiving that notice –
    - (aa) whether that claimant is prepared to accept damages under such an order; and
    - (bb) if so, the amount of damages claimed; and
  - (iii) Attach to the Notice of Motion a Form CT 3 completed by each claimant who indicates, in terms of sub-paragraph (ii)(aa), that they are prepared to accept damages under the order.
- (2) After hearing the parties, the Tribunal must either –
  - (a) make the order as agreed and proposed by the parties;
  - (b) indicate any changes that must be made in the draft order before the Tribunal will make the order; or
  - (c) refuse to make the order.
- (3) If the Tribunal refuses to make a consent order as requested, or requires any changes that a party is unwilling to accept –
  - (a) The Commission or other complainant, as the case may be, may, as of right, amend the Referral and statement of particulars;
  - (b) The registrar must serve each party, and claimant, if applicable, with –
    - (i) a notice that the motion for a consent order has been denied; and
    - (ii) a copy of the Complaint Referral and statement of particulars, in their original or amended form, as applicable;

- (c) the Tribunal must proceed to consider the complaint in accordance with these Rules as they apply to contested complaints generally, after—
  - (i) the time for an appeal from the decision of the Tribunal in terms of sub-rule (2) has expired; or
  - (ii) if an appeal has been noted from that decision, after the Court has decided that appeal; and
- (d) none of the members of the Tribunal who considered the motion for the consent order may participate in any further proceedings relating to that complaint.

**Division B - Interim Relief in terms of Section 59****28. Initiating interim relief procedures**

- (1) A claimant may initiate an interim relief proceeding in terms of section 59 by filing a Notice of Motion in Form CT 6, and supporting affidavit setting out the facts on which the application is based.
- (2) The claimant must serve a copy of the Notice of Motion and affidavit on the Commissioner and each respondent named in the Notice of Motion, within 3 days after filing it.
- (3) A Notice of Motion in terms of this Rule must –
  - (a) allege each prohibited practice in respect of which the application is made by specific reference to the relevant section, subsection, paragraph or subparagraph of the Act;
  - (b) indicate the order sought, and the section of the Act under which that order may be granted;
  - (c) state the name and address of each person in respect of whom an order is sought.
- (4) A Notice of Motion may allege alternative prohibited practices based on the same facts.
- (5) In urgent circumstances the Tribunal on good cause shown may shorten any time periods or dispense with any formalities provided for in this Division.

**29. Answering and Replying affidavits**

- (1) Within 15 business days after being served with a Notice of Motion, a respondent against whom an interim order is sought -

- (a) may serve an answering affidavit on the Commissioner, the claimant and any other person against whom the order is sought; and
  - (b) must file the affidavit with proof of service.
- (2) Within 14 days after being served with an answering affidavit that raises issues not addressed in the Notice of Motion or its supporting affidavit, the claimant may –
  - (a) serve a replying affidavit on the respondent, the Commissioner and on any other person against whom the order is sought; and
  - (b) file a copy of the replying affidavit and proof of service.

### **30. Interim relief hearings**

- (1) Rules 23, 24 and 25, each read with the changes required by context, apply to the pre-hearing procedures of an interim relief application.
- (2) Sections 52(2) – (5), 54(d), and 55, and Rules 22, and 25 and 26(2), each read with the changes required by context, apply to the hearing procedures of an interim relief application.
- (3) Subject to sub-rule (4), evidence on an application for interim relief must be by affidavit.
- (4) At the hearing of an application for interim relief, the presiding member of the Tribunal may allow –
  - (a) oral evidence in relation to an issue raised; or
  - (b) questioning of a deponent to an affidavit.
- (5) At the hearing of an application in terms of this Division, the Tribunal –
  - (a) must accept oral submissions from the Commission, the claimant, and each respondent;
  - (b) must assess the matter in terms of the relevant section;

- (c) must either grant or refuse the relief sought.
- (6) Upon making an order in terms of this Division, the Tribunal may make an order for costs.

**Division C - Merger Proceedings****31. Merger Parties and Participants**

(1) In this Part, in respect of any particular merger

(a) "acquiring firm" means -

- (i) any firm that, or person who, as a result of a transaction in any circumstances set out in section 12, would acquire or establish control over, or significant interest in, all or part of the business of another firm or person; and
- (ii) any other firm that has control over, or significant interest in, all or part of the business of a firm described in sub-paragraph (i); and
- (iii) any other firm that is controlled by, or a significant interest in which is held by, a firm described in either sub-paragraph (i) or (ii); and

(b) "party to a merger" means an acquiring firm, or a target firm;

(c) "primary acquiring firm" means a firm that meets the definition set out in paragraph (a)(i);

(d) "primary target firm" means the firm that satisfies the definition in paragraph (e)(i); and

(e) "target firm" means -

- (i) a firm that, as a result of a transaction in any circumstances set out in section 12, either -
  - (aa) would become controlled by, or a significant interest in which would be held by, another firm; or



- (bb) would transfer control of, or a significant interest in, part of its business to another firm; and
  - (f) any other firm that is controlled by, or a significant interest in which is held by, a business described in sub-paragraph (i).
- (2) The following persons may participate in proceedings before the Tribunal in respect of any merger:
  - (a) Any person recognised as a participant in terms of the *Competition Commission Rules*;
  - (b) The Minister, if a Minister's Notice of Intention to Participate has been filed with either the Competition Commission or the Tribunal in respect of that merger.
  - (c) Any other person whom the Tribunal has ordered to be recognised as a participant.

### **32. Participation by Minister in merger proceedings**

- (1) Whether or not the Minister participated in merger proceedings before the Commission, the Minister may file a Notice of Minister's Intention to Participate in Form CC 5(2) within 10 days after -
  - (a) The Commission refers a large merger to the Tribunal; or
  - (b) A party to the merger files a request in terms of section 15(2), in respect of an intermediate merger.
- (2) Upon receiving a Minister's Notice of Intention to Participate in terms of sub-rule (1), the registrar must -
  - (a) deliver a copy of the Minister's Notice of Intention to Participate to every other participant; and

- (b) deliver to the Minister a copy of all documents filed in connection with the merger, up to the day on which the Minister's Notice of Intention to Participate was filed.
- (3) The registrar must deliver to the Minister any document that is filed in connection with a merger after the Minister's Notice of Intention to Participate was filed.
- (4) The Minister may file a concise statement of the public interest grounds on which the Minister relies in respect of a particular merger, and a statement of the decision, if any that the Minister prefers, at any time between –
  - (a) The date on which the Minister filed a Notice of Intention to Participate; and
  - (b) 10 days after receiving advice from the Tribunal in terms of sub-rule (5), if applicable.
- (5) If, in respect of a particular merger the Minister has filed a Notice of Intention to Participate, but has not yet filed a statement in terms of sub-rule (4), the Tribunal must advise the Minister in writing at the time that it is prepared to make a decision in terms of section 15.
- (6) Upon receiving a concise statement from the Minister in terms of sub-rule (4), the Commission must serve a copy of the statement on each other participant in those proceedings, and each participant may file a written response to the statement within 5 days after it has been served on them.

### **33. Requests for consideration of intermediate mergers**

- (1) The primary acquiring firm or primary target firm may request the Tribunal to consider the conditional approval or prohibition of that merger in terms of section 15, by filing a Request for Consideration in Form CT 4 within 15 days after the Commission's decision in the matter.
- (2) A Request for Consideration must contain a concise statement of the decision that the party seeks, and must be -

- (a) accompanied by a summary of the factual and legal basis upon which the request is based; and
- (b) served on –
  - (i) the Commission; and
  - (ii) any participant in the relevant merger proceedings before the Commission who is not a party to the Request for Consideration.
- (3) Upon receiving a copy of a Request for Consideration, the Commission must give the Tribunal –
  - (a) a copy of the Clearance Certificate or Notice of Prohibition;
  - (b) a copy of the statement of reasons for the decision; and
  - (c) access to the Commission's file in respect of that merger.

#### **34. Intermediate merger pre-hearing procedures**

- (1) Within 15 days after a Request for Consideration has been filed the registrar must –
  - (a) schedule a date and time for the hearing of the Request; and
  - (b) serve a Notice of Hearing in Form CT 14 on the Commission, on the party who filed the Request for Consideration and on each person who has indicated an intention to participate.
- (2) At any time before the hearing of the Request a member assigned by the Chairperson may convene a pre-hearing conference of those persons who have indicated an intention to participate either to the Commission or to the Tribunal and Rules 23 and 24, each read with the changes required by context, apply to that conference.
- (3) In addition to the provisions of Rules 23 and 24, at a pre-hearing conference in terms of this Rule, the member assigned by the Chairperson may also determine whether

there will be a formal hearing or whether the matter may be decided on the basis of written argument only.

- (4) The period provided for in sub-rule (1) may be extended –
  - (a) for a further 10 days by the Chairperson; or
  - (b) for a further period by the Chairperson with the consent of the primary acquiring firm and the primary target firm.

### **35. Intermediate merger hearing procedures**

- (1) At the hearing of a Request filed in terms of Rule 33, the Tribunal –
  - (a) may accept oral submissions from any participant;
  - (b) may accept any other information that is submitted to it by a participant;
  - (c) must consider the Commission's decision and statement of reasons;
  - (d) must assess the merger in terms of section 16; and
  - (e) must either approve, approve subject to conditions, or prohibit the merger.
- (2) Subject to a determination made in terms of Rule 34 (2), Sections 52(2) – (5), 53(d), 54, 55, 56 and 57, each read with the changes required by context, apply to proceedings in terms of this Rule.
- (3) After completing its hearing in respect of an intermediate merger, the Tribunal must –
  - (a) either approve the merger, approve the merger subject to conditions, or prohibit the merger within 15 days after the end of the hearing by issuing a certificate in the appropriate Form CT 10 or CT 11; and
  - (b) within 30 days after issuing a certificate –
    - (i) issue written reasons for its decision; and

- (ii) publish a notice of its decision in the Gazette.

### 36. Referral of large mergers

- (1) A large merger proceeding begins when the Commission refers the merger to the Tribunal by filing a Referral of Large Merger in Form CC 17.
- (2) Within 15 days after receiving a Merger Referral, the registrar must -
  - (a) schedule a date and time for the hearing; and
  - (b) serve a Notice of Hearing in Form CT 14 on the Commission and on each person who has indicated an intention to participate.
- (3) At any time before the hearing, a member of the Tribunal assigned by the Chairperson may convene a pre-hearing conference of those persons who have indicated an intention to participate either to the Commission or the Tribunal, and Rules 23 and 24, each read with the changes required by context, apply to that conference.
- (4) In addition to the provisions of Rules 23 and 24, at a pre-hearing conference in terms of this Rule, the assigned member of the Tribunal may also determine whether there will be a formal hearing or whether the matter may be decided on the basis of written argument only.
- (5) At the hearing, the Tribunal -
  - (a) may accept oral submissions from the Commission and any participant;
  - (b) may accept any other information submitted to it;
  - (c) must consider the Commission's recommendation and reasons for it;
  - (d) must assess the merger in terms of section 16; and
  - (e) must either approve, approve subject to conditions, or prohibit the merger.

- (6) Subject to a determination made in terms of sub-rule (3), Sections 52(2) – (5), 53(d), 54, 55 and 56, each read with the changes required by context, apply to proceedings in terms of this Rule.
- (7) After completing its hearing in respect of a merger, the Tribunal must -
  - (a) either approve the merger, approve the merger subject to conditions, or prohibit the merger within 15 days after the end of the hearing by issuing a certificate in the appropriate Form CT 10, or CT 11; and
  - (b) within 30 days after issuing a certificate -
    - (i) issue written reasons for its decision; and
    - (ii) publish a notice of its decision in the Gazette.
- (8) The period provided for in sub-rule (2) may be extended –
  - (a) for a further 10 days by the Chairperson; or
  - (b) for a further period by the Chairperson with the consent of the primary acquiring firm or the primary target firm.

### **37. Revocation of approval or conditional approval**

- (1) In respect of a merger that has been approved or conditionally approved by the Tribunal, the Commission may file a Notice of Motion in Form CT 6 to revoke the approval or conditional approval of that merger provided, if the proposed revocation is based on section 14(5)(c), that it has taken the steps set out in Rule 34 of the *Competition Commission Rules*.
- (2) A Notice of Motion in terms of sub-rule (1) must specify the provision of section 14(5) on which the request is based.
- (3) Upon receiving a Notice of Motion in terms of sub-rule (1), the registrar must
  - (a) advise any firm concerned, in writing, of the Notice; and

- (b) publish a notice of the requested revocation in the Gazette.
- (4) The Tribunal may request further information from any person who submits a representation in response to a notice published in terms of sub-rule (3)(b).
- (5) After considering the application, and any submissions or other information received in relation to the requested revocation, the Tribunal must –
  - (a) either confirm the approval or conditional approval, as the case may be, in writing, or revoke it by issuing a Notice of Revocation in Form CT 12;
  - (b) publish a notice of that decision in the Gazette; and
  - (c) report its decision in writing to each participant in the merger proceedings.
- (6) Within 10 days after receiving a Notice of Revocation in terms of sub-rule (5)(a), the firm concerned may request the Court to review the notice on the grounds that there is no basis in terms of section 14(5) for the approval or conditional approval to be revoked.
- (7) If no review is applied for in terms of sub-rule (4), or if the Court upholds the Notice of Revocation, the effect of that notice is –
  - (a) the Certificate of approval or conditional approval in respect of the relevant merger is deemed to have been rejected as of the date of that Certificate;
  - (b) each party to the merger is, for all purposes of the Act, in the same position as if they had never notified the Commission of that merger; and
  - (c) the Commission and the Tribunal may further consider that merger only if a party to the merger subsequently files a new Merger Notice with respect to it; and
  - (d) if a new Merger Notice is subsequently filed in respect of that merger, the Commission and Tribunal must consider that merger on the basis of that new notice without reference to any previous notice filed in respect of it.

**Division D - Exemption Appeal Proceedings****38. Initiating exemption appeals**

- (1) Section 10(8), read with the changes required by context, and this division, applies with respect to an exemption decision in terms of Schedule 1.
- (2) A person referred to in section 10(8) may initiate an exemption appeal proceeding in terms of that section by filing a Notice of Appeal in Form CT 7 within 30 days after notice of the relevant decision is published in the Gazette.
- (3) Upon the filing of a Notice of Appeal in terms of this Part, and pending a final decision in the matter –
  - (a) an exemption that has been granted remains in effect;
  - (b) an exemption or letter of advice that has been revoked remains in effect; and
  - (c) a refusal to grant an exemption remains in effect, but the provisions of Rule 21(5)(c) of the *Competition Commission Rules*, read with the changes required by context, applies.
- (4) A Notice of Appeal in terms of this Rule must –
  - (a) name as a respondent –
    - (i) the Commission;
    - (ii) the person who applied for the exemption, if that person is not the appellant; and
    - (iii) if the appeal is in respect of an exemption decision in terms of Schedule 1, the Minister or member of the Executive Council who was consulted in terms of that Schedule, if they are not the appellant.
  - (b) set out the grounds on which the appeal is based; and
  - (c) indicate the order sought.



- (5) A Notice of Appeal may set out alternative grounds of appeal based on the same facts.
- (6) The appellant must serve a copy of the Notice of Appeal on each respondent, within 3 days after filing it.
- (7) The registrar must publish a notice of each appeal in terms of this Division in the Gazette.

#### **39. Appeal record**

- (1) The Commission must file a record of the exemption proceedings in the Commission within 20 business days after being served with a copy of the Notice of Appeal.
- (2) The record referred to in sub-rule (1) must include a copy of—
  - (a) the application for exemption submitted to the Commission;
  - (b) any written representations concerning that application that were considered by the Commission;
  - (c) any Exemption certificate, Notice of Refusal, Notice of Revocation, or Decision concerning a revocation, or advise in terms of section 10(2)(a) issued to the person who applied for the exemption; and
  - (d) any written reasons given by the Commission for a decision issued to the person who applied for the exemption.

#### **40. Heads of argument**

- (1) No later than 15 business days before the date set for hearing the appeal, the appellant must –
  - (a) serve a copy of the appellant's heads of argument on each respondent; and
  - (b) file those heads of argument and proof of service.

- (2) No later than 10 business days before the date set for hearing the appeal, each respondent must –
  - (a) serve a copy of their heads of argument on the appellant; and
  - (b) file those heads of argument and proof of service.

#### **41. Appeal hearing**

- (1) Upon receiving a Notice of Appeal filed in terms of this Division, the registrar must –
  - (a) schedule a date and time for the hearing of the appeal; and
  - (b) serve a Notice of Hearing in Form CT 14 on the Appellant and each respondent.
- (2) At the hearing of an appeal, the Tribunal –
  - (a) must accept oral submissions from the appellant and each respondent;
  - (b) must consider the Commission's decision(s) and written reasons;
  - (c) must assess the matter in terms of section 10, or Schedule 1, as the case may be; and
  - (d) must either grant or refuse the appeal.
- (3) Upon making an order in terms of this Rule, the Tribunal may make an order for costs.
- (4) Sections 52(2) – (5), 54(d), and 55, each read with the changes required by context, apply to proceedings in terms of this Rule.
- (5) After issuing written reasons for its decision, the Tribunal must publish a notice of its decision in the Gazette.

**Division E - Other Appeals, Reviews, Variations, or Enforcement Proceedings****42. Initiating other proceedings**

- (1) Any proceedings not otherwise provided for in these Rules may be initiated only by filing a Notice of Motion in Form CT 6 and supporting affidavit setting out the facts on which the application is based.
- (2) The applicant must serve a copy of the Notice of Motion and affidavit on each respondent named in the Notice, within 5 business days after filing it.
- (3) A Notice of Motion in terms of this Rule must –
  - (a) depending on the context –
    - (i) set out the Commission's decision that is being appealed or reviewed ;
    - (ii) set out the decision of the Tribunal that the applicant seeks to have varied or rescinded;
    - (iii) set out the Tribunal Rule in respect of which the applicant seeks condonation; or
    - (iv) allege conduct referred to in –
      - (aa) section 61(1)(c) in respect of which the Commission seeks an administrative fine; or
      - (bb) section 62(1) in respect of which the Commission seeks an order of divestiture;
  - (b) indicate the order sought;
  - (c) state the name and address of each person in respect of whom an order is sought.

**43. Answering and Replying affidavits**

- (1) Within 10 business days after being served with a Notice of Motion applying for any relief other than condonation, a respondent against whom an order is sought -
  - (a) may serve an answering affidavit on the applicant, and on any other person against whom the order is sought; and
  - (b) must file the affidavit with proof of service.
- (2) Within 10 business days after being served with an answering affidavit that raises issues not addressed in the Notice of Motion or its supporting affidavit, the applicant may -
  - (a) serve a replying affidavit on the respondent, the Commissioner and on any other person against whom the order is sought; and
  - (b) file a copy of the Replying affidavit and proof of service.

**44. Hearings**

- (1) Subject to subsection (2), evidence in an application in terms of this Division must be by affidavit.
- (2) At the hearing of an application in terms of this Division, the presiding member of the Tribunal may allow -
  - (a) oral evidence in relation to an issue raised; or
  - (b) questioning of a deponent to an affidavit.
- (3) At the hearing of an Application in terms of this Division, the Tribunal -
  - (a) must accept oral submissions from the applicant and each respondent;
  - (b) must consider -
    - (i) the Commission's decision(s) and written reasons, if applicable; or

- (ii) its own prior decision and reasons, if the application seeks variation or rescission of a prior decision;
- (c) must assess the matter in terms the relevant section; and
- (d) must -
  - (i) in the case of a decision by the Commissioner, either uphold the Commissioner's decision, or substitute its own decision for it; or
  - (ii) otherwise, either grant or refuse the relief sought.
- (4) Sections 52(2) – (5), 54(d), 55, 56 and 57 each read with the changes required by context, apply to proceedings in terms of this Rule.

**Part 5 – Representation of Parties, Intervenors, Witnesses, and Interpreters****45. Representation of parties**

- (1) A representative acting on behalf of any person in any proceedings must notify the registrar and every other party, advising them of the following particulars:
  - (a) the representative's name;
  - (b) the postal address and place of employment or business; and
  - (c) if a fax number and telephone number are available, those numbers.
- (2) A person who terminates their representative's authority to act in any proceedings, and then acts in person or appoints another representative, must notify the registrar and every other party of that termination, and of the appointment of another representative, if any, and include that representative's particulars, as set out in sub-rule (1).
- (3) On receipt of a notice in terms of sub-rule (1) or (2), the address of the representative or the party, as the case may be, will become the address of record for notices to and for service on that party of all documents in the proceedings.
- (4) Despite sub-rule (3), a person who, before receiving a notice in terms of sub-rule (1) or (2), has sent a notice to, or effected service on, a party somewhere other than at the address of record will be deemed to have validly served that item, unless the Tribunal orders otherwise.
- (5) A representative in any proceedings who ceases to act for a party must deliver a notice to that effect to that party and every other party concerned.
- (6) A notice delivered in terms of sub-rule (5) must state the names and addresses of each party who is being notified.

- (7) After receiving a notice referred to in sub-rule (5), the address of the party formerly represented becomes the address for notices to, and for service on, that party of all documents in the proceedings, unless a new address is furnished for that purpose.

#### **46. Joinder or substitution of parties**

- (1) The Tribunal, or the assigned member, as the case may be, may combine any number of persons, whether jointly, jointly and severally, separately, or in the alternative, as parties in the same proceedings, if their respective rights to relief depend on the determination of substantially the same question of law or facts.
- (2) If a party to any proceedings has been incorrectly or defectively cited, the Tribunal or the assigned member, as the case may be, on application and on notice to the party concerned, may correct the error or defect and may make an order as to costs.
- (3) If in any proceedings it becomes necessary to substitute a person for an existing party, any party to those proceedings, on application and on notice to every other party, may apply to the Tribunal or the assigned member, as the case may be, for an order substituting that party for an existing party, and the Tribunal or the assigned member, as the case may be, may make an order, including an order as to costs, or give directions as to the further procedure in the proceedings.
- (4) An application to join any person as a party to proceedings, or to be substituted for an existing party, must be accompanied by copies of all documents previously delivered, unless the person concerned or that person's representative is already in possession of those documents.
- (5) No joinder or substitution in terms of this rule will affect any prior steps taken in the proceedings.

#### **47. Intervenors**

- (1) At any time after an initiating document is filed with the Tribunal, any person who has a material interest in the relevant matter may apply to intervene in the Tribunal proceedings by filing a Notice of Motion in Form CT 6, which must -

- (a) include a concise statement of the nature of the person's interest in the proceedings, and the matters in respect of which the person will make representations; and
  - (b) be served on every other participant in the proceedings.
- (2) No more than 10 business days after receiving a motion to intervene, a member of the Tribunal assigned by the Chairperson must either -
  - (a) make an order allowing the applicant to intervene, subject to any limitations -
    - (i) necessary to ensure that the proceedings will be orderly and expeditious; or
    - (ii) on the matters with respect to which the person may participate, or the form of their participation; or
  - (b) deny the application, if it concludes that the interests of the person are not within the scope of the Act, or are already represented by another participant in the proceeding.
- (3) Upon making an order in terms of sub-rule (2), the assigned member may make an appropriate order as to costs.
- (4) If an application to intervene is granted -
  - (a) the registrar must send to the intervenor a list of all documents filed in the proceedings prior to the day on which the request for leave to intervene was granted; and
  - (b) access by an intervenor to a document filed or received in evidence is subject to any outstanding order of the Tribunal restricting access to the document.

#### **48. Summoning witnesses**

- (1) If the Tribunal requires a witness to attend any proceedings to give evidence it may have a summons issued by the registrar in Form CT 13 for that purpose.



- (2) If a witness is required to produce in evidence any document or thing in the witness's possession, the summons must specify the document or thing to be produced.
- (3) After the summons has been issued, it must be served by the sheriff in any manner authorised by Rule 4 of the High Court Rules.
- (4) A witness who has been required to produce any document or thing at the proceedings must hand it over to the registrar as soon as possible after service of the summons, unless the witness claims that the document or thing is privileged.

#### **49. Witness fees**

- (1) A witness in any proceedings is entitled to be paid in accordance with the tariff of allowances prescribed by the Minister of Justice and published by notice in the Gazette in terms of section 42 of the Supreme Court Act, 1959 (Act 59 of 1959).
- (2) Despite sub-rule (1), the Tribunal may order that no allowance or only a portion of the prescribed allowances be paid to any witness.

#### **50. Interpreters and translators**

- (1) Before an interpreter may interpret in Tribunal proceedings, the interpreter must take an oath or make an affirmation in the following form before a member of the Tribunal:

"I, .....(full name)

swear/ affirm that whenever I am called on to interpret in any proceedings before the Tribunal, I will correctly interpret to the best of my ability from the language I am called on to interpret into one or other of the official languages, and vice versa."

- (2) An oath or affirmation must be taken or made in the manner prescribed for the taking of an oath or the making of an affirmation in the High Court Rules, read with the changes required by context and a printed copy of the oath or affirmation must be signed by the interpreter.

- (3) Any person admitted and enrolled as a sworn translator of any division of the High Court is deemed to be a sworn translator for the Tribunal.

**Part 6 – Withdrawals, Postponements, Set-down, and Matters Struck-off****51. Withdrawals and postponements**

- (1) At any time before the Tribunal has determined a matter, the initiating party may withdraw all or part of the matter by –
  - (a) serving a Notice of Withdrawal in Form CT 8 on each party; and
  - (b) filing the Notice of Withdrawal with proof of service.
- (2) If the parties agree to postpone a hearing, the initiating party must notify the registrar as soon as possible.
- (3) Subject to section 57, –
  - (a) a Notice of Withdrawal may include a consent to pay costs; and
  - (b) if no consent to pay costs is contained in a Notice of Withdrawal the other party may apply to the Tribunal by Notice of Motion in Form CT 6 for an appropriate order for costs.

**52. Set down of matters**

- (1) If a matter has been postponed to a date to be determined in the future, any party to the matter may apply to the registrar for it to be re-enrolled, but no preference may be given to that matter on the roll, unless the Chairperson decides otherwise.
- (2) The registrar must allocate a time, date and place for the hearing and send a Notice of Set - Down in Form CT 15 to each party.
- (3) If a matter is postponed to a specific date, the registrar need not send a Notice of Set - Down to the parties.

**53. Matters struck-off**

- (1) The Tribunal member presiding at a hearing may strike a matter off the Roll if the initiating party is not present.
- (2) If a matter is struck off the roll, the matter may not be re-enrolled unless –
  - (a) that party concerned files an affidavit setting out a satisfactory explanation for the failure to attend the hearing; and
  - (b) a member of the Tribunal assigned by the Chairperson, on considering the explanation offered, orders the matter to be re-enrolled.

**Part 7 – Procedures Generally****54. Conduct of hearings**

- (1) If, in the course of proceedings, a person is uncertain as to the practice and procedure to be followed, the member of the Tribunal presiding over a matter –
  - (a) may give directions on how to proceed; and
  - (b) for that purpose, if a question arises as to the practice or procedure to be followed in cases not provided for by these Rules, the member may have regard to the *High Court Rules*.
- (2) Subject to these Rules, the member of the Tribunal presiding over a matter may determine the time and place for the hearing before the Tribunal.
- (3) The Tribunal may condone any technical irregularities arising in any of its proceedings.
- (4) The Tribunal -
  - (a) may accept as evidence any relevant oral testimony, document or other thing, whether or not –
    - (i) it is given or proven under oath or affirmation; or
    - (ii) would be admissible as evidence in court; but
  - (b) may refuse to accept any oral testimony, document or other thing that is unduly repetitious.

**55. Guidelines**

The Tribunal, by notice published in the Gazette, may issue guidelines or requirements concerning the form and style of any documents provided for in these Rules, other than forms listed in Tables CTR 2 and CTR 3.

**56. Record of hearing**

The registrar must compile a record of any proceeding in which a hearing has been held, **including -**

- (a) The initiating document;
- (b) the notice of any hearing;
- (c) any interlocutory orders made by the Tribunal or a member;
- (d) all documentary evidence filed with the Tribunal;
- (e) the transcript, if any, of the oral evidence given at the hearing; and
- (f) the final decision of the Tribunal and the reasons.

## Part 8 – Orders, Costs and Taxation

### 57. Default orders

- (1) If a person served with an initiating document has not filed a response within the prescribed period, the initiating party may move by Notice of Motion in Form CT 6 to have the order sought issued against that person by the Tribunal.
- (2) On an application in terms of sub-rule (1), the Tribunal may make an appropriate order –
  - (a) after it has heard any required evidence concerning the motion; and
  - (b) if it is satisfied that the notice or application was served in accordance with these Rules.
- (3) Upon an order being made in terms of sub-rule (2), the registrar must serve the order on the person described in subsection (1) and on every other party.

### 58. Costs and taxation

- (1) Where the Tribunal has made an award of costs in terms of section 57, the following provisions apply:
  - (a) The fees of one representative may be allowed between party and party, unless the Tribunal authorises the fees of additional representatives.
  - (b) The fees of any additional representative authorised in terms of sub-rule (1) must not exceed one half of those of the first representative, unless the Tribunal directs otherwise.
  - (c) The costs between party and party allowed in terms of an order of the Tribunal, or any agreement between the parties, must be calculated and taxed by the

taxing master at the tariff determined by the order or agreement, but if no tariff has been determined, the tariff applicable in the High Court will apply.

- (d) Qualifying fees for expert witnesses may not be recovered as costs between party and party unless otherwise directed by the Tribunal during the proceedings.
- (e) The registrar may perform the functions and duties of a taxing master or appoint any person as taxing master who in the registrar's opinion is fit to perform the functions and duties assigned to or imposed on a taxing master by these rules.
- (f) The taxing master is empowered to tax any bill of costs for services actually rendered in connection with proceedings in the court.
- (g) At the taxation of any bill of costs, the taxing master may call for any book, document, paper or account that in the taxing master's opinion is necessary to determine properly any matter arising from the taxation.
- (h) The taxing master must not proceed to the taxation of any bill of costs unless the taxing master has been satisfied by the party requesting the taxation (if that party is not the party liable to pay the bill) that the party liable to pay the bill has received due notice as to the time and place of the taxation and of that party's entitlement to be present at the taxation.
- (i) Despite sub-rule (h), notice need not be given to a party -
  - (i) who failed to appear at the hearing either in person or through a representative; or
  - (ii) who consented in writing to the taxation taking place in that party's absence.
- (j) Any decision by a taxing master is subject to the review of the High Court on application.



# COMPETITION TRIBUNAL RULES

## REGULATING THE FUNCTIONS OF THE COMPETITION TRIBUNAL

### Annexure 1 - Tables

Table CTR 1 – Methods and times for delivery of Documents

Nature of Person	Method of Delivery	Date and Time of Deemed delivery
ANY PERSON	By faxing the notice or a certified copy of the document to the person, if the person has a fax number; or	On the date and at the time recorded by the fax receiver, unless there is conclusive evidence that it was delivered on a different date or at a different time.
	By sending the notice or a copy of the document by electronic mail, if the person has an address for receiving electronic mail; or	On the date and at the time recorded by the computer used by the sender, unless there is conclusive evidence that it was delivered on a different date or at a different time.
	By sending the notice or a certified copy of the document by registered post to the person's last-known address; or	On the 7 <sup>th</sup> day following the day on which the notice or document was posted as recorded by a post office, unless there is conclusive evidence that it was delivered on a different day.

	If the person is a participant in any proceedings of the Commission, and is represented by a representative, by delivering the notice, or handing a certified copy of the document to that representative; or	On the date and at the time recorded on a receipt for the delivery.
	By any other means authorised by the High Court; or	In accordance with the order of the High Court.
	By any other method allowed for that person in terms of the following rows of this Table.	As provided for that method of delivery.
<b>ANY NATURAL PERSON</b>	By handing the notice or a certified copy of the document to the person, or to any representative authorised in writing to accept service on behalf of the person; or	On the date and at the time recorded on a receipt for the delivery.
	By leaving the notice or a certified copy of the document at the person's place of residence or business with any other person who is apparently at least 16 years old and in charge of the premises at the time; or	On the date and at the time recorded on a receipt for the delivery.
	By leaving the notice or a certified copy of the document at the person's place of employment with any person who is apparently at least 16 years old and apparently in authority.	On the date and at the time recorded on a receipt for the delivery.

<b>THE TRIBUNAL</b>	By entering the required information in an electronic representation of that form on the Internet Web site, if any, maintained by the Tribunal, if the document is a prescribed form; or	On the date and at the time recorded by the Tribunal's computer system, as verified by fax reply to the sender of the information.
	By transmitting the document as a separate file attached to an electronic mail message addressed to the registrar of the Tribunal; or	On the date and at the time recorded by the Tribunal's computer system, unless, within 1 business day after that date, the registrar advises the sender that the file is unreadable.
	By sending a computer disk containing the document in electronic form, by registered post addressed to the registrar of the Tribunal; or	On the date and at the time of delivery of the registered post to the registrar of the Tribunal, as recorded by the post office, unless, within 1 business day after that date, the registrar advises the sender that the disk is unreadable.
	By handing the document, or a computer disk containing the document in electronic form, to the registrar of the Tribunal.	On the date and at the time noted in a receipt issued by the registrar of the Tribunal unless, the document is on a computer disk, and, within 1 business day after that date, the registrar advises the sender that the disk is unreadable.
<b>THE COMMISSION</b>	By entering the required information in an electronic representation of that form on the Internet Web site, if any, maintained by the Commission, if the document is a prescribed form; or	On the date and at the time recorded by the Commission's computer system, as verified by fax reply to the sender of the information.

	By transmitting the document as a separate file attached to an electronic mail message addressed to the Commission; or	On the date and at the time recorded by the Commission's computer system, unless, within 1 business day after that date, the Commission advises the sender that the file is unreadable.
	By sending a computer disk containing the document in electronic form, by registered post addressed to the Commission; or	On the date and at the time of delivery of the registered post to the Commission, as recorded by the post office, unless, within 1 business day after that date, the Commission advises the sender that the disk is unreadable.
	By handing the document, or a computer disk containing the document in electronic form, to the Commissioner, or a responsible employee who is apparently in charge of the Commission's office.	On the date and at the time noted in a receipt issued by the Commissioner unless, the document is on a computer disk, and, within 1 business day after that date, the Commission advises the sender that the disk is unreadable.
<b>A COMPANY OR SIMILAR BODY CORPORATE</b>	By handing the notice or a certified copy of the document to a responsible employee of the company or body corporate at its registered office or its principal place of business within the Republic; or	On the date and at the time recorded on a receipt for the delivery.
	If there is no employee willing to accept service, by affixing the notice or a certified copy of the document to the main door of the office or place of business.	On the date and at the time sworn to by affidavit of the person who affixed the document, unless there is conclusive evidence that the document was affixed on a different date or at a different time.

<b>A TRADE UNION</b>	By handing the notice or a certified copy of the document to a responsible employee who is apparently in charge of the main office of the union or for the purposes of section 13(2), if there is a union office within the magisterial district of the firm required to notify its employees in terms of these Rules, at that office.	On the date and at the time recorded on a receipt for the delivery.
	If there is no person willing to accept service, by affixing a certified copy of the notice or document to the main door of that office.	On the date and at the time sworn to by affidavit of the person who affixed the document, unless there is conclusive evidence that the document was affixed on a different date or at a different time.
<b>EMPLOYEES OF FIRM</b>	By fixing the notice or certified copy of the document, in a prominent place in the workplace where it can be easily read by employees.	On the date and at the time sworn to by affidavit of the person who affixed the document, unless there is conclusive evidence that the document was affixed on a different date or at a different time.
<b>A PARTNERSHIP, FIRM OR ASSOCIATION</b>	By handing the notice or a certified copy of the document to a person who is apparently in charge of the premises and apparently at least 16 years of age, at the place of business of the partnership, firm or association; or	On the date and at the time recorded on a receipt for the delivery.

	If the partnership, firm or association has no place of business, by handing the notice or a certified copy of the document to a partner, the owner of the firm, or the chairman or secretary of the managing or other controlling body of the association, as the case may be.	On the date and at the time recorded on a receipt for the delivery.
<b>A MUNICIPALITY</b>	By handing the notice or a certified copy of the document to the town clerk, assistant town clerk or any person acting on behalf of that person.	On the date and at the time recorded on a receipt for the delivery.
<b>A STATUTORY BODY OTHER THAN THE COMMISSION AND TRIBUNAL</b>	By handing the notice or a certified copy of the document to the secretary or similar officer or member of the board or committee of that body, or any person acting on behalf of that body.	On the date and at the time recorded on a receipt for the delivery.
<b>THE STATE OR A PROVINCE</b>	By handing the notice or a certified copy of the document to a responsible employee in any office of the State Attorney.	On the date and at the time recorded on a receipt for the delivery.

(1)

**Table CTR 2 – Notices and Applications**

<b>Rule #</b>	<b>Purpose of notice or Application</b>	<b>Form #</b>	<b>Conditions</b>
s. 50	Referral of Complaint by Commission	CT 1 (1)	
s. 51(1)	Referral of Complaint by Complainant	CT 1 (2)	May be used only after the Commission has issued a Notice of Non-Referral in respect of that matter.
s. 65(2)b	Referral of Complaint by Complainant	CT 1 (3)	
s. 63	Consent to Order	CT 2	Must be attached to a Referral of Complaint.
s. 63	Consent to include damages in consent order	CT 3	Must be attached to a Referral of Complaint and consent to Order.
Rule 33	Request for Consideration of an Intermediate Merger	CT 4	
Several	Notice	CT 5	
Several	Notice of Motion	CT 6	
Rule 38	Notice of Appeal	CT 7	

Rule 51	Notice of Withdrawal	CT 8	
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**Table CTR 3 – Certificates and Notices**

Rule #	Purpose of Certificate or Notice	Form #	Conditions
Rule 36(4)	Extension Certificate	CT 9	
Rules 35, 36	Merger Clearance Certificate	CT 10	May be used either with or without conditions.
Rule 35, 36	Notice of Prohibition of Merger	CT 11	
Rule 37	Notice of Revocation of Merger Decision	CT 12	
Rule 48	Tribunal Summons	CT 13	
Rule 41	Notice of Hearing	CT 14	
Rule 52	Notice of Set - Down	CT 15	
s. 65(6)(b)	Certificate of Decision	CT 16	

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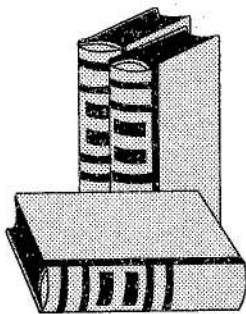
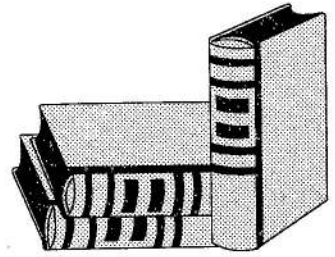
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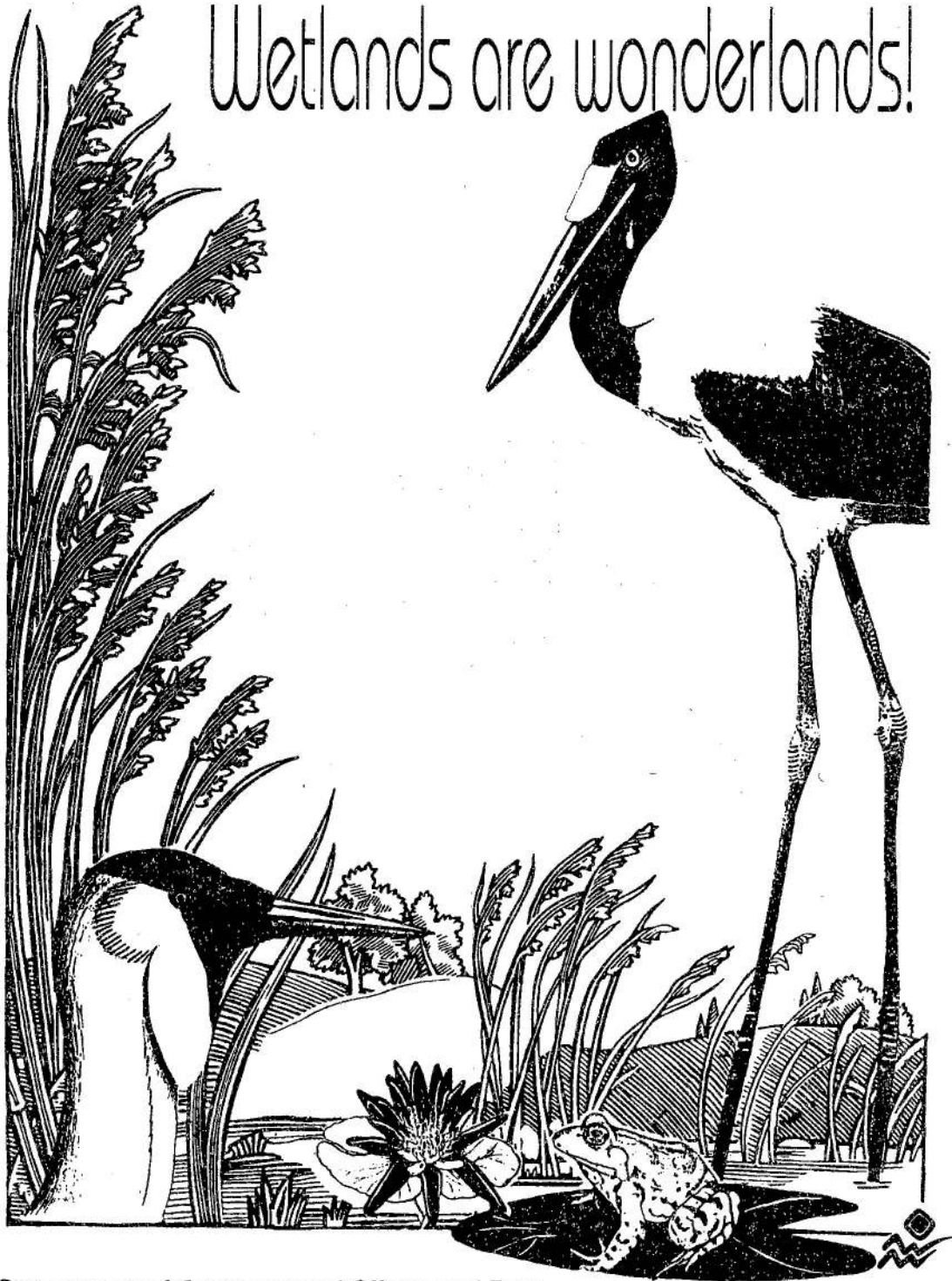
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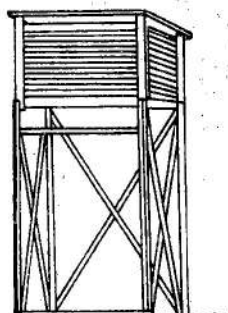
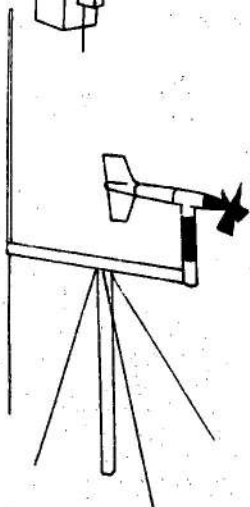
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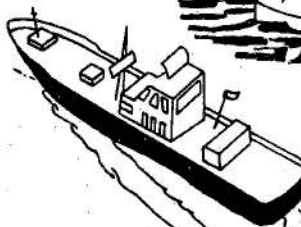
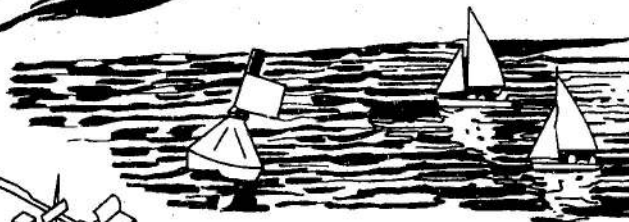
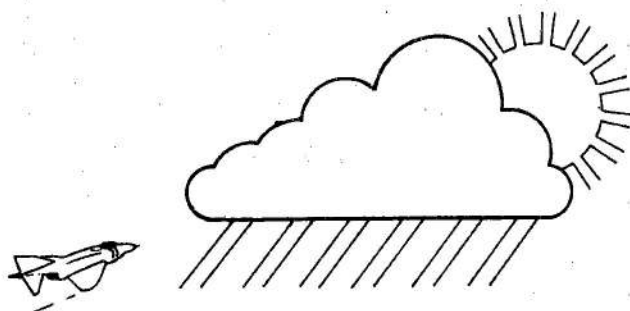


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