

# REPUBLIC OF SOUTH AFRICA

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## COMPETITION ACT

(Date of commencement of sections 1-3, 6,11, 19-43,78,79 & 84 on 30 November 1998. The remaining sections of the Act commenced on 1 September 1999)

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### **as amended by**

Competition Amendment Act, No 35 of 1999  
(Date of commencement 1 September 1999)

Competition Amendment Act, No. 15 of 2000  
(Date of commencement 1 September 2000)

Competition Second Amendment Act, No. 39 of 2000  
(Date of commencement 1 February 2001)

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# ACT

To provide for the establishment of a Competition Commission responsible for the investigation, control and evaluation of restrictive practices, abuse of dominant position, and mergers; and for the establishment of a Competition Tribunal responsible to adjudicate such matters; and for the establishment of a Competition Appeal Court; and for related matters.

## PREAMBLE

The people of South Africa recognise:

That apartheid and other discriminatory laws and practices of the past resulted in excessive concentrations of ownership and control within the national economy, inadequate restraints against anti-competitive trade practices, and unjust restrictions on full and free participation in the economy by all South Africans.

*This paragraph was amended to its present form by section 22 of The Competition Second Amendment Act, 2000.*

That the economy must be open to greater ownership by a greater number of South Africans.

That credible competition law, and effective structures to administer that law, are necessary for an efficient functioning economy.

That an efficient, competitive economic environment, balancing the interests of workers, owners and consumers and focussed on development, will benefit all South Africans.

## **IN ORDER TO –**

provide all South Africans equal opportunity to participate fairly in the national economy;

achieve a more effective and efficient economy in South Africa;

provide for markets in which consumers have access to, and can freely select, the quality and variety of *goods and services* they desire;

create greater capability and an environment for South Africans to compete effectively in international markets;

restrain particular trade practices which undermine a competitive economy;

regulate the transfer of economic ownership in keeping with the public *interest*;

establish independent institutions to monitor economic competition; and

give effect to the international law obligations of the Republic.

**BE IT THEREFORE ENACTED BY THE PARLIAMENT OF THE  
REPUBLIC OF SOUTH AFRICA, AS FOLLOWS:**

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# CHAPTER 1

## DEFINITIONS, INTERPRETATION, PURPOSE AND APPLICATION OF ACT

### 1. Definitions and interpretation

(1) In *this Act* -

- (i) **'acquiring firm'** means a *firm* –
- (a) that, as a result of a transaction in any circumstances set out in section 12, would directly or indirectly acquire, or establish direct or indirect control over, the whole or part of the business of another *firm*;
  - (b) that has direct or indirect control over the whole or part of the business of a *firm* contemplated in paragraph (a); or
  - (c) the whole or part of whose business is directly or indirectly controlled by a *firm* contemplated in paragraph (a) or (b);

*Paragraph (i) was added by section 1 (a) of The Competition Second Amendment Act, 2000.*

- (ii) **'agreement'**, when used in relation to a *prohibited practice*, includes a contract, arrangement or understanding, whether or not legally enforceable;

*Paragraph (ii) was amended to its present form by section 1 (b) of The Competition Second Amendment Act, 2000.*

- (iii) **'civil court'** means a High Court or Magistrates Court, as referred to in sections 166(c) and (d) of the *Constitution*;

- (iv) **'complainant'** means a person who has submitted a complaint in terms of section 49B(2)(b);  
*Paragraph (iv) was added by section 1 (c) of The Competition Second Amendment Act, 2000.*
- (v) **'confidential information'** means trade, business or industrial information that belongs to a *firm*, has a particular economic value, and is not generally available to or known by others;
- (vi) **'concerted practice'** means co-operative, or co-ordinated conduct between *firms*, achieved through direct or indirect contact, that replaces their independent action, but which does not amount to an *agreement*;
- (vii) **'Constitution'** means the *Constitution* of the Republic of South Africa, 1996 (Act No. 108 of 1996);
- (viii) **'essential facility'** means an infrastructure or resource that cannot reasonably be duplicated, and without access to which competitors cannot reasonably provide *goods or services* to their customers;
- (ix) **'excessive price'** means a price for a good or service which –  
(aa) bears no reasonable relation to the economic value of that good or service; and  
(bb) is higher than the value referred to in subparagraph (a);
- (x) **'exclusionary act'** means an act that impedes or prevents a *firm* entering into, or expanding within, a market;
- (xi) **'firm'** includes a person, partnership or a trust;

- (xii) **'goods or services'**, when used with respect to particular *goods or services*, includes any other *goods or services* that are reasonably capable of being substituted for them, taking into account ordinary commercial practice and geographical, technical and temporal constraints;
- (xiii) **'horizontal relationship'** means a relationship between competitors;  
*the former definition of interest was deleted section 1 (d) of The Competition Second Amendment Act, 2000.*
- (xiv) **'market power'** means the power of a *firm* to control prices, or to exclude competition or to behave to an appreciable extent independently of its competitors, customers or suppliers;
- (xv) **'member's interest'** has the meaning set out in the Close Corporations Act, 1984 (Act No. 69 of 1984);  
*Paragraph (xv) was added by section 1 (e) of The Competition Second Amendment Act, 2000.*
- (xvi) **'Minister'** means the *Minister* of Trade and Industry;
- (xvii) **'organ of state'** has the meaning set out in section 239 of the *Constitution*;
- (xviii) **'party to a merger'** means an *acquiring firm* or a *target firm*;  
*Paragraph (xviii) was added by section 1 (f) of The Competition Second Amendment Act, 2000.*
- (xix) **'premises'** includes land, or any building, structure, vehicle, ship, boat, vessel, aircraft or container;
- (xx) **'prescribed'** means *prescribed by regulation*;  
*Paragraph (xx) was amended to its present form by section 1 (g) of The Competition Second Amendment Act, 2000.*

- (xxi) **‘primary acquiring firm’** means any firm contemplated in paragraph (a) of the definition of *acquiring firm*;

*Paragraph (xxi) was added by section 1 (h) of The Competition Second Amendment Act, 2000.*

- (xxii) **‘primary target firm’** means any *firm* contemplated in paragraph (a) or (b) of the definition of *target firm*;

*Paragraph (xxii) was added by section 1 (h) of The Competition Second Amendment Act, 2000.*

- (xxiii) **‘private dwelling’** means any part of a structure that is occupied as a residence, or any part of a structure or outdoor living area that is accessory to, and used wholly for the purposes of, a residence;

- (xxiv) **‘prohibited practice’** means a practice prohibited in terms of Chapter 2;

- (xxv) **‘public regulation’** means any national, provincial or local government legislation or subordinate legislation, or any license, tariff, directive or similar authorisation issued by a *regulatory authority* or pursuant to any statutory authority;

- (xxvi) **‘registered trade union’** means a trade union registered in terms of section 96 of the Labour Relations Act, 1995 (Act No. 66 of 1995);

*Paragraph (xxvi) was added by section 1 (i) of The Competition Second Amendment Act, 2000.*

- (xxvii) **‘regulation’** means a *regulation* made under *this Act*;

- (xxviii) **‘regulatory authority’** means an entity established in terms of national or provincial legislation responsible for regulating an industry, or sector of an industry;

- (xxix) **'respondent'** means a *firm* against whom a complaint of a *prohibited practice* has been initiated in terms of *this Act*;
- (xxx) **'restrictive horizontal practice'** means any practice listed in section 4;
- (xxxi) **'restrictive vertical practice'** means any practice listed in section 5;
- (xxxii) **'small business'** has the meaning set out in the National *Small business Act*, 1996 (Act No. 102 of 1996);
- (xxxiii) **'target firm'** means a *firm* –
- (a) the whole or part of whose business would be directly or indirectly controlled by an *acquiring firm* as a result of a transaction in any circumstances set out in section 12;
  - (b) that, as a result of a transaction in any circumstances set out in section 12, would directly or indirectly transfer direct or indirect control of the whole or part of, its business to an *acquiring firm*; or
  - (c) the whole or part of whose business is directly or indirectly controlled by a *firm* contemplated in paragraph (a) or (b);

*Paragraph (xxxiii) was added by section 1 (j) of The Competition Second Amendment Act, 2000.*

- (i) **'this Act'** includes the *regulations* and Schedules;
- (ii) **'vertical relationship'** means the relationship between a *firm* and its suppliers, its customers, or both.

(1A) When a particular number of business days is provided for performing an act, the number of days must be calculated by –

- (a) excluding the first day, any public holiday, Saturday and Sunday; and
- (b) including the last day.

*Subsection (1A) was added by section 1 (k) of The Competition Second Amendment Act, 2000.*

(2) *This Act* must be interpreted –

- (a) in a manner that is consistent with the *Constitution* and gives effect to the purposes set out in section 2; and
- (b) in compliance with the international law obligations of the Republic.

(3) Any person interpreting or applying *this Act* may consider appropriate foreign and international law.

## 2. Purpose of Act

The purpose of *this Act* is to promote and maintain competition in the Republic in order –

- (a) to promote the efficiency, adaptability and development of the economy;
- (b) to provide consumers with competitive prices and product choices;

- (c) to promote employment and advance the social and economic welfare of South Africans;
- (d) to expand opportunities for South African participation in world markets and recognise the role of foreign competition in the Republic;
- (e) to ensure that small and medium-sized enterprises have an equitable opportunity to participate in the economy; and
- (f) to promote a greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged persons.

### 3. Application of Act

- (1) *This Act* applies to all economic activity within, or having an effect within, the Republic, except –
  - (a) collective bargaining within the meaning of section 23 of the *Constitution*, and the Labour Relations Act, 1995 (Act No. 66 of 1995);
  - (b) a collective *agreement*, as defined in section 213 of the Labour Relations Act, 1995; and
  - (c) . . .  
*Paragraph (c) was deleted by section 2 (a) of The Competition Second Amendment Act, 2000.*
  - (d) . . .  
*Paragraph (d) was deleted by section 2 (a) of The Competition Second Amendment Act, 2000.*
  - (e) concerted conduct designed to achieve a non-commercial socio-economic objective or similar purpose.
- (1A) (a) In so far as *this Act* applies to an industry, or sector of an industry, that is subject to the jurisdiction of another *regulatory authority*, which authority has

jurisdiction in respect of conduct regulated in terms of Chapter 2 or 3 of *this Act*, *this Act* must be construed as establishing concurrent jurisdiction in respect of that conduct.

- (b) The manner in which the concurrent jurisdiction is exercised in terms of *this Act* and any other *public regulation*, must be managed, to the extent possible, in accordance with any applicable *agreement* concluded in terms of sections 21(1)(h) and 82(1) and (2).

*Subsection (1A) was added by section 2 (b) of The Competition Second Amendment Act, 2000.*

- (2) For all purposes of *this Act*, a person is a historically disadvantaged person if that person –
  - (a) is one of a category of individuals who, before the *Constitution* of the Republic of South Africa, 1993 (Act No. 200 of 1993), came into operation, were disadvantaged by unfair discrimination on the basis of race;
  - (b) is an association, a majority of whose members are individuals referred to in paragraph (a);
  - (c) is a juristic person other than an association, and individuals referred to in paragraph (a) own and control a majority of its issued share capital or members' *interest* and are able to control a majority of its votes; or
  - (d) is a juristic person or association, and persons referred to in paragraph (a), (b) or (c) own and control a majority of its issued share capital or members' *interest* and are able to control a majority of its votes.



# CHAPTER 2

## PROHIBITED PRACTICES

### PART A – Restrictive Practices

#### 4. Restrictive horizontal practices prohibited

- (1) An *agreement* between, or *concerted practice* by, *firms*, or a decision by an association of *firms*, is prohibited if it is between parties in a *horizontal relationship* and if –
- (a) it has the effect of substantially preventing, or lessening, competition in a market, unless a party to the *agreement*, *concerted practice*, or decision can prove that any technological, efficiency or other pro-competitive gain resulting from it outweighs that effect; or
  - (b) it involves any of the following *restrictive horizontal practices*:
    - (i) directly or indirectly fixing a purchase or selling price or any other trading condition;
    - (ii) dividing markets by allocating customers, suppliers, territories, or specific types of *goods or services*; or
    - (iii) collusive tendering.

*Subsection (1) was amended to its present form by section 3(a) and (b) of The Competition Second Amendment Act, 2000.*

- (2) An *agreement* to engage in a *restrictive horizontal practice* referred to in subsection (1)(b) is presumed to exist

between two or more *firms* if –

- (a) any one of those *firms* owns a significant interest in the other, or they have at least one director or substantial shareholder in common; and
- (b) any combination of those *firms* engages in that *restrictive horizontal practice*.

*Subsection (2) was amended to its present form by section 3(c) of The Competition Second Amendment Act, 2000.*

- (3) A presumption contemplated in subsection (2) may be rebutted if a *firm*, director or shareholder concerned establishes that a reasonable basis exists to conclude that the practice referred to in subsection (1)(b) was a normal commercial response to conditions prevailing in that market.
- (4) For purposes of subsections (2) and (3), “director” means –
  - (a) a director of a company as defined in the Companies Act, 1973 (Act No. 61 of 1973);
  - (b) a member of a close corporation, as defined in the Close Corporations Act, 1984 (Act No. 69 of 1984);
  - (c) a trustee of a trust; or
  - (d) a person holding an equivalent position in a *firm*.

*Subsection (4) was amended to its present form by section 3(d) of The Competition Second Amendment Act, 2000.*

- (5) The provisions of subsection (1) do not apply to an *agreement* between, or *concerted practice* engaged in by, –
  - (a) a company, its wholly owned subsidiary as contemplated in section 1(5) of the Companies Act, 1973, a wholly owned subsidiary of that subsidiary, or any combination of them; or

- (b) the constituent *firms* within a single economic entity similar in structure to those referred to in paragraph (a).

## 5. Restrictive vertical practices prohibited

- (1) An *agreement* between parties in a *vertical relationship* is prohibited if it has the effect of substantially preventing or lessening competition in a market, unless a party to the *agreement* can prove that any technological, efficiency or other pro-competitive, gain resulting from that *agreement* outweighs that effect.
- (2) The practice of minimum resale price maintenance is prohibited.
- (3) Despite subsection (2), a supplier or producer may recommend a minimum resale price to the reseller of a *good or service* provided –
  - (a) the supplier or producer makes it clear to the reseller that the recommendation is not binding; and
  - (b) if the product has its price stated on it, the words “recommended price” appear next to the stated price.

## PART B – Abuse of a Dominant Position

### 6. Restricted application of Part

*Section 6 was amended to its present form by section 4 of The Competition Second Amendment Act, 2000.*

- (1) The *Minister*, in consultation with the Competition Commission, must determine –

- (a) a threshold of annual turnover, or assets, in the Republic, either in general or in relation to specific industries, below which this Part does not apply to a *firm*; and
  - (b) a method for the calculation of annual turnover or assets to be applied in relation to that threshold.
- (2) The *Minister* may make a new determination in terms of subsection (1) in consultation with the Competition Commission.
- (3) Before making a determination contemplated in this section, the *Minister*, in consultation with the Competition Commission, must publish in the Gazette a notice –
- (a) setting out the proposed threshold and method of calculation for purposes of this section; and
  - (b) inviting written submissions on that proposal.
- (4) Within six months after publishing a notice in terms of subsection (3), the *Minister*, in consultation with the Competition Commission, must publish in the Gazette a notice –
- (a) Setting out the threshold and method of calculation for purposes of this section; and
  - (b) the effective date of that threshold.

## 7. Dominant firms

A *firm* is dominant in a market if –

- (a) it has at least 45% of that market;
- (b) it has at least 35%, but less than 45%, of that market, unless it can show that it does not have *market power*; or
- (c) it has less than 35% of that market, but has *market power*.

## 8. Abuse of dominance prohibited

It is prohibited for a dominant *firm* to –

- (a) charge an *excessive* price to the detriment of consumers;
- (b) refuse to give a competitor access to an *essential facility* when it is economically feasible to do so;
- (c) engage in an *exclusionary act*, other than an act listed in paragraph (d), if the anti-competitive effect of that act outweighs its technological, efficiency or other pro-competitive gain; or
- (d) engage in any of the following *exclusionary acts*, unless the *firm* concerned can show technological, efficiency or other pro-competitive gains which outweigh the anti-competitive effect of its act –
  - (i) requiring or inducing a supplier or customer to not deal with a competitor;
  - (ii) refusing to supply scarce goods to a competitor when supplying those goods is economically feasible;
  - (iii) selling *goods or services* on condition that the buyer purchases separate *goods or services* unrelated to the object of a contract, or forcing a buyer to accept a condition unrelated to the object of a contract;
  - (iv) selling *goods or services* below their marginal or average variable cost; or
  - (v) buying-up a scarce supply of intermediate goods or resources required by a competitor.

## 9. Price discrimination by dominant firm prohibited

- (1) An action by a dominant *firm*, as the seller of *goods or services* is prohibited price discrimination, if –

- (a) it is likely to have the effect of substantially preventing or lessening competition;
  - (b) it relates to the sale, in equivalent transactions, of *goods or services* of like grade and quality to different purchasers; and
  - (c) it involves discriminating between those purchasers in terms of –
    - (i) the price charged for the *goods or services*;
    - (ii) any discount, allowance, rebate or credit given or allowed in relation to the supply of *goods or services*;
    - (iii) the provision of services in respect of the *goods or services*; or
    - (iv) payment for services provided in respect of the *goods or services*.
- (2) Despite subsection (1), conduct involving differential treatment of purchasers in terms of any matter listed in paragraph (c) of that subsection is not prohibited price discrimination if the dominant *firm* establishes that the differential treatment –
- (a) makes only reasonable allowance for differences in cost or likely cost of manufacture, distribution, sale, promotion or delivery resulting from the differing places to which, methods by which, or quantities in which, *goods or services* are supplied to different purchasers;
  - (b) is constituted by doing acts in good faith to meet a price or benefit offered by a competitor; or

- (c) is in response to changing conditions affecting the market for the *goods or services* concerned, including –
  - (i) any action in response to the actual or imminent deterioration of perishable goods;
  - (ii) any action in response to the obsolescence of goods;
  - (iii) a sale pursuant to a liquidation or sequestration procedure; or
  - (iv) a sale in good faith in discontinuance of business in the *goods or services* concerned.

## **PART C – Exemptions from Application of Chapter**

### **10. Exemption**

*Section 10 was amended to its present form by section 5 of The Competition Second Amendment Act, 2000.*

- (1) A *firm* may apply to the Competition Commission to exempt from the application of this Chapter –
  - (a) an *agreement* or practice, if that *agreement* or practice meets the requirements of subsection (3); or
  - (b) category of *agreements* or practices, if that category of *agreements* or practices meets the requirements of subsection (3).
- (2) Upon receiving an application in terms of subsection (1), the Competition Commission must –
  - (a) grant a conditional or unconditional exemption for a

- specified term, if the *agreement* or practice concerned, or category of *agreements* or practices concerned, meets the requirements of subsection (3); or
- (b) refuse to grant an exemption, if –
    - (i) the *agreement* or practice concerned, or category of *agreements* or practices concerned, does not meet the requirements of subsection (3); or
    - (ii) the *agreement* or practice, or category of *agreements* or practices does not constitute a *prohibited practice* in terms of this Chapter.
- (3) The Competition Commission may grant an exemption in terms of subsection (2)(a) only if –
- (a) any restriction imposed on the *firms* concerned by the *agreement* or practice concerned, or category of either *agreements* or practices concerned, is required to attain an objective mentioned in paragraph (b); and
  - (b) the *agreement* or practice concerned, or category of *agreements* or practices concerned, contributes to any of the following objectives:
    - (i) maintenance or promotion of exports;
    - (ii) promotion of the ability of *small businesses*, or *firms* controlled or owned by historically disadvantaged persons, to become competitive;
    - (iii) change in productive capacity necessary to stop decline in an industry; or
    - (iv) the economic stability of any industry designated by the *Minister*, after consulting the Minister responsible for that industry.



- (4) A *firm* may apply to the Competition Commission to exempt from the application of this Chapter an *agreement* or practice, or category of *agreements* or practices, that relates to the exercise of intellectual property rights, including a right acquired or protected in terms of the Performers' Protection Act, 1967 (Act No. 11 of 1967), the Plant Breeder's Rights Act, 1976 (Act No. 15 of 1976), the Patents Act, 1978 (Act No. 57 of 1978), the Copyright Act, 1978 (Act No. 98 of 1978), the Trade Marks Act, 1993 (Act No. 194 of 1993) and the Designs Act, 1993 (Act No. 195 of 1993).
- (4A) Upon receiving an application in terms of subsection (4), the Competition Commission may grant an exemption for a specified term.
- (5) The Competition Commission may revoke an exemption granted in terms of subsection (2)(a) or subsection (4A) if –
- (a) the exemption was granted on the basis of false or incorrect information;
  - (b) a condition for the exemption is not fulfilled; or
  - (c) the reason for granting the exemption no longer exists.
- (6) Before granting an exemption in terms of subsection (2) or (4A), or revoking an exemption in terms of subsection (5), the Competition Commission –
- (a) must give notice in the *Gazette* of the application for an exemption, or of its intention to revoke that exemption;
  - (b) must allow interested parties 20 business days from the date of that notice to make written representations as to why the exemption should not be granted or revoked; and

- (c) may conduct an investigation into the *agreement* or practice concerned, or category of *agreements* or practices concerned.
- (7) The Competition Commission, by notice in the *Gazette*, must give notice of any exemption granted, refused or revoked in terms of this section.
- (8) The *firm* concerned, or any other person with a substantial financial interest affected by a decision of the Competition Commission in terms of subsection (2), (4A) or (5), may appeal that decision to the Competition Tribunal in the *prescribed* manner.
- (9) At any time after refusing to grant an exemption in terms of subsection (2)(b)(ii), the Competition Commission –
  - (a) may withdraw its notice of refusal to grant the exemption, in the *prescribed* manner; and
  - (b) if it does withdraw its notice of refusal, must reconsider the application for exemption.

# CHAPTER 3

## MERGER CONTROL

*Chapter 3 was amended to its present form by section 6 of the Competition Second Amendment Act, 2000.*

### 11. Thresholds and categories of mergers

- (1) The *Minister*, in consultation with the Competition Commission, must determine –
  - (a) A lower and a higher threshold of combined annual turnover or assets, or a lower and a higher threshold of combinations of turnover and assets, in the Republic, in general or in relation to specific industries, for purposes of determining categories of mergers contemplated in subsection (5); and
  - (b) a method for the calculation of annual turnover or assets to be applied in relation to each of those thresholds.
- (2) The *Minister* may make a new determination in terms of subsection (1) in consultation with the Competition Commission.
- (3) Before making a determination contemplated in this section, the *Minister*, in consultation with the Competition Commission, must publish in the *Gazette* a notice –
  - (a) setting out the proposed threshold and method of calculation for purposes of this section; and
  - (b) inviting written submissions on that proposal.
- (4) Within six months after publishing a notice in terms of subsection (3), the *Minister*, in consultation with the

Competition Commission, must publish in the *Gazette* a notice –

- (a) setting out the new threshold and method of calculation for purposes of this section; and
  - (b) the effective date of that threshold.
- (5) For purposes of this Chapter –
- (a) **“a small merger”** means a merger or proposed merger with a value at or below the lower threshold established in terms of subsection (1)(a);
  - (b) **“an intermediate merger”** means a merger or proposed merger with a value between the lower and higher thresholds established in terms of subsection (1)(a); and
  - (c) **“a large merger”** means a merger or proposed merger with a value at or above the higher threshold established in terms of subsection (1)(a).

## 12. Merger defined

- (1) (a) For purposes of *this Act*, a merger occurs when one or more *firms directly or indirectly* acquire or establish direct or indirect control over the whole or part of the business of another *firm*.
- (b) A merger contemplated in paragraph (a) may be achieved in any manner, including through –
- (i) purchase or lease of the shares, an interest or assets of the other *firm* in question; or
  - (ii) amalgamation or other combination with the other *firm* in question.

- (2) A person controls a *firm* if that person –
- (a) beneficially owns more than one half of the issued share capital of the *firm*;
  - (b) is entitled to vote a majority of the votes that may be cast at a general meeting of the *firm*, or has the ability to control the voting of a majority of those votes, either directly or through a controlled entity of that person;
  - (c) is able to appoint or to veto the appointment of a majority of the directors of the *firm*;
  - (d) is a holding company, and the *firm* is a subsidiary of that company as contemplated in section 1(3)(a) of the Companies Act, 1973 (Act No. 61 of 1973);
  - (e) in the case of a *firm* that is a trust, has the ability to control the majority of the votes of the trustees, to appoint the majority of the trustees or to appoint or change the majority of the beneficiaries of the trust;
  - (f) in the case of a close corporation, owns the majority of members' *interest* or controls directly or has the right to control the majority of members' votes in the close corporation; or
  - (g) has the ability to materially influence the policy of the *firm* in a manner comparable to a person who, in ordinary commercial practice, can exercise an element of control referred to in paragraphs (a) to (f).

## **12A. Consideration of Mergers**

- (1) Whenever required to consider a merger, the Competition Commission or Competition Tribunal must initially deter-

- mine whether or not the merger is likely to substantially prevent or lessen competition, by assessing the factors set out in subsection (2), and –
- (a) if it appears that the merger is likely to substantially prevent or lessen competition, then determine –
    - (i) whether or not the merger is likely to result in any technological, efficiency or other pro-competitive gain which will be greater than, and offset, the effects of any prevention or lessening of competition, that may result or is likely to result from the merger, and would not likely be obtained if the merger is prevented; and
    - (ii) whether the merger can or cannot be justified on substantial public interest grounds by assessing the factors set out in subsection (3);  
or
  - (b) otherwise, determine whether the merger can or cannot be justified on substantial public interest grounds by assessing the factors set out in subsection (3).
- (2) When determining whether or not a merger is likely to substantially prevent or lessen competition, the Competition Commission or Competition Tribunal must assess the strength of competition in the relevant market, and the probability that the *firms* in the market after the merger will behave competitively or co-operatively, taking into account any factor that is relevant to competition in that market, including –
- (a) the actual and potential level of import competition in the market;

- (b) the ease of entry into the market, including tariff and regulatory barriers;
  - (c) the level and trends of concentration, and history of collusion, in the market;
  - (d) the degree of countervailing power in the market;
  - (e) the dynamic characteristics of the market, including growth, innovation, and product differentiation;
  - (f) the nature and extent of vertical integration in the market;
  - (g) whether the business or part of the business of a party to the merger or proposed merger has failed or is likely to fail; and
  - (h) whether the merger will result in the removal of an effective competitor.
- (3) When determining whether a merger can or cannot be justified on public interest grounds, the Competition Commission or the Competition Tribunal must consider the effect that the merger will have on –
- (a) a particular industrial sector or region;
  - (b) employment;
  - (c) the ability of *small businesses*, or *firms* controlled or owned by historically disadvantaged persons, to become competitive; and
  - (d) the ability of national industries to compete in international markets.

### **13. Small merger notification and implementation**

- (1) A party to a small merger –
  - (a) is not required to notify the Competition Commission of that merger unless the Commission

- requires it to do so in terms of subsection (3); and
- (b) may implement that merger without approval, unless required to notify the Competition Commission in terms of subsection (3).
- (2) A party to a small merger may voluntarily notify the Competition Commission of that merger at any time.
  - (3) Within 6 months after a small merger is implemented, the Competition Commission may require the parties to that merger to notify the Commission of that merger in the *prescribed* manner and form if, in the opinion of the Commission, having regard to the provisions of section 12A, the merge –
    - (a) may substantially prevent or lessen competition; or
    - (b) cannot be justified on public interest grounds.
  - (4) A *party to a merger* contemplated in subsection (3) may take no further steps to implement that merger until the merger has been approved or conditionally approved.
  - (5) Within 20 business days after all parties to a small merger have fulfilled all their notification requirements in the *prescribed* manner and form, the Competition Commission –
    - (a) may extend the period in which it has to consider the proposed merger by a single period not exceeding 40 business days and, in that case, must issue an extension certificate to any party who notified it of the merger; or
    - (b) after having considered the merger in terms of section 12A, must issue a certificate in the *prescribed* form –
      - (i) approving the merger;
      - (ii) approving the merger subject to any conditions;



- (iii) prohibiting implementation of the merger, if it has not been implemented; or
  - (iv) declaring the merger to be prohibited.
- (6) If, upon the expiry of the 20 business day period provided for in subsection (5), the Competition Commission has not issued any of the certificates referred to in that subsection or, upon the expiry of an extension period contemplated in subsection (5)(a), the Commission has not issued a certificate referred to in subsection (5)(b), the merger must be regarded as having been approved, subject to section 15.
- (7) The Competition Commission must –
  - (a) publish a notice of the decision in the *Gazette*; and
  - (b) issue written reasons for the decision if –
    - (i) it prohibits or conditionally approves the merger; or
    - (ii) requested to do so by a party to the merger.

### **13A. Notification and implementation of other mergers**

- (1) A party to an intermediate or a large merger must notify the Competition Commission of that merger in the *prescribed* manner and form.
- (2) In the case of an intermediate or a large merger, the *primary acquiring firm* and the *primary target firm* must each provide a copy of the notice contemplated in subsection (1) to –
  - (a) any *registered trade union* that represents a substantial number of its employees; or
  - (b) the employees concerned or representatives of the employees concerned, if there are no such *registered trade unions*.

- (3) The parties to an intermediate or large merger may not implement that merger until it has been approved, with or without conditions, by the Competition Commission in terms of section 14(1)(b), the Competition Tribunal in terms of section 16 (2) or the Competition Appeal Court in terms of section 17.

### **13B. Merger investigations**

- (1) The Competition Commission may direct an inspector to investigate any merger, and may designate one or more persons to assist the inspector.
- (2) The Competition Commission may require any *party to a merger* to provide additional information in respect of the merger.
- (3) Any person, whether or not a party to or a participant in merger proceedings, may voluntarily file any document, affidavit, statement or other relevant information in respect of that merger.

### **14. Competition Commission intermediate merger proceedings**

- (1) Within 20 business days after all parties to an intermediate merger have fulfilled all their notification requirements in the *prescribed* manner and form, the Competition Commission –
  - (a) may extend the period in which it has to consider the proposed merger by a single period not exceeding 40 business days and, in that case, must issue an extension certificate to any party who notified it of the merger; or
  - (b) after having considered the merger in terms of sec-

tion 12A, must issue a certificate in the *prescribed* form –

- (i) approving the merger;
  - (ii) approving the merger subject to any conditions;  
or
  - (iii) prohibiting implementation of the merger.
- (2) If, upon the expiry of the 20 business day period provided for in subsection (1), the Competition Commission has not issued any of the certificates referred to in that subsection or, upon the expiry of an extension period contemplated in subsection (1)(a), the Commission has not issued a certificate referred to in subsection (1)(b), the merger must be regarded as having been approved, subject to section 15.
- (3) The Competition Commission must –
- (a) publish a notice of the decision in the *Gazette*; and
  - (b) issue written reasons for the decision if
    - (i) it prohibits or conditionally approves the merger; or
    - (ii) requested to do so by a party to the merger.

#### **14A. Competition Commission large merger proceedings**

- (1) After receiving notice of a large merger, the Competition Commission –
- (a) must refer the notice to the Competition Tribunal and to the *Minister*; and
  - (b) within 40 business days after all parties to a large merger have fulfilled all their *prescribed* notification requirements, must forward to the Competition Tribunal and the *Minister* a written recommendation, with reasons, whether or not implementation of the

- merger should be –
  - (i) approved;
  - (ii) approved subject to any conditions; or
  - (iii) prohibited.
- (2) The Competition Tribunal may extend the period for making a recommendation in respect of a particular merger upon an application by the Competition Commission, but the Tribunal may not grant an extension of more than 15 business days at a time.
- (3) If, upon the expiry of the period contemplated in subsection (1), or an extended time contemplated in subsection (2), the Competition Commission has neither applied for an extension or a further extension as the case may be, nor forwarded a recommendation to the Competition Tribunal, any party to the merger may apply to the Tribunal to begin the consideration of the merger without a recommendation from the Commission.
- (4) Upon receipt of an application by a party contemplated in subsection (3), the Tribunal must set a date for proceedings in respect of that merger.

## **15. Revocation of merger approval**

- (1) The Competition Commission may revoke its own decision to approve or conditionally approve a small or intermediate merger if –
  - (a) the decision was based on incorrect information for which a party to the merger is responsible;
  - (b) the approval was obtained by deceit; or
  - (c) a *firm* concerned has breached an obligation attached to the decision.

- (2) If the Competition Commission revokes a decision to approve a merger under subsection (1), it may prohibit that merger even though any time limit set out in this Chapter may have elapsed.

## **16. Competition Tribunal merger proceedings**

- (1) If the Competition Commission approves –
  - (a) a small or intermediate merger subject to any conditions, or prohibits such merger, any party to the merger, by written notice and in the *prescribed* form, may request the Competition Tribunal to consider the conditions or prohibited merger; or
  - (b) an intermediate merger, or approves such merger subject to any conditions, a person who, in terms of section 13A (2), is required to be given notice of the merger, by written notice and in the *prescribed* form, may request the Competition Tribunal to consider the approval or conditional approval, provided the person had been a participant in the proceedings of the Competition Commission.
- (2) Upon receiving a referral of a large merger and recommendation from the Competition Commission in terms of section 14A(1), or a request in terms of subsection (1), the Competition Tribunal must consider the merger in terms of section 12A, and the recommendation or request, as the case may be, and within the *prescribed* time –
  - (a) approve the merger;
  - (b) approve the merger subject to any conditions; or
  - (c) prohibit implementation of the merger.
- (3) Upon application by the Competition Commission, the

Competition Tribunal may revoke its own decision to approve or conditionally approve a merger and section 15, read with the changes required by the context, applies to a revocation in terms of this subsection.

- (4) The Competition Tribunal must –
  - (a) publish a notice of the decision made in terms of subsection (2) or (3) in the *Gazette*; and
  - (b) issue written reasons for any such decision.

## **17. Competition Appeal Court merger proceedings**

- (1) Within 20 business days after notice of a decision by the Competition Tribunal in terms of section 16, an appeal from that decision may be made to the Competition Appeal Court, subject to its rules, by –
  - (a) any party to the merger; or
  - (b) a person who, in terms of section 13A(2), is required to be given notice of the merger, provided the person had been a participant in the proceedings of the Competition Tribunal.
- (2) The Competition Appeal Court may –
  - (a) set aside the decision of the Competition Tribunal;
  - (b) amend the decision by ordering or removing restrictions, or by including or deleting conditions; or
  - (c) confirm the decision.
- (3) If the Competition Appeal Court sets aside a decision of the Competition Tribunal, the Court must –
  - (a) approve the merger;
  - (b) approve the merger subject to any conditions; or
  - (c) prohibit implementation of the merger.

## 18. Intervention in merger proceedings

- (1) In order to make representations on any public interest ground referred to in section 12A(3), the *Minister* may participate as a party in any intermediate or large merger proceedings before the Competition Commission, Competition Tribunal or the Competition Appeal Court, in the *prescribed* manner.
- (2) Despite anything to the contrary in *this Act*, the Competition Commission may not make a decision in terms of section 13(5)(b) or 14(1)(b), and the Competition Tribunal may not make an order in terms of section 16(2), if the –
  - (a) merger constitutes –
    - (i) an acquisition of shares for which permission is required in terms of section 37 of the Banks Act, 1990 (Act No. 94 of 1990); or
    - (ii) a transaction for which consent is required in terms of section 54 of the Banks Act, 1990 (Act No. 94 of 1990); and
  - (b) the Minister of Finance has, in the *prescribed* manner, issued a notice to the Commissioner specifying the names of the parties to the merger and certifying that –
    - (i) the merger is a merger contemplated in paragraph (a)(i) or (ii); and
    - (ii) it is in the public interest that the merger is subject to the jurisdiction of the Banks Act, 1990 (Act No. 94 of 1990) only.
- (3) Sections 13(6) and 14(2) do not apply to a merger in respect of which the Minister of Finance has issued a certificate contemplated in subsection (2).

# CHAPTER 4

## COMPETITION COMMISSION, TRIBUNAL, AND COURT

### PART A – The Competition Commission

#### 19. Establishment and Constitution of Competition Commission

- (1) There is hereby established a body to be known as the Competition Commission, which –
  - (a) has jurisdiction throughout the Republic;
  - (b) is a juristic person; and
  - (c) must exercise its functions in accordance with *this Act*.
- (2) The Competition Commission consists of the Commissioner, and one or more Deputy Commissioners, appointed by the *Minister* in terms of *this Act*.

*Subsection (2) was amended to its present form by section 7 of The Competition Second Amendment Act, 2000.*

#### 20. Independence of Competition Commission

- (1) The Competition Commission –
  - (a) is independent and subject only to the *Constitution* and the law; and
  - (b) must be impartial and must perform its functions without fear, favour, or prejudice.
- (2) The Commissioner, each Deputy Commissioner and each member of the staff of the Competition Commission, must not –



- (a) engage in any activity that may undermine the integrity of the Commission;
  - (b) participate in any investigation, hearing or decision concerning a matter in respect of which that person has a direct financial interest or any similar personal interest;
  - (c) make private use of, or profit from, any *confidential information* obtained as a result of performing that person's official functions in the Commission; or
  - (d) divulge any information referred to in paragraph 2(c) to any third party, except as required as part of that person's official functions within the Commission.
- (3) Each *organ of state* must assist the Commission to maintain its independence and impartiality, and to effectively carry out its powers and duties.

## **21. Functions of Competition Commission**

- (1) The Competition Commission is responsible to –
- (a) implement measures to increase market transparency;
  - (b) implement measures to develop public awareness of the provisions of *this Act*;
  - (c) investigate and evaluate alleged contraventions of Chapter 2;
  - (d) grant or refuse applications for exemption in terms of Chapter 2;
  - (e) authorise, with or without conditions, prohibit or refer mergers of which it receives notice in terms of Chapter 3;

- (f) negotiate and conclude consent orders in terms of section 63;
  - (g) refer matters to the Competition Tribunal, and appear before the Tribunal, as required by *this Act*;
  - (h) negotiate *agreements* with any *regulatory authority* to co-ordinate and harmonize the exercise of jurisdiction over competition matters within the relevant industry or sector, and to ensure the consistent application of the principles of *this Act*;
  - (i) participate in the proceedings of any *regulatory authority*;
  - (j) advise, and receive advice from, any *regulatory authority*;
  - (k) over time, review legislation and *public regulations*, and report to the *Minister* concerning any provision that permits uncompetitive behaviour; and
  - (l) deal with any other matter referred to it by the Tribunal.
- (2) In addition to the functions listed in subsection (1), the Competition Commission may –
- (a) report to the *Minister* on any matter relating to the application of *this Act*;
  - (b) enquire into and report to the *Minister* on any matter concerning the purposes of *this Act*; and
  - (c) perform any other function assigned to it in terms of *this* or any other *Act*.
- (3) The *Minister* must table in the National Assembly any report submitted in terms of subsection (1)(k), and any report submitted in terms of subsection (2) if that report deals with a substantial matter relating to the purposes of

*this Act –*

- (a) within 10 business days after receiving that report from the Competition Commission; or
- (b) if Parliament is not then sitting, within 10 business days after the commencement of the next sitting.

*Subsection (3) was amended to its present form by section 8(a) of The Competition Second Amendment Act, 2000.*

(4) The *Minister*, in consultation with the Commissioner, and by notice in the *Gazette*, may *prescribe regulations* for matters relating to the functions of the Commission, including –

- (a) forms;
- (b) time periods;
- (c) information required;
- (d) additional definitions;
- (e) filing fees;
- (f) access to *confidential information*;
- (g) manner and form of participation in Commission procedures; and
- (h) procedures.

*Subsection (4) was amended to its present form by section 8 (b) of The Competition Second Amendment Act, 2000.*

## **22. Appointment of Commissioner**

- (1) The *Minister* must appoint a person with suitable qualifications and experience in economics, law, commerce, industry or public affairs to be the Commissioner for a term of five years.
- (2) The *Minister* may re-appoint a person as Commissioner at the expiry of that person's term of office.

- (3) The Commissioner is the Chief Executive Officer of the Competition Commission, is responsible for the general administration of the Commission and for carrying out any functions assigned to it in terms of *this Act*, and must –
  - (a) perform the functions that are conferred on the Commissioner by or in terms of *this Act*;
  - (b) manage and direct the activities of the Commission; and
  - (c) supervise the Commission's staff.
- (4) The *Minister* must, in consultation with the Minister of Finance, determine the Commissioner's remuneration, allowances, benefits, and other terms and conditions of employment.
- (5) The Commissioner, on one month's written notice addressed to the *Minister*, may resign as Commissioner.
- (6) The *Minister* –
  - (a) must remove the Commissioner from office if that person becomes subject to any of the disqualification's referred to in section 28(3)(a) – (d); and
  - (b) other than as provided in paragraph (a), may remove the Commissioner from office only for –
    - (i) serious misconduct;
    - (ii) permanent incapacity; or
    - (iii) engaging in any activity that may undermine the integrity of the Competition Commission.

### **23. Appointment of Deputy Commissioner**

- (1) The *Minister* must appoint at least one person, and may appoint other persons, with suitable qualifications and experience in economics, law, commerce, industry or public

affairs as Deputy Commissioner to assist the Commissioner in carrying out the functions of the Competition Commission.

- (2) The *Minister* must designate a Deputy Commissioner to perform the functions of the Commissioner whenever –
  - (a) the Commissioner is unable for any reason to perform the functions of the Commissioner; or
  - (b) the office of Commissioner is vacant.

## 24. Appointment of inspectors

- (1) The Commissioner may appoint any person in the service of the Competition Commission, or any other suitable person, as an inspector.
- (2) The *Minister* may, in consultation with the Minister of Finance, determine the remuneration paid to a person who is appointed in terms of subsection (1), but who is not in the full-time service of the Competition Commission.
- (3) An inspector must be provided with a certificate of appointment signed by the Commissioner stating that the person has been appointed as an inspector in terms of *this Act*.
- (4) When an inspector performs any function in terms of *this Act*, the inspector must –
  - (a) be in possession of a certificate of appointment issued to that inspector in terms of subsection (3); and
  - (b) show that certificate to any person who –
    - (i) is affected by the exercise of the functions of the inspector; and
    - (ii) requests to see the certificate.

*Subsection (4) was amended to its present form by section 9 of The Competition Second Amendment Act, 2000.*

## 25. Staff of Competition Commission

- (1) The Commissioner may –
  - (a) appoint staff, or contract with other persons, to assist the Competition Commission in carrying out its functions; and
  - (b) in consultation with the *Minister* and Minister of Finance, determine the remuneration, allowances, benefits, and other terms and conditions of appointment of each member of the staff.

## PART B – The Competition Tribunal

### 26. Establishment and Constitution of Competition Tribunal

- (1) There is hereby established a body to be known as the Competition Tribunal, which
  - (a) has jurisdiction throughout the Republic;
  - (b) is a juristic person;
  - (c) is a Tribunal of record; and
  - (d) must exercise its functions in accordance with *this Act*.
- (2) The Competition Tribunal consists of a Chairperson and not less than three, but not more than ten, other women or men appointed by the President, on a full or part-time basis, on the recommendation of the *Minister*, from among persons nominated by the *Minister* either on the *Minister's* initiative or in response to a public call for nominations.

*Subsection (2) was amended to its present form by section 10 of The Competition Second Amendment Act, 2000.*

- (3) The President must –
  - (a) appoint the Chairperson and other members of the Competition Tribunal on the date that *this Act* comes into operation; and
  - (b) appoint a person to fill any vacancy on the Tribunal.
- (4) Section 20, read with the changes required by the context, applies to the Competition Tribunal.

### 27. Functions of Competition Tribunal

- (1) The Competition Tribunal may –
  - (a) adjudicate on any conduct prohibited in terms of Chapter 2, to determine whether prohibited conduct

- has occurred, and if so, to impose any remedy provided for in *this Act*;
- (b) adjudicate on any other matter that may, in terms of *this Act*, be considered by it, and make any order provided for in *this Act*;
  - (c) hear appeals from, or review any decision of, the Competition Commission that may, in terms of *this Act*, be referred to it; and
  - (d) make any ruling or order necessary or incidental to the performance of its functions in terms of *this Act*.
- (2) Section 21(4), read with the changes required by the context, applies to the Competition Tribunal, and the reference in that section to the Commissioner must be construed as a reference to the Chairperson of the Tribunal.

*Section 27 was amended to its present form by section 11 of The Competition Second Amendment Act, 2000.*

## **28. Qualifications of members of Competition Tribunal**

- (1) The Chairperson and other members of the Competition Tribunal, viewed collectively must –
  - (a) represent a broad cross-section of the population of the Republic; and
  - (b) comprise sufficient persons with legal training and experience to satisfy the requirements of section 31(2)(a).
- (2) Each member of the Competition Tribunal must –
  - (a) be a citizen of South Africa, who is ordinarily resident in South Africa;
  - (b) have suitable qualifications and experience in economics, law, commerce, industry or public



- affairs; and
  - (c) be committed to the purposes and principles enunciated in section 2.
- (3) A person may not be a member of the Competition Tribunal if that person –
- (a) is an office-bearer of any party, movement, organisation or body of a partisan political nature;
  - (b) is an unrehabilitated insolvent;
  - (c) is subject to an order of a competent court holding that person to be mentally unfit or disordered; or
  - (d) has been convicted of an offence committed after the *Constitution* of the Republic of South Africa, 1993 (Act No. 200 of 1993), took effect, and sentenced to imprisonment without the option of a fine.

## **29. Term of office of members of Competition Tribunal**

- (1) Subject to subsection (2), the Chairperson and each other member of the Competition Tribunal serves for a term of five years.
- (2) The President may re-appoint a member of the Competition Tribunal at the expiry of that member's term of office, but no person may be appointed to the office of the Chairperson of the Tribunal for more than two consecutive terms.
- (3) The Chairperson, on one month's written notice addressed to the *Minister*, may –
  - (a) resign from the Competition Tribunal; or
  - (b) resign as Chairperson, but remain as a member of the Tribunal.
- (4) A member of the Competition Tribunal other than the

Chairperson may resign by giving at least one month's written notice to the *Minister*.

- (5) The President, on the recommendation of the *Minister*, –
  - (a) must remove the Chairperson or any other member of the Competition Tribunal from office if that person becomes subject to any of the disqualification's referred to in section 28(3); and
  - (b) other than as provided in subsection (a), may remove the Chairperson or a member from office only for –
    - (i) serious misconduct;
    - (ii) permanent incapacity; or
    - (iii) engaging in any activity that may undermine the integrity of the Tribunal.

### **30. Deputy Chairperson of Competition Tribunal**

- (1) The President must, on the recommendation of the *Minister*, designate a member of the Competition Tribunal as Deputy Chairperson of the Tribunal.
- (2) The Deputy Chairperson performs the functions of Chairperson whenever –
  - (a) the office of Chairperson is vacant; or
  - (b) the Chairperson is for any other reason temporarily unable to perform the functions of Chairperson.

### **31. Competition Tribunal proceedings**

- (1) The Chairperson is responsible to manage the caseload of the Competition Tribunal, and must assign each matter referred to the Tribunal to a panel composed of any three members of the Tribunal.
- (2) When assigning a matter in terms of subsection (1), the

Chairperson must –

- (a) ensure that at least one member of the panel is a person who has legal training and experience; and
  - (b) designate a member of the panel to preside over the panel's proceedings.
- (3) If, because of withdrawal from a hearing in terms of section 32, resignation, illness or death, a member of the panel is unable to complete the proceedings in a matter assigned to that panel, the Chairperson must –
- (a) direct that the hearing of that matter proceed before any remaining member of the panel subject to the requirements of subsection (2)(a); or
  - (b) terminate the proceedings before that panel and constitute another panel, which may include any member of the original panel, and direct that panel to conduct a new hearing.
- (4) The decision of a panel on a matter referred to it must be in writing and include reasons for that decision.
- (5) If the Competition tribunal may extend or reduce a *prescribed* period in terms of *this Act*, the Chairperson of the Tribunal or another member of the Tribunal assigned by the Chairperson, sitting alone, may make an order –
- (a) extending or reducing that period; or
  - (b) condoning late performance of an act that is subject to that period.

*Subsection (5) was added by section 12 of The Competition Second Amendment Act, 2000.*

- (6) A decision of the Chairperson or other person contemplated in subsection (5), or of a majority of the members of a panel in any other matter, is the decision of the Tribunal.

Subsection (6), formerly (5), was amended to its present form by section 12 of The Competition Second Amendment Act, 2000.

### **32. Conflicts and disclosure of interest by members of Competition Tribunal**

- (1) A member of the Tribunal may not represent any person before a panel of the Tribunal.
- (2) If, during a hearing, it appears to a member of the Competition Tribunal that a matter concerns a financial or other interest of that member contemplated in section 20(2)(b), the member must -
  - (a) immediately and fully disclose the fact and nature of that interest to the Chairperson and to the presiding member at that hearing; and
  - (b) withdraw from any further involvement in that hearing.

### **33. Acting by member of Competition Tribunal after expiry of term of office**

If, on the expiry of the term of office of a member of the Competition Tribunal, that member is still considering a matter before the Tribunal, that member may continue to act as a member in respect of that matter only.

### **34. Remuneration and benefits of members of Competition Tribunal**

- (1) The *Minister*, in consultation with the Minister of Finance, may determine the remuneration, allowances, and other benefits of the Chairperson, Deputy Chairperson and other members of the Competition Tribunal.

- (2) The *Minister* may not during the term of office of a member of the Competition Tribunal, reduce the member's salary, allowances or benefits.
- (3) The *Minister* may determine any other conditions of appointment not provided for in this section.

### **35. Staff of Competition Tribunal**

The Chairperson may –

- (a) appoint staff, or contract with other persons, to assist the Competition Tribunal in carrying out its functions; and
- (b) in consultation with the *Minister* and the Minister of Finance, determine the remuneration, allowances, benefits, and other terms and conditions of appointment of a member of the staff.

## PART C – The Competition Appeal Court

### 36. Establishment and *Constitution* of Competition Appeal Court

- (1) There is hereby established a court to be known as the Competition Appeal Court, which –
  - (a) is a court contemplated in section 166(e) of the *Constitution* with a status similar to that of a High Court;
  - (b) has jurisdiction throughout the Republic; and
  - (c) is a court of record.
- (2) The Competition Appeal Court consists of at least three judges, appointed by the President on the advice of the Judicial Services Commission, each of whom must be a judge of the High Court.

*Subsection (2) was amended to its present form by section 1 of The Competition Amendment Act, 2000.*

- (3) The President must designate one of the judges of the Competition Appeal Court to be Judge President of the Court.

*Subsection (3) was added by section 1 (b) of The Competition Amendment Act, 2000.*

- (4) The Minister of Justice, after consulting the Judge President of the Competition Appeal Court, may second any number of judges of the High Court to serve as acting judges of the Competition Appeal Court.

*Subsection (4) was added by section 1 (b) of The Competition Amendment Act, 2000.*

- (5) When the office of Judge President of the Competition Appeal Court is vacant, or when the Judge President is temporarily unable to perform the functions of that office for any reason, the senior judge of the Court must perform the functions of Judge President.

*Subsection (5) was added by section 1 (b) of The Competition Amendment Act, 2000.*

### **37. Functions of Competition Appeal Court**

- (1) The Competition Appeal Court may –
  - (a) review any decision of the Competition Tribunal; or
  - (b) consider an appeal arising from the Competition Tribunal in respect of –
    - (i) any of its final decisions, other than a consent order made in terms of section 63; or
    - (ii) any of its interim or interlocutory decisions that may, in terms of *this Act*, be taken on appeal.
- (2) The Competition Appeal Court may give any judgement or make any order, including an order to –
  - (a) confirm, amend or set aside a decision or order of the Competition Tribunal; or
  - (b) remit a matter to the Competition Tribunal for a further hearing on any appropriate terms.

*Section 37 was amended to its present form by section 2 of The Competition Amendment Act, 2000.*

### **38. Business of Competition Appeal Court**

- (1) The Judge President of the Competition Appeal Court –
  - (a) is responsible to supervise and direct the work of the Court;
  - (b) must preside at proceedings of the Court or designate another judge of the Competition Appeal Court to preside at particular proceedings of the Court; and

*Paragraph (b) was amended to its present form by section 3(a) of The Competition Amendment Act, 2000.*

- (c) by notice in the *Gazette*, may make rules for the proceedings of the Court.

- (2) Subject to subsection (2A), the Judge President must assign each matter before the Court to a bench composed of three judges of the Court.

*Subsection (2) was amended to its present form by section 3(b) of The Competition Amendment Act, 2000.*

- (2A) The Judge President, or any other judge of the Competition Appeal Court designated by the Judge President, may sit alone to consider an –

- (a) appeal against a decision of an interlocutory nature, as *prescribed* by the rules of the Competition Appeal Court;
- (b) application concerning the determination or use of *confidential information*;
- (c) application for leave to appeal, as *prescribed* by the rules of the Competition Appeal Court;
- (d) application to suspend the operation and execution of an order that is the subject of a review or appeal; or
- (e) application for procedural directions.

*Subsection (2A) was added by section 3(c) of The Competition Amendment Act, 2000.*

- (3) The decision of a judge sitting alone in terms of subsection (2A), or of a majority of the bench hearing a particular matter, is the decision of the Competition Appeal Court.

*Subsection (3) was amended to its present form by section 3(d) of The Competition Amendment Act, 2000.*

- (4) If a judge, or any of the judges hearing a matter assigned in terms of subsection (2) is unable to complete the proceedings in that matter, the Judge President must –

- (a) direct that the hearing of that matter proceed before the remaining judge or judges to whom it was assigned; or



- (b) terminate the proceedings before that bench and constitute another bench, which may include a judge to whom the matter was originally assigned, and direct that bench to hear the matter afresh.

*Subsection (4) was amended to its present form by section 3(e) of The Competition Amendment Act, 2000.*

- (5) A decision of the Competition Appeal Court must be in writing and include reasons for that decision.

### **39. Term of office**

- (1) The Judge President and any other judge of the Competition Appeal Court is appointed for a fixed term determined by the President at the time of appointment and holds office until –
  - (a) the expiry of the term;
  - (b) the date the judge ceases to be a judge of the High Court; or
  - (c) the judge resigns from the Court by giving written notice to the President.
- (2) Section 33, read with the changes required by the context, applies to the Judge President and other judges of the Competition Appeal Court.
- (3) The tenure of office, the remuneration, and the terms and conditions of service applicable to a judge of the High Court in terms of the Judges' Remuneration and Conditions of Employment Act, 1989 (Act No. 88 of 1989), are not affected by the appointment and concurrent tenure of office of that judge who is appointed as a judge of the Competition Appeal Court.

*Section 39 was amended to its present form by section 4 of The Competition Amendment Act, 2000.*

## PART D – Administrative Matters Concerning the Competition Commission and the Competition Tribunal

### 40. Finances

- (1) The Competition Commission is financed from –
  - (a) money that is appropriated by Parliament for the Commission;
  - (b) fees payable to the Commission in terms of *this Act*;
  - (c) income derived by the Commission from its investment and deposit of surplus money in terms of subsection (6); and
  - (d) money received from any other source.
- (2) The financial year of the Competition Commission is the period from 1 April in any year to 31 March in the following year, except that the first financial year of the Commission begins on the date that *this Act* comes into operation, and ends on 31 March next following that date.
- (3) Each year, at a time determined by the *Minister*, the Commissioner must submit to the *Minister* a statement of the Competition Commission's estimated income and expenditure, and requested appropriation from Parliament, in respect of the next ensuing financial year.
- (4) The Competition Commission must open and maintain an account in the name of the Commission with a registered bank, or other registered financial institution, in the Republic, and –
  - (a) any money received by the Commission must be

- deposited to that account; and
- (b) every payment on behalf of the Commission must be made from that account.
- (5) Cheques drawn on the account of the Competition Commission must be signed on its behalf by two persons authorised for that purpose by resolution of the Commission.
- (6) The Competition Commission may invest or deposit money of the Commission that is not immediately required for contingencies or to meet current expenditures –
- (a) on a call or short-term fixed deposit with any registered bank or financial institution in the Republic; or
  - (b) in an investment account with the Corporation for Public Deposits established by section 2 of the Corporation for Public Deposits Act, 1984 (Act No. 46 of 1984).
- (7) The Commissioner is the accounting authority of the Competition Commission for the purposes of the Public Finance Management Act, 1999 (Act No. 1 of 1999).

*Subsection (7) was amended to its present form by section 13(a) of The Competition Second Amendment Act, 2000.*

(8) . . .

*Subsection (8) was deleted by section 13 (b) of The Competition Second Amendment Act, 2000.*

- (9) Within six months after the end of each financial year, the Commissioner must prepare financial statements in accordance with established accounting practice, principles and procedures, comprising –
- (a) a statement reflecting, with suitable and sufficient particulars, the income and expenditure of the

- Competition Commission during the preceding financial year; and
- (b) a balance sheet showing the state of its assets, liabilities and financial position as at the end of that financial year.
- (10) The Auditor General must audit the Competition Commission's financial records each year.

#### **41. Annual Report**

- (1) Within six months after the end of the Competition Commission's financial year, the Commissioner must prepare and submit to the *Minister* an annual report in the *prescribed* form, including –
  - (a) the audited financial statements prepared in terms of section 40(9);
  - (b) the auditor's report, prepared in terms of section 40(10);
  - (c) a report of activities undertaken in terms of its functions set out in *this Act*;
  - (d) a statement of the progress achieved during the preceding year towards realization of the purposes of *this Act*; and
  - (e) any other information that the *Minister*, by notice in the *Gazette*, determines.
- (2) The *Minister* must table in the National Assembly each annual report submitted in terms of subsection (1) –
  - (a) within 10 business days after receiving that report from the Competition Commission; or

- (b) if Parliament is not then sitting, within 10 business days after the commencement of the next sitting.

*Subsection (2) was amended to its present form by section 14 of The Competition Second Amendment Act, 2000.*

#### **42. Rules applicable to Competition Tribunal**

Sections 40 and 41, each read with the changes required by the context, applies to the Competition Tribunal, except that a reference in either section to the Commissioner must be read as referring to the Chairperson of the Tribunal.

#### **43. Liability**

- (1) The State Liability Act, 1957 (Act No. 20 of 1957), read with the changes required by the context, applies to the Competition Commission and to the Competition Tribunal, but a reference in that Act to “the *Minister* of the Department concerned” must be interpreted as referring to the Commissioner, or to the Chairperson, as the case may be.
- (2) No Competition Tribunal member, Competition Appeal Court member, Commissioner, staff person, or contractor is liable for any report, finding, point of view or recommendation that is given in good faith and is submitted to Parliament, or made known, under the *Constitution* or *this Act*.

# CHAPTER 5

## INVESTIGATION AND ADJUDICATION PROCEDURES

*Chapter 5 was amended to its present form by section 15 of The Competition Second Amendment Act, 2000.*

### **PART A – Confidential information**

#### **44. Right of informants to claim confidentiality**

- (1) (a) A person, when submitting information to the Competition Commission or the Competition Tribunal, may identify information that the person claims to be *confidential information*.
- (b) Any claim contemplated in paragraph (a) must be supported by a written statement in the *prescribed* form, explaining why the information is confidential.
- (2) The Competition Commission is bound by a claim contemplated in subsection (1), but may at any time during its proceedings refer the claim to the Competition Tribunal to determine whether or not the information is *confidential information*.
- (3) The Competition Tribunal may –
  - (a) determine whether or not the information is confidential; and
  - (b) if it finds that the information is confidential, make any appropriate order concerning access to that information.

#### 45. Disclosure of information

- (1) A person who seeks access to information that is subject to a claim that it is *confidential information* may apply to the Competition Tribunal in the *prescribed* manner and form, and the Competition Tribunal may –
  - (a) determine whether or not the information is *confidential information*; and
  - (b) if it finds that the information is confidential, make any appropriate order concerning access to that *confidential information*.
- (2) Within 10 business days after an order of the Competition Tribunal is made in terms of section 44(3), a party concerned may appeal against that decision to the Competition Appeal Court, subject to its rules.
- (3) From the time information comes into the possession of the Competition Commission or Competition Tribunal until a final determination has been made concerning it, the Commission and Tribunal must treat as confidential, any information that –
  - (a) the Competition Tribunal has determined is *confidential information*; or
  - (b) is the subject of a claim in terms of this section.
- (4) 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* by the Competition Tribunal or the Competition Appeal Court.

#### 45A. Restricted use of information

- (1) (a) When making any decision in terms of *this Act*, the Competition Commission, subject to paragraph (b), may take *confidential information* into account in making its decision.
- (b) If the Commission's reasons for the decision would reveal any *confidential information*, the Commission must provide a copy of the proposed reasons to the party concerned at least 10 business days before publishing those reasons.
- (2) A party may apply to the Competition Tribunal within the period contemplated in subsection (1)(b) after receiving a copy of the proposed reasons, subject to its rules, for an appropriate order to protect the confidentiality of the relevant information.
- (3) A party concerned may appeal against a decision of the Competition Tribunal in terms of subsection (2) to the Competition Appeal Court, subject to its rules.
- (4) If a party applies to the Competition Tribunal in terms of subsection (2), the Competition Commission may not publish the proposed reasons until the Tribunal or the Competition Appeal Court, as the case may be, has made an order regarding the matter.



## PART B – Powers of Search and Summons

### 46. Authority to enter and search under warrant

- (1) A judge of the High Court, a regional magistrate, or a magistrate may issue a warrant to enter and search any *premises* that are within the jurisdiction of that judge or magistrate, if, from information on oath or affirmation, there are reasonable grounds to believe that –
  - (a) a *prohibited practice* has taken place, is taking place or is likely to take place on or in those *premises*; or
  - (b) anything connected with an investigation in terms of *this Act* is in the possession of, or under the control of, a person who is on or in those *premises*.
- (2) A warrant to enter and search may be issued at any time and must specifically –
  - (a) identify the *premises* that may be entered and searched; and
  - (b) authorise an inspector or a police officer to enter and search the *premises* and to do anything listed in section 48.
- (3) A warrant to enter and search is valid until one of the following events occurs:
  - (a) the warrant is executed;
  - (b) the warrant is cancelled by the person who issued it or, in that person's absence, by a person with similar authority;
  - (c) the purpose for issuing it has lapsed; or
  - (d) the expiry of one month after the date it was issued.

- (4) A warrant to enter and search may be executed only during the day, unless the judge, regional magistrate or magistrate who issued it authorises that it may be executed at night at a time that is reasonable in the circumstances.
- (5) A person authorised by warrant issued in terms of subsection (2) may enter and search *premises* named in that warrant.
- (6) Immediately before commencing with the execution of a warrant, a person executing that warrant must either –
  - (a) if the owner, or person in control, of the *premises* to be searched is present –
    - (i) provide identification to that person and explain to that person the authority by which the warrant is being executed; and
    - (ii) hand a copy of the warrant to that person or to the person named in it; or
  - (b) if none of those persons is present, affix a copy of the warrant to the *premises* in a prominent and visible place.

#### **47. Authority to enter and search without warrant**

- (1) An inspector who is not authorised by a warrant in terms of section 46(2) may enter and search *premises* other than a *private dwelling*.
- (2) Immediately before entering and searching in terms of this section, the inspector conducting the search must provide identification to the owner or person in control of the *premises* and explain to that person the authority by which the search is being conducted, and must –

- (a) get permission from that person to enter and search the *premises*; or
  - (b) believe on reasonable grounds that a warrant would be issued under section 46 if applied for, and that the delay that would ensue by first obtaining a warrant would defeat the object or purpose of the entry and search.
- (3) An entry and search without a warrant may be carried out only during the day, unless doing it at night is justifiable and necessary in the circumstances.

#### **48. Powers to enter and search**

- (1) A person who is authorised under section 46 or 47 to enter and search *premises* may –
- (a) enter upon or into those *premises*;
  - (b) search those *premises*;
  - (c) search any person on those *premises* if there are reasonable grounds for believing that the person has personal possession of an article or document that has a bearing on the investigation;
  - (d) examine any article or document that is on or in those *premises* that has a bearing on the investigation;
  - (e) request information about any article or document from the owner of, or person in control of, the *premises* or from any person who has control of the article or document, or from any other person who may have the information;
  - (f) take extracts from, or make copies of, any book or

- document that is on or in the *premises* that has a bearing on the investigation;
- (g) use any computer system on the *premises*, or require assistance of any person on the *premises* to use that computer system, to –
    - (i) search any data contained in or available to that computer system;
    - (ii) reproduce any record from that data; and
    - (iii) seize any output from that computer for examination and copying; and
  - (h) attach and, if necessary, remove from the *premises* for examination and safekeeping, anything that has a bearing on the investigation.
- (2) Section 49A(3) applies to an answer given or statement made to an inspector in terms of this section.
  - (3) An inspector authorised to conduct an entry and search in terms of section 46 or 47 may be accompanied and assisted by a police officer.

#### **49. Conduct of entry and search**

- (1) A person who enters and searches any *premises* under section 48 must conduct the entry and search with strict regard for decency and order, and with regard for each person's right to dignity, freedom, security and privacy.
- (2) During any search under section 48(1)(c), only a female inspector or police officer may search a female person, and only a male inspector or police officer may search a male person.
- (3) A person who enters and searches *premises* under section 48 must, before questioning anyone –

- (a) advise that person of the right to be assisted at the time by an advocate or attorney; and
  - (b) allow that person to exercise that right.
- (4) A person who removes anything from *premises* being searched must –
  - (a) issue a receipt for it to the owner of, or person in control of, the *premises*; and
  - (b) return it as soon as practicable after achieving the purpose for which it was removed.
- (5) During a search, a person may refuse to permit the inspection or removal of an article or document on the grounds that it contains privileged information.
- (6) If the owner or person in control of an article or document refuses in terms of subsection (5) to give that article or document to the person conducting the search, the person conducting the search may request the registrar or sheriff of the High Court that has jurisdiction to attach and remove the article or document for safe custody until that court determines whether or not the information is privileged.
- (7) A police officer who is authorised to enter and search *premises* under section 46, or who is assisting an inspector who is authorised to enter and search *premises* under section 46 or 47, may overcome resistance to the entry and search by using as much force as is reasonably required, including breaking a door or window of the *premises*.
- (8) Before using force in terms of subsection (7), a police officer must audibly demand admission and must announce the purpose of the entry, unless it is reasonable to believe that doing so may induce someone to destroy or dispose of an article or document that is the object of the search.

- (9) The Competition Commission may compensate anyone who suffers damage because of a forced entry during a search when no one responsible for the *premises* was present.

#### **49A. Summons**

- (1) At any time during an investigation in terms of *this Act*, the Commissioner may summon any person who is believed to be able to furnish any information on the subject of the investigation, or to have possession or control of any book, document or other object that has a bearing on that subject –
- (a) to appear before the Commissioner or a person authorised by the Commissioner, to be interrogated at a time and place specified in the summons; or
  - (b) at a time and place specified in the summons, to deliver or produce to the Commissioner, or a person authorised by the Commissioner, any book, document or other object specified in the summons.
- (2) A person questioned by an inspector conducting an investigation, or by the Commissioner or other person in terms of subsection (1), must answer each question truthfully and to the best of that person's ability, but the person is not obliged to answer any question if the answer is self-incriminating.
- (3) No self-incriminating answer given or statement made to a person exercising any power in terms of this section is admissible as evidence against the person who gave the answer or made the statement in criminal proceedings, except in criminal proceedings for perjury or in which that person is tried for an offence contemplated in section 72 or section 73(2)(d), and then only to the extent that the answer or statement is relevant to prove the offence charged.

## PART C – Complaint Procedures

### 49B. Initiating a complaint

- (1) The Commissioner may initiate a complaint against an alleged *prohibited practice*.
- (2) Any person may –
  - (a) submit information concerning an alleged *prohibited practice* to the Competition Commission, in any manner or form; or
  - (b) submit a complaint against an alleged *prohibited practice* to the Competition Commission in the *prescribed* form.
- (3) Upon initiating or receiving a complaint in terms of this section, the Commissioner must direct an inspector to investigate the complaint as quickly as practicable.
- (4) At any time during an investigation, the Commissioner may designate one or more persons to assist the inspector.

### 49C. Interim relief

- (1) At any time, whether or not a hearing has commenced into an alleged *prohibited practice*, the *complainant* may apply to the Competition Tribunal for an interim order in respect of the alleged practice.
- (2) The Competition Tribunal –
  - (a) must give the *respondent* a reasonable opportunity to be heard, having regard to the urgency of the proceedings; and
  - (b) may grant an interim order if it is reasonable and just to do so, having regard to the following factors:

- (i) The evidence relating to the alleged *prohibited practice*;
  - (ii) the need to prevent serious or irreparable damage to the applicant; and
  - (iii) the balance of convenience.
- (3) In any proceedings in terms of this section, the standard of proof is the same as the standard of proof in a High Court on a common law application for an interim interdict.
- (4) An interim order in terms of this section may not extend beyond the earlier of the –
  - (a) conclusion of a hearing into the alleged *prohibited practice*; or
  - (b) date that is six months after the date of issue of the interim order.
- (5) If an interim order has been granted, and a hearing into that matter has not been concluded within six months after the date of that order, the Competition Tribunal, on good cause shown, may extend the interim order for a further period not exceeding six months.
- (6) Any party to an application may apply to the Competition Appeal Court to review a decision of the Competition Tribunal in terms of this section.
- (7) The applicant may appeal to the Competition Appeal Court against a refusal by the Competition Tribunal to grant an interim order in terms of this section.
- (8) The *respondent* may appeal to the Competition Appeal Court in terms of this section against an order of the Competition Tribunal that has a final or irreversible effect.



#### 49D. Consent Orders

- (1) If, during, on or after completion of the investigation of a complaint, the Competition Commission and the *respondent* agree on the terms of an appropriate order, the Competition Tribunal, without hearing any evidence, may confirm that agreement as a consent order in terms of section 58(1)(b).
- (2) After hearing a motion for a consent order, the Competition Tribunal must –
  - (a) make the order as agreed to and proposed by the Competition Commission and the *respondent*;
  - (b) indicate any changes that must be made in the draft order before it will make the order; or
  - (c) refuse to make the order.
- (3) With the consent of a *complainant*, a consent order may include an award of damages to the *complainant*.
- (4) A consent order does not preclude a *complainant* from applying for –
  - (a) a declaration in terms of section 58(1)(a)(v) or (vi);  
or
  - (b) an award of civil damages in terms of section 65, unless the consent order includes an award of damages to the *complainant*.

#### 50. Outcome of complaint

- (1) At any time after initiating a complaint, the Competition Commission may refer the complaint to the Competition Tribunal.
- (2) Within one year after a complaint was submitted to it, the Commissioner must –

- (a) subject to subsection (3), refer the complaint to the Competition Tribunal, if it determines that a *prohibited practice* has been established; or
  - (b) in any other case, issue a notice of non-referral to the *complainant* in the *prescribed* form.
- (3) When the Competition Commission refers a complaint to the Competition Tribunal in terms of subsection (2)(a), it –
  - (a) may –
    - (i) refer all the particulars of the complaint as submitted by the *complainant*;
    - (ii) refer only some of the particulars of the complaint as submitted by the *complainant*; or
    - (iii) add particulars to the complaint as submitted by the *complainant*; and
  - (b) must issue a notice of non-referral as contemplated in subsection (2)(b) in respect of any particulars of the complaint not referred to the Competition Tribunal.
- (4) In a particular case –
  - (a) the Competition Commission and the *complainant* may agree to extend the period allowed in subsection (2); or
  - (b) on application by the Competition Commission made before the end of the period contemplated in paragraph (a), the Competition Tribunal may extend that period.
- (5) If the Competition Commission has not referred a complaint to the Competition Tribunal, or issued a notice of non-referral, within the time contemplated in subsection (2), or the extended period contemplated in subsection (4),

the Commission must be regarded as having issued a notice of non-referral on the expiry of the relevant period.

## **51. Referral to Competition Tribunal**

- (1) If the Competition Commission issues a notice of non-referral in response to a complaint, the *complainant* may refer the complaint directly to the Competition Tribunal, subject to its rules of procedure.
- (2) A referral to the Competition Tribunal, whether by the Competition Commission in terms of section 50(1), or by a *complainant* in terms of subsection (1), must be in the *prescribed* form.
- (3) The Chairperson of the Competition Tribunal must, by notice in the *Gazette*, publish each referral made to the Tribunal.
- (4) The notice published in terms of subsection (3) must include –
  - (a) the name of the *respondent*; and
  - (b) the nature of the conduct that is the subject of the referral.

## PART D – Tribunal Hearings and Orders

### 52. Hearings before Competition Tribunal

- (1) The Competition Tribunal must conduct a hearing, subject to its rules, into every matter referred to it in terms of *this Act*.
- (2) Subject to subsections (3) and (4), the Competition Tribunal –
  - (a) must conduct its hearings in public, as expeditiously as possible, and in accordance with the principles of natural justice; and
  - (b) may conduct its hearings informally or in an inquisitorial manner.
- (2A) Despite subsection (2)(a), the Chairperson of the Tribunal may order that a matter be heard –
  - (a) in chambers, if no oral evidence will be heard, or that oral submissions be made at the hearing; or
  - (b) by telephone or video conference, if it is in the interests of justice and expediency to do so.
- (3) Despite subsection (2), the Tribunal member presiding at a hearing may exclude members of the public, or specific persons or categories of persons, from attending the proceedings –
  - (a) if evidence to be presented is *confidential information*, but only to the extent that the information cannot otherwise be protected;
  - (b) if the proper conduct of the hearing requires it; or
  - (c) for any other reason that would be justifiable in civil proceedings in a High Court.

- (4) At the conclusion of a hearing, the Competition Tribunal must make any order permitted in terms of *this Act*, and must issue written reasons for its decision.
- (5) The Competition Tribunal must provide the participants and other members of the public reasonable access to the record of each hearing, subject to any ruling to protect *confidential information* made in terms of subsection (3)(a).

### 53. Right to participate in hearing

- (1) The following persons may participate in a hearing, in person or through a representative, and may put questions to witnesses and inspect any books, documents or items presented at the hearing:
  - (a) If the hearing is in terms of Part C –
    - (i) the Commissioner, or any person appointed by the Commissioner;
    - (ii) the *complainant*, if –
      - (aa) the *complainant* referred the complaint to the Competition Tribunal; or
      - (bb) in the opinion of the presiding member of the Competition Tribunal, the *complainant's* interest is not adequately represented by another participant, and then only to the extent required for the *complainant's* interest to be adequately represented;
    - (iii) the *respondent*; and
    - (iv) any other person who has a material interest in the hearing, unless, in the opinion of the presiding member of the

Competition Tribunal, that interest is adequately represented by another participant, but only to the extent required for the *complainant's* interest to be adequately represented;

- (b) If the hearing is in terms of section 10 or Schedule 1 –
  - (i) the applicant for an exemption;
  - (ii) the Competition Commission;
  - (iii) the appellant, if the appellant is not the applicant for an exemption;
  - (iv) an interested person contemplated in section 10(8) who submitted a representation to the Competition Commission, unless, in the opinion of the presiding member of the Competition Tribunal, that person's interest is adequately represented by another participant, but only to the extent required for the person's interest to be adequately represented; and
  - (v) the *Minister* or member of the Executive Council if consulted in terms of Schedule 1;
- (c) if the hearing is in terms of Chapter 3 –
  - (i) any party to the merger;
  - (ii) the Competition Commission;
  - (iii) any person who was entitled to receive a notice in terms of section 13A (2) and who indicated to the Commission an intention to participate, in the *prescribed* form;
  - (iv) the *Minister*, if the *Minister* has indicated an intention to participate; and

- (v) any other person whom the Competition Tribunal recognised as a participant; and
- (d) if the hearing is in terms of Part A –
  - (i) the person who owns the information that is the subject of the hearing;
  - (ii) any person who sought disclosure of any information that is the subject of the hearing;
  - (iii) the Competition Commission; and
  - (iv) any other person whom the Tribunal recognised as a participant.

#### **54. Powers of member presiding at hearing**

The member of the Competition Tribunal presiding at a hearing may –

- (a) direct or summon any person to appear at any specified time and place;
- (b) question any person under oath or affirmation;
- (c) summon or order any person –
  - (i) to produce any book, document or item necessary for the purposes of the hearing; or
  - (ii) to perform any other act in relation to *this Act*;
- (d) give directions prohibiting or restricting the publication of any evidence given to the Competition Tribunal;
- (e) accept oral submissions from any participant; and
- (f) accept any other information that is submitted by a participant.

## **55. Rules of procedure**

- (1) Subject to the Competition Tribunal's rules of procedure, the Tribunal member presiding at a hearing may determine any matter of procedure for that hearing, with due regard to the circumstances of the case, and the requirements of section 52(2).
- (2) The Tribunal may condone any technical irregularities arising in any of its proceedings.
- (3) The Tribunal may –
  - (a) 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) refuse to accept any oral testimony, document or other thing that is unduly repetitious.

## **56. Witnesses**

- (1) Every person giving evidence at a hearing of the Competition Tribunal must answer any relevant question.
- (2) The law regarding a witness' privilege in a criminal case in a court of law applies equally to a person who provides information during a hearing.
- (3) The Competition Tribunal may order a person to answer any question, or to produce any article or document, even if it is self-incriminating to do so.
- (4) Section 49A(3) applies to evidence given by a witness in terms of this section.



## 57. Costs

- (1) Subject to subsection (2), and the Competition Tribunal's rules of procedure, each party participating in a hearing must bear its own costs.
- (2) If the Competition Tribunal –
  - (a) has not made a finding against a *respondent*, the Tribunal member presiding at a hearing may award costs to the *respondent*, and against a *complainant* who referred the complaint in terms of section 51(1); or
  - (b) has made a finding against a *respondent*, the Tribunal member presiding at a hearing may award costs against the *respondent*, and to a *complainant* who referred the complaint in terms of section 51(1).

## 58. Orders of Competition Tribunal

- (1) In addition to its other powers in terms of *this Act*, the Competition Tribunal may –
  - (a) make an appropriate order in relation to a *prohibited practice*, including –
    - (i) interdicting any *prohibited practice*;
    - (ii) ordering a party to supply or distribute *goods or services* to another party on terms reasonably required to end a *prohibited practice*;
    - (iii) imposing an administrative penalty, in terms of section 59, with or without the addition of any other order in terms of this section;
    - (iv) ordering divestiture, subject to section 60;
    - (v) declaring conduct of a *firm* to be a *prohibited*

- practice* in terms of *this Act*, for the purposes of section 65;
- (vi) declaring the whole or any part of an *agreement* to be void;
  - (vii) ordering access to an *essential facility* on terms reasonably required;
- (b) confirm a consent *agreement* in terms of section 49D as an order of the Tribunal; or
  - (c) subject to sections 13(6) and 14(2), condone, on good cause shown, any non-compliance of –
    - (i) the Competition Commission or Competition Tribunal rules; or
    - (ii) a time limit set out in *this Act*.
- (2) At any time, the Competition Tribunal may adjourn a hearing for a reasonable period of time, if there is reason to believe that the hearing relates to a *prohibited practice* that might qualify for exemption in terms of section 10.
- (3) Despite any other provision of *this Act*, if the Competition Tribunal adjourns a hearing in terms of subsection (2), the *respondent* may apply for an exemption during that adjournment.

## **59. Administrative penalties**

- (1) The Competition Tribunal may impose an administrative penalty only –
- (a) for a *prohibited practice* in terms of section 4(1)(b), 5(2) or 8(a), (b) or (d);
  - (b) for a *prohibited practice* in terms of section 4(1)(a), 5(1), 8(c) or 9(1), if the conduct is substantially a repeat by the same *firm* of conduct previously found

- by the Competition Tribunal to be a *prohibited practice*;
- (c) for contravention of, or failure to comply with, an interim or final order of the Competition Tribunal or the Competition Appeal Court; or
  - (d) if the parties to a merger have –
    - (i) failed to give notice of the merger as required by Chapter 3;
    - (ii) proceeded to implement the merger in contravention of a decision by the Competition Commission or Competition Tribunal to prohibit that merger;
    - (iii) proceeded to implement the merger in a manner contrary to a condition for the approval of that merger imposed by the Competition Commission in terms of section 13 or 14, or the Competition Tribunal in terms of section 16; or
    - (iv) proceeded to implement the merger without the approval of the Competition Commission or Competition Tribunal, as required by *this Act*.
- (2) An administrative penalty imposed in terms of subsection (1) may not exceed 10% of the *firm's* annual turnover in the Republic and its exports from the Republic during the *firm's* preceding financial year.
- (3) When determining an appropriate penalty, the Competition Tribunal must consider the following factors:
- (a) the nature, duration, gravity and extent of the contravention;
  - (b) any loss or damage suffered as a result of the contravention;

- (c) the behaviour of the *respondent*;
  - (d) the market circumstances in which the contravention took place;
  - (e) the level of profit derived from the contravention;
  - (f) the degree to which the *respondent* has co-operated with the Competition Commission and the Competition Tribunal; and
  - (g) whether the *respondent* has previously been found in contravention of *this Act*.
- (4) A fine payable in terms of this section must be paid into the National Revenue Fund referred to in section 213 of the *Constitution*.

## 60. Divestiture

- (1) If a merger is implemented in contravention of Chapter 3, the Competition Tribunal may –
- (a) order a party to the merger to sell any shares, *interest* or other assets it has acquired pursuant to the merger; or
  - (b) declare void any provision of an *agreement* to which the merger was subject.
- (2) The Competition Tribunal, in addition to or in lieu of making an order under section 58, may make an order directing any *firm*, or any other person to sell any shares, *interest* or assets of the *firm* if –
- (a) it has contravened section 8, and
  - (b) the *prohibited practice* –
    - (i) cannot adequately be remedied in terms of another provision of *this Act*; or
    - (ii) is substantially a repeat by that *firm* of conduct

previously found by the Tribunal to be a *prohibited practice*.

- (3) An order made by the Competition Tribunal in terms of subsection (2) is of no force or effect unless confirmed by the Competition Appeal Court.
- (4) An order made in terms of subsection (1) or (2) may set a time for compliance, and any other terms that the Competition Tribunal considers appropriate, having regard to the commercial interests of the party concerned.

## **PART E – Appeals and reviews to Competition Appeal Court**

### **61. Appeals**

- (1) A person affected by a decision of the Competition Tribunal may appeal against, or apply to the Competition Appeal Court to review, that decision in accordance with the Rules of the Competition Appeal Court if, in terms of section 37, the Court has jurisdiction to consider that appeal or review that matter.
- (2) The Competition Appeal Court may make an order for the payment of costs against any party in the hearing, or against any person who represented a party in the hearing, according to the requirements of the law and fairness.

### **62. Appellate jurisdiction**

- (1) The Competition Tribunal and Competition Appeal Court share exclusive jurisdiction in respect of the following matters:
  - (a) Interpretation and application of Chapters 2, 3 and 5, other than –
    - (i) a question or matter referred to in subsection (2); or
    - (ii) a review of a certificate issued by the Minister of Finance in terms of section 18(2); and
  - (b) the functions referred to in sections 21(1), 27(1) and 37, other than a question or matter referred to in subsection (2).
- (2) In addition to any other jurisdiction granted in *this Act* to the Competition Appeal Court, the Court has jurisdiction over –

- (a) the question whether an action taken or proposed to be taken by the Competition Commission or the Competition Tribunal is within their respective jurisdictions in terms of *this Act*;
  - (b) any constitutional matter arising in terms of *this Act*;
  - (c) the question whether a matter falls within the exclusive jurisdiction granted under subsection (1).
- (3) The jurisdiction of the Competition Appeal Court –
- (a) is final over a matter within its exclusive jurisdiction in terms of subsection (1); and
  - (b) is neither exclusive nor final in respect of a matter within its jurisdiction in terms of subsection (2).
- 4) An appeal from a decision of the Competition Appeal Court in respect of a matter within its jurisdiction in terms of subsection (2) lies to the Supreme Court of Appeal, or Constitutional Court, subject to section 63 and their respective rules.
- (5) For greater certainty, the Competition Tribunal and the Competition Appeal Court have no jurisdiction over the assessment of the amount, and awarding, of damages arising out of a *prohibited practice*.

### **63. Leave to appeal**

- (1) The right to an appeal in terms of section 62(4) –
- (a) is subject to any law that –
    - (i) specifically limits the right of appeal set out in that section; or
    - (ii) specifically grants, limits or excludes any right of appeal;
  - (b) is not limited by monetary value of the matter in dispute; and

- (c) exists even if the matter in dispute is incapable of being valued in money.
- (2) An appeal in terms of section 62(4) may be brought to the Supreme Court of Appeal, or, if it concerns a Constitutional matter, to the Constitutional Court, only –
    - (a) with leave of the Competition Appeal Court; or
    - (b) if the Competition Appeal Court refuses leave, with leave of the Supreme Court of Appeal or the Constitutional Court, as the case may be.
  - (3) A court granting leave to appeal in terms of this section may attach any appropriate conditions, including a condition that the applicant provide security for the costs of the appeal.
  - (4) If the Competition Appeal Court, when refusing leave to appeal, made an order of costs against the applicant, the Supreme Court of Appeal or the Constitutional Court may vary that order on granting leave to appeal.
  - (5) An application to the Competition Appeal Court for leave to appeal must be made in the manner and form required by the Competition Appeal Court Rules.
  - (6) An application to the Constitutional Court for leave to appeal must be made in the manner and form required by its Rules.
  - (7) Section 21(1A) to (3)(e) of the Supreme Court Act, 1959 (Act No. 59 of 1959), read with the changes required by the context, applies to an application to the Supreme Court of Appeal for leave to appeal under *this Act*.
  - (8) A person applying to the Supreme Court of Appeal for leave to appeal under *this Act* must give notice of the application to the registrar of the Competition Appeal Court.



# CHAPTER 6

## ENFORCEMENT

*Chapter 6 was amended to its present form by section 15 of The Competition Second Amendment Act, 2000.*

### **64. Status and enforcement of orders**

- (1) Any decision, judgment or order of the Competition Commission, Competition Tribunal or Competition Appeal Court may be served, executed and enforced as if it were an order of the High Court.
- (2) The Competition Commission may institute proceedings in the High Court on its own behalf for recovery of an administrative penalty imposed by the Competition Tribunal.
- (3) Proceedings under subsection (2) may not be initiated more than three years after the imposition of the administrative penalty.

### **65. Civil actions and jurisdiction**

- (1) Nothing in *this Act* renders void a provision of an *agreement* that, in terms of *this Act*, is prohibited or may be declared void, unless the Competition Tribunal or Competition Appeal Court declares that provision to be void.
- (2) If, in any action in a *civil court*, a party raises an issue concerning conduct that is prohibited in terms of *this Act*, that court must not consider that issue on its merits, and –
  - (a) if the issue raised is one in respect of which the Competition Tribunal or Competition Appeal Court

has made an order, the court must apply the determination of the Tribunal or the Competition Appeal Court to the issue; or

- (b) otherwise, the court must refer that issue to the Tribunal to be considered on its merits, if the court is satisfied that –
  - (i) the issue has not been raised in a frivolous or vexatious manner; and
  - (ii) the resolution of that issue is required to determine the final outcome of the action.

(3) . . .

*Subsection (3) was deleted section 15 of The Competition Second Amendment Act, 2000.*

(4) . . .

*Subsection (4) was deleted section 15 of The Competition Second Amendment Act, 2000.*

(5) . . .

*Subsection (5) was deleted section 15 of The Competition Second Amendment Act, 2000.*

(6) A person who has suffered loss or damage as a result of a *prohibited practice* –

- (a) may not commence an action in a *civil court* for the assessment of the amount or awarding of damages if that person has been awarded damages in a consent order confirmed in terms of section 49D(1); or
- (b) if entitled to commence an action referred to in paragraph (a), when instituting proceedings, must file with the Registrar or Clerk of the Court a notice from the Chairperson of the Competition Tribunal, or the Judge President of the Competition Appeal

Court, in the *prescribed* form –

- (i) certifying that the conduct constituting the basis for the action has been found to be a *prohibited practice* in terms of *this Act*;
  - (ii) stating the date of the Tribunal or Competition Appeal Court finding; and
  - (iii) setting out the section of *this Act* in terms of which the Tribunal or the Competition Appeal Court made its finding.
- (7) A certificate referred to in subsection (6)(b) is conclusive proof of its contents, and is binding on a *civil court*.
- (8) An appeal or application for review against an order made by the Competition Tribunal in terms of section 58 suspends any right to commence an action in a *civil court* with respect to the same matter.
- (9) A person's right to bring a claim for damages arising out of a *prohibited practice* comes into existence –
- (a) on the date that the Competition Tribunal made a determination in respect of a matter that affects that person; or
  - (b) in the case of an appeal, on the date that the appeal process in respect of that matter is concluded.
- (10) For the purposes of section 2A(2)(a) of the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975), interest on a debt in relation to a claim for damages in terms of *this Act* will commence on the date of issue of the certificate referred to in subsection (6).

## 66. Variation of order

- (1) The Competition Tribunal, or the Competition Appeal Court, acting of its own accord or on application of a person affected by a decision or order, may vary or rescind its decision or order –
  - (a) erroneously sought or granted in the absence of a party affected by it;
  - (b) in which there is ambiguity, or an obvious error or omission, but only to the extent of correcting that ambiguity, error or omission; or
  - (c) made or granted as a result of a mistake common to all of the parties to the proceeding.

## 67. Limitations of bringing action

- (1) A complaint in respect of a *prohibited practice* may not be initiated more than three years after the practice has ceased.
- (2) A complaint may not be referred to the Competition Tribunal against any *firm* that has been a *respondent* in completed proceedings before the Tribunal under the same or another section of *this Act* relating substantially to the same conduct.

## 68. Standard of proof

In any proceedings in terms of *this Act*, other than proceedings in terms of section 49C or criminal proceedings, the standard of proof is on a balance of probabilities.

# CHAPTER 7

## OFFENCES

### 69. Breach of confidence

- (1) It is an offence to disclose any *confidential information* concerning the affairs of any person or *firm* obtained –
  - (a) in carrying out any function in terms of *this Act*; or
  - (b) as a result of initiating a complaint, or participating in any proceedings in terms of *this Act*.
- (2) Subsection (1) does not apply to information disclosed –
  - (a) for the purpose of the proper administration or enforcement of *this Act*;
  - (b) for the purpose of the administration of justice; or
  - (c) at the request of an inspector, Commissioner, Deputy Commissioner or Competition Tribunal member entitled to receive the information.

### 70. Hindering administration of Act

It is an offence to hinder, oppose, obstruct or unduly influence any person who is exercising a power or performing a duty delegated, conferred or imposed on that person by *this Act*.

### 71. Failure to attend when summoned

A person commits an offence who, having been summoned in terms of section 49A, or directed or summoned to attend a hearing –

- (a) fails without sufficient cause to appear at the time and place specified or to remain in attendance until excused; or
- (b) attends as required, but –

- (i) refuses to be sworn in or to make an affirmation; or
- (ii) fails to produce a book, document or other item as ordered, if it is in the possession of, or under the control of, that person.

*Section 71 was amended to its present form by section 16 of The Competition Second Amendment Act, 2000.*

## **72. Failure to answer fully or truthfully**

A person commits an offence who, having been sworn in or having made an affirmation –

- (a) subject to section 49A(3) or 56, fails to answer any question fully and to the best of that person's ability; or
- (b) gives false evidence, knowing or believing it to be false.

*Section 72 was amended to its present form by section 17 of The Competition Second Amendment Act, 2000.*

## **73. Failure to comply with Act**

- (1) A person commits an offence who contravenes or fails to comply with an interim or final order of the Competition Tribunal or the Competition Appeal Court.

*Subsection (2) was amended to its present form by section 18 of The Competition Second Amendment Act, 2000.*

- (2) A person commits an offence who –
  - (a) does anything calculated to improperly influence the Competition Tribunal or Competition Commission concerning any matter connected with an investigation;

- (b) anticipates any findings of the Tribunal or Commission concerning an investigation in a way that is calculated to influence the proceedings or findings;
- (c) does anything in connection with an investigation that would have been contempt of court if the proceedings had occurred in a court of law;
- (d) knowingly provides false information to the Commission;
- (e) defames the Tribunal or the Competition Appeal Court, or a member of either of them, in their respective official capacities;
- (f) wilfully interrupts the proceedings or misbehaves in the place where a hearing is being conducted;
- (g) acts contrary to a warrant to enter and search;
- (h) without authority, but claiming to have authority in terms of section 46 or 47 –
  - (i) enters or searches *premises*; or
  - (ii) attaches or removes an article or document.

#### 74. Penalties

- (1) Any person convicted of an offence in terms of *this Act*, is liable –
  - (a) in the case of a contravention of section 73(1), to a fine not exceeding R500 000-00 or to imprisonment for a period not exceeding 10 years, or to both a fine and imprisonment; or
  - (b) in any other case, to a fine not exceeding R2 000-00 or to imprisonment for a period not exceeding six months, or to both a fine and imprisonment.

## **75. Magistrate's Court jurisdiction to impose penalties**

Despite anything to the contrary contained in any other law, a Magistrate's Court has jurisdiction to impose any penalty provided for in *this Act*.

## **76. Repealed**

*Section 76 was repealed by section 19 of The Competition Second Amendment Act, 2000.*

## **77. Proof of facts**

- (1) In any criminal proceedings in terms of *this Act* –
  - (a) if it is alleged that a person at a *firm* is or was an employee, that person must be presumed to be an employee at that *firm*, unless the contrary is proved;
  - (b) if it is proved that a false statement, entry or record or false information appears in or on a book, document, plan, drawing or computer storage medium, the person who kept that item must be presumed to have made the statement, entry, record or information, unless the contrary is proved; and
  - (c) an order certified by the Chairperson of the Competition Tribunal or Judge President of the Competition Appeal Court, is conclusive proof of the contents of the order of the Competition Tribunal or the Competition Appeal Court, as the case may be.
- (2) A statement, entry or record, or information, in or on any book, document, plan, drawing or computer storage medium is admissible in evidence as an admission of the facts in or on it by the person who appears to have made, entered, recorded or stored it unless it is proved that that person did not make, enter, record or store it.



# CHAPTER 8

## GENERAL PROVISIONS

### 78. Regulations

The *Minister*, by notice in the *Gazette*, may make *regulations* that are required to give effect to the purposes of *this Act*.

### 79. Guidelines

(1) The Competition Commission may prepare guidelines to indicate the Commission's policy approach to any matter within its jurisdiction in terms of *this Act*.

(2) A guideline prepared in terms of subsection (1) –

(a) must be published in the *Gazette*; but

(b) is not binding on the Competition Commission, the Competition Tribunal or the Competition Appeal Court in the exercise of their respective discretion, or their interpretation of *this Act*.

### 80. Official seal

The President, by proclamation in the *Gazette*, may prescribe an official seal for each of the Competition Commission, Competition Tribunal and the Competition Appeal Court.

### 81. Act binds State

*This Act* binds the State.

### 82. Relationships with other agencies

(1) A *regulatory authority* which, in terms of any *public regulation*, has jurisdiction in respect of conduct regulated in

terms of Chapter 2 or 3 within a particular sector –

- (a) must negotiate agreements with the Competition Commission, as anticipated in section 21(1)(h); and
  - (b) in respect of a particular matter within its jurisdiction, may exercise its jurisdiction by way of such an agreement.
- (2) Subsection (1)(a) and (b), read with the changes required by the context, applies to the Competition Commission.
- (3) In addition to the matters contemplated in section 21(1)(h), an agreement in terms of subsection (1) must –
- (a) identify and establish procedures for the management of areas of concurrent jurisdiction;
  - (b) promote co-operation between the *regulatory authority* and the Competition Commission;
  - (c) provide for the exchange of information and the protection of *confidential information*; and
  - (d) be published in the *Gazette*.

*Subsections (1), (2) and (3) were added by section 20 of The Competition Second Amendment Act, 2000.*

- (4) The President may assign to the Competition Commission any duty of the Republic, in terms of an international agreement relating to the purpose of *this Act*, to exchange information with a similar foreign agency.

### **83. Transitional arrangements and repeal of laws**

- (1) Subject to Schedule 3, the laws specified in Schedule 2, and all proclamations, *regulations* or notices promulgated or published in terms of those laws, are repealed.
- (2) The repeal of those laws specified in Schedule 2 does not affect any transitional arrangements made in Schedule 3.

#### **84. Short Title and commencement of Act**

- (1) *This Act* is called the Competition Act and comes into operation on a date fixed by the President by proclamation in the *Gazette*.
- (2) The President may set different dates for different provisions of *this Act* to come into operation.
- (3) Unless the context otherwise indicates, a reference in a section of *this Act* to a time when *this Act* comes into operation must be construed as a reference to the time when that section comes into operation.

# SCHEDULE 1

## EXEMPTION OF PROFESSIONAL RULES

### PART A

*Part A was amended to its present form by section 21 of The Competition Second Amendment Act, 2000.*

- (1) A professional association whose rules contain a restriction that has the effect of substantially preventing or lessening competition in a market may apply in the *prescribed* manner to the Competition Commission for an exemption in terms of item 2.
- (2) The Competition Commission may exempt all or part of the rules of a professional association from the provisions of Part A of Chapter 2 of *this Act* for a specified period if, having regard to internationally applied norms, any restriction contained in those rules that has the effect of substantially preventing or lessening competition in a market is reasonably required to maintain –
  - (a) professional standards; or
  - (b) the ordinary function of the profession.
- (3) Upon receiving an application in terms of item 1, the Competition Commission must –
  - (a) publish a notice of the application in the *Gazette*;
  - (b) allow interested parties 20 business days from the date of that notice to make representations concerning the application; and
  - (c) consult the responsible Minister, or member of the Executive Council concerning the application.

- (4) After considering the application and any submissions or other information received in relation to the application, and consulting with the responsible Minister or member of the Executive Council, the Commission must –
  - (a) either grant an exemption or reject the application by issuing a notice in the *prescribed* form to the applicant;
  - (b) give written reasons for its decision; and
  - (c) publish a notice of that decision in the *Gazette*.
- (5) The Competition Commission, in the *prescribed* manner, may revoke an exemption granted under item 4 on good cause shown, at any time after it has –
  - (a) given notice in the *Gazette* of its intention to revoke the exemption;
  - (b) allowed interested parties 20 business days from the date of that notice to make representations concerning the exemption; and
  - (c) consulted the responsible Minister, or member of the Executive Council.
- (6) A professional rule is exempt, or its exemption revoked, only as of the date on which notice of the exemption or revocation, as the case may be, is published in the *Gazette*.
- (7) The Competition Commission must maintain for public inspection a record of all professional rules that have received exemption, or for which exemption has been revoked.
- (8) A professional association, or any other person with a substantial interest affected by a decision of the Competition Commission in terms of item 4 may appeal against that

decision to the Competition Tribunal in the *prescribed* manner and form.

(9) In this Schedule –

**‘professional association’** means an association referred to in Part B of this Schedule;

**‘professional rules’** means rules regulating a professional association that are binding on its members;

**‘rules’** includes *public regulations*, codes of practice and statements of principle.

## PART B

For the purpose of *this Act*, a professional association is –

- (a) for each of the following professions, a governing body of that profession registered in terms of an Act mentioned below the name of that profession;  
or
- (b) any other association, if the Competition Commission is satisfied that it represents the interests of members of a profession referred to in paragraph (a):

### **Accountants and Auditors**

Public Accountants and Auditors Act, 1991 (Act No. 80 of 1991)

### **Architects**

Architects Act, 1970 (Act No. 35 of 1970)

### **Engineering**

Engineering Profession of South Africa Act, 1990 (Act No. 114 of 1990)

### **Estate Agents**

Estate Agents Act, 1976 (Act No. 112 of 1976)

### **Attorneys and Advocates**

Attorneys Act, 1979 (Act No. 53 of 1979)

Admission of Advocates Act, 1964 (Act No. 74 of 1964)

### **Natural sciences**

Natural Scientific Professions Act, 1993 (Act No. 106 of 1993)

### **Quantity Surveyors**

Quantity Surveyors Act, 1970 (Act No. 36 of 1970)

### **Surveyors**

Professional and Technical Surveyors Act, 1984 (Act No. 40 of

1984)

**Town and Regional Planners**

Town and Regional Planners Act, 1984 (Act No. 19 of 1984)

**Valuers**

Valuers Act, 1982 (Act No. 23 of 1982)

**Medical**

Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act No. 56 of 1974)

Nursing Act, 1978 (Act No. 50 of 1978)

Dental Technicians Act, 1979 (Act No. 19 of 1979)

Pharmacy Act, 1974 (Act No. 53 of 1974)

Veterinary and Para-veterinary Professional Act, 1982 (Act No. 19 of 1982)

Chiropractors Homeopaths and Allied Health Service Professions Act, 1982 (Act No. 63 of 1982)

**Miscellaneous**

Any other *professional association* to whom the provisions of this Schedule have been declared applicable by the *Minister* by notice in the *Gazette*.



## SCHEDULE 2

### REPEAL OF LAWS (SECTION 83)

<b>NO. AND YEAR OF LAW</b>	<b>SHORT TITLE</b>	<b>EXTENT OF REPEAL</b>
Act No. 96 of 1979	Maintenance and Promotion of Competition Act, 1979	The whole
Act No. 58 of 1980	Maintenance and Promotion of Competition Amendment Act, 1980	The whole
Act No. 62 of 1983	Maintenance and Promotion of Competition Amendment Act, 1983	The whole
Act No. 12 of 1985	Maintenance and Promotion of Competition Amendment Act, 1985	The whole
Act No. 5 of 1986	Maintenance and Promotion of Competition Amendment Act, 1986	The whole
Act No. 96 of 1987	Maintenance and Promotion of Competition Amendment Act, 1987	The whole
Act No. 88 of 1990	Maintenance and Promotion of Competition Amendment Act, 1990	The whole

# SCHEDULE 3

## TRANSITIONAL ARRANGEMENTS

*Schedule 3 was amended to its present form by section 1 of The Competition Amendment Act, 1999.*

- (1) A ruling issued in terms of section 6(2)(a) of the Maintenance and Promotion of Competition Act, 1979 (Act No. 96 of 1979), or notice issued in terms of section 14(1)(c) of that Act, in relation to an “acquisition” as defined in that Act, must be regarded for purposes of *this Act*, depending on the context, to be either –
  - (a) a conditional approval of a merger as if it had been granted after *this Act* came into operation, by the Competition Commission in terms of section 14(1)(b)(ii) or by the Competition Tribunal in terms of section 15(2)(b); or
  - (b) a prohibition of a merger as if it had been prohibited after *this Act* came into operation, by the Competition Commission in terms of section 14(1)(b)(iii) or by the Competition Tribunal in terms of section 15(2)(c).
- (2) An arrangement entered into in terms of section 11(1) of the Maintenance and Promotion of Competition Act, 1979 (Act No. 96 of 1979), must be regarded as having been confirmed as a consent order in terms of section 63 of *this Act* and is valid for a period of 12 months from the date on which *this Act* comes into operation.
- (3) An exemption granted in terms of Section 14(5) of the Maintenance and Promotion of Competition Act, 1979 (Act

No. 96 of 1979), must be regarded as having been granted in terms of section 10 of *this Act* and is valid for a period of 12 months from the date on which *this Act* comes into operation.

- (3A) A notice issued by the *Minister* in terms of section 14(1)(c) of the Maintenance and Promotion of Competition Act, 1979 (Act No. 96 of 1979), in relation to a “restrictive practice” or a “monopoly situation” as defined in that Act, must be regarded as an order in terms of section 60(1)(a) of *this Act* and is valid for a period of 12 months from the date on which *this Act* comes into operation.
- (4) Any reference in any other statute to –
- (a) the Maintenance and Promotion of Competition Act, 1979 (Act No. 96 of 1979), must be regarded as a reference to *this Act*;
  - (b) a “restrictive practice” or “monopoly situation” as defined in terms of section 1 of the Maintenance and Promotion of Competition Act, 1979 (Act No. 96 of 1979), must be regarded as a reference to a “*prohibited practice*” in terms of *this Act*;
  - (c) an “acquisition” as defined in terms of section 1 of the Maintenance and Promotion of Competition Act, 1979 (Act No. 96 of 1979), must be regarded as a reference to a “merger” in terms of *this Act*;
  - (d) The “Competition Board” as established in terms of section 3 of the Maintenance and Promotion of Competition Act, 1979 (Act No. 96 of 1979), must be regarded as a reference to the Competition Commission.
  - (e) The Chairperson of the Competition Board contem-

plated in section 3 of the Maintenance and Promotion of Competition Act, 1979 (Act No. 96 of 1979), must be regarded as a reference to either the Competition Commissioner contemplated in section 22 of *this Act*, or the chairperson of the Competition Tribunal contemplated in section 26 of *this Act*, as determined by the *Minister*.

- (4A) Any transaction that takes place between the date on which *this Act* is published and the date on which *this Act* comes into operation, and which would constitute an intermediate or large merger if it had taken place after *this Act* came into operation, is regarded for a period of 12 months after the date on which *this Act* comes into operation as a merger in contravention of Chapter 3 and is subject to the provisions of section 62(1), unless –
- (a) the transaction has been approved by the Competition Board in terms of the Maintenance and Promotion of Competition Act, 1979 (Act No. 96 of 1979); or
  - (b) the transaction has been notified in terms of item 4B.
- (4B) Any party to a transaction contemplated in item 4A may, within three months after the date on which *this Act* comes into operation, notify the Competition Commission of the transaction in terms of section 13 as if it were an intermediate or large merger.
- (4C) The provisions of Chapter 3, with the changes required by the context, apply to a transaction that is notified under item 4B.
- (4D) After *this Act* comes into operation, any appeal pending

before a special court contemplated in section 15 of the Maintenance and Promotion of Competition Act, 1979 (Act No. 96 of 1979), must be regarded as an appeal to the Competition Appeal Court contemplated in section 36 of *this Act* in the manner *prescribed*.

- (4E) Subject to items 1 to 3A, the Competition Appeal Court may, after hearing any appeal contemplated in item 4D, make any decision that the special court could have made in terms of section 15(10) of the Maintenance and Promotion of Competition Act, 1979 (Act No. 96 of 1979), and the provisions of *this Act* otherwise apply to that decision, as if it were a decision of the Competition Appeal Court in terms of *this Act*.
- (4F) (1) Notwithstanding sections 6 and 11, the first determinations of thresholds made by the *Minister* in terms of those sections must be made before the date on which *this Act* comes into operation.
- (2) Notwithstanding sections 6(2) and 11(2), the first determinations contemplated in subsection (1) take effect on the date on which *this Act* comes into operation.
- (5) When *this Act* comes into operation an officer or employee appointed in terms of the Public Service Act, 1994, to serve the Competition Board established by the Maintenance and Promotion of Competition Act, 1979 (Act No. 96 of 1979), continues to be an officer or employee under the Public Service Act, subject to the direction of the Department of Trade and Industry.
- (6) If an officer or an employee referred to in item 5 is appointed as an officer or employee of the Competition

Commission, the accumulated value of that person's contributions to any pension fund, together with the accumulated value of the contributions made to that fund by the person's employer, may be transferred to a pension fund established for the benefit of the staff of the Commission.

# APPENDIX

(EXPLANATORY NOTE: Extracts from the transitional provisions of the Competition Amendment Act No. 15 of 2000 and the Competition Second Amendment Act No. 39 of 2000 are repeated below for easy reference.)

## 1. Competition Amendment Act , No. 15 of 2000

Competition Appeal Court

(1) The Competition Amendment Act, 2000 provides:

“ Anyone serving as Judge President or as a judge of the Competition Appeal Court immediately before *this Act* comes into operation continues to serve in that office after *this Act* comes into operation, subject to section 39 of the principal Act.”

## 2. Competition Second Amendment Act, No. 39 of 2000

Transitional Provisions

(1) In this section –

(a) “**principal Act**” means the Competition Act, 1998 (Act No. 89 of 1998), as it existed immediately before the commencement of *this Act*; and

(b) “**principal Act as amended**” means the principal Act as amended by *this Act*.

(2) Despite section 6(3) and (4), and section 11(3) and (4), of the principal Act as amended, the Minister of Trade and Industry may at the commencement of *this Act* publish in the *Gazette* a notice determining a new threshold and method of calculation under each of those sections, respectively.

(3) A determination in terms of subsection (2) takes effect on the date of commencement of *this Act*, and if it is a deter-

mination under –

- (a) section 6 of the principal Act as amended, applies to any proceedings that were pending before the Competition Commission, Competition Tribunal or Competition Appeal Court immediately before the date of commencement of *this Act*; or
  - (b) section 11 of the principal Act as amended, applies to any proceedings that were pending before the Competition Commission immediately before the date of commencement of *this Act*.
- (4) A recommendation made by the Competition Commission in terms of section 14(3) of the principal Act must be regarded as having been a decision made under section 14(1)(b) of the principal Act as amended, if –
- (a) as a result of subsection (3)(b), the merger is classified as an intermediate merger; and
  - (b) the Competition Tribunal had not made an order in respect of the merger at the date of commencement of *this Act*.
- (5) Any proceedings that were pending before the Competition Commission, Competition Tribunal or Competition Appeal Court before the date of commencement of *this Act* must be preceded with in terms of the principal Act as amended, except to the extent that a *regulation* under section 21(4) or 27(2) of the principal Act as amended, or a rule of the Competition Appeal Court, provides otherwise.
- (6) For greater clarity, section 18(2) and (3) of the principal Act as amended applies to a merger that was pending before the Competition Commission or the Competition Tribunal immediately before the date of commencement of *this Act*.





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

*(Published in Government Notice No. 22025 in Government Gazette Vol. 428 on 1 February 2001).*

**In terms of section 21 (4) of the Competition Act, 1998 (Act No. 89 of 1998), as amended, The Minister of Trade and Industry, in consultation with the Competition Commission, has made the following regulations relating to the functions of the Competition Commission, to come into operation at the time that the Competition Second Amendment Act, 2000 (Act No. 39 of 2000) comes into operation.**

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# COMPETITION COMMISSION RULES

## REGULATING THE FUNCTIONS OF THE COMPETITION COMMISSION

### PART 1 – General Provisions

#### Division A – Interpretation

**1. Short title**

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

**2. Repeal of previous rules**

The Competition Commission Rules published in Government Notice R1938, in Government Gazette 20384 of 20 August 1999, are repealed.

**3. Interpretation**

(1) Section 1 applies to the interpretation of these Rules.

(2) A word or expression that is defined in a chapter of the Act bears the same meaning in these Rules as in the Act.

(3) 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.
- (4) In these Rules unless the context indicates otherwise,
- (a) “Act” means the *Competition Act*, 1998 (Act No. 89 of 1998), as amended from time to time;
  - (b) “application” means a request for an exemption submitted in terms of section 10, or in terms of item 1 of Schedule 1 of the Act;
  - (c) “certified copy” means a copy of a document certified by a Commissioner of Oaths;
  - (d) “Commission” means the body established by section 19;
  - (e) “Commissioner” means the office holder appointed in terms of section 22;
  - (f) “Competition Tribunal Rules” means the rules promulgated in terms of the Act for the regulation of procedures of the Tribunal;
  - (g) “complaint” means either
    - (i) a matter initiated by the Commissioner in terms of section 49B(1); or
    - (ii) a matter that has been submitted to the Commission in terms of section 49B(2)(b);
  - (h) “Court” means the Competition Appeal Court established by section 36;
  - (i) “deliver” depending on the context, means to serve, or to file, a document;
  - (j) “file”, when used as a verb, means to deposit with the Commission;
  - (k) “Judge President” means the Judge President of

- the Court;
- (l) “Merger Notice” means a notification
    - (i) voluntarily submitted in terms of section 13(2),  
or
    - (ii) required in terms of either section 13(3) or section 13A;
  - (m) “public holiday” means a public holiday referred to in section 1 of the Public Holidays Act, 1994 (Act 36 of 1994);
  - (n) “Rule” includes any footnote to a Rule, and any Table included within or referred to in a Rule;
  - (o) “serve” means to deliver a document to a person other than the Commission;
  - (p) “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;
    - (iii) a member of the Tribunal sitting in terms of section 31(5); or
    - (iv) the registrar of the Tribunal.

## **Division B – Commission Office Functions**

### **4. Office hours and address of Commission**

- (1) The offices of the Commission are open to the public every Monday to Friday, excluding public holidays, from 08h30 to 15h30.
- (2) Despite sub-paragraph (1) –
  - (a) in exceptional circumstances the Commission may accept documents for filing on any day and at any time; and
  - (b) the Commission must accept documents for filing as directed by either the Tribunal or a member of the Tribunal assigned by its chairperson.
- (3) Subject to Rules 7 and 9, any communication to the Commission, or to a member of the staff of the Commission, may be –
  - (a) Delivered by hand at:  
The Competition Commission  
the dti Campus  
Building C: Mulayo  
77 Meintjies Street  
Sunnyside, Pretoria  
Republic of South Africa
  - (b) Addressed by post to:  
The Competition Commission  
Private Bag X23  
Lynnwood Ridge, Pretoria 0040  
Republic of South Africa
  - (c) Communicated by telephone on 27 012 394 3200
  - (d) Transmitted by Fax on 27 012 394 0166; or



- (e) Transmitted by electronic mail to  
ccsa@compcom.co.za

**5. Condonation of time limits**

On good cause shown, the Commissioner 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 Commission itself.

**6. Commissioner's functions**

The Commissioner, in writing, may assign any function or power to a member of the staff of the Commission, either generally or in connection with a particular matter.

## **PART 2 – Delivery of Documents**

### **7. Delivery of documents**

- (1) A notice or document may be delivered in any manner set out in Table CCR 1.
- (2) Subject to sub-rule (4), a document delivered by a method listed in the second column of Table CCR 1 will be deemed to have been delivered to 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 deliver a document in any manner provided for in these Rules, the person concerned may apply to the Tribunal for an order of substituted service.
- (4) Subject to Rule 4(2), if the date and time for the delivery of a document referred to in Table CCR 1 is outside of the office hours of the Commission as set out in Rule 4(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 representative, if it is being sent to the representative of a person;
  - (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 appears to be incomplete or otherwise unsuccessful.

## **8. Issuing documents**

- (1) If the Act or these Rules require the Commission to issue a document –
  - (a) the document will have been issued by the Commission when it has been signed, and served on any person to whom it is addressed; and
  - (b) the document may be signed and served at any time of day, despite Rule 4(1).
- (2) Rule 7(4) does not apply to the service of a document issued by the Commission.

## **9. Filing documents**

- (1) The Commission must assign distinctive case numbers to each –
  - (a) Complaint;
  - (b) Application;
  - (c) Merger Notice; and
  - (d) Advisory Opinion.
- (2) The Commission must ensure that every document subsequently filed in respect of the same proceedings is marked with the same case number.
- (3) The Commission may refuse to accept a document subsequently filed in respect of the same proceedings that is not properly marked with the assigned case number.
- (4) A person who files any document in terms of the Act or these

rules must provide to the Commission that person's –

- (a) legal name;
- (b) address for service;
- (c) telephone number;
- (d) if available, email address and fax number; and
- (e) if the person is not an individual, the name of the individual authorised to deal with the Commission on behalf of the person filing the document.

## 10. Fees

- (1) The Commission may not charge a fee to any person for filing a complaint.
- (2) Subject to sub-rule (3), the fee for filing an application with the Commission is –
  - (a) for a single exemption –
    - (i) a filing fee of R5 000; plus
    - (ii) an annual fee, payable at the time of the application, equal to R500 times the number of years for which the exemption is granted; or
  - (b) for a category exemption –
    - (i) a filing fee of R 100 000; plus
    - (ii) an annual fee, payable at the time of the application, equal to R1 000 times the number of years for which the exemption is granted; or
  - (c) for an exemption in terms of Schedule 1 of the Act, a filing fee of R100 000.
- (3) If an application is refused in terms of section 10 or Schedule 1, the Commission must refund to the applicant the annual fee paid in respect of that application.
- (4) The fee for an advisory opinion is R2 500.

- (5) The fee for filing a Merger Notice is –
  - (a) R100 000 for an intermediate merger; or
  - (b) R350 000 for a large merger.
- (6) No fee is payable for filing a Merger Notice for a small merger.
- (7) A fee payment will be deemed to be received by the Commission on –
  - (a) the date that a cheque or money order in payment of that fee is delivered to the Commission; or
  - (b) the date that a direct deposit or an electronic transfer of funds in the amount of that fee is credited to the account of the Commission at the financial institution to which is it transferred.
- (8) The Commission may charge a fee of R1-00 per A4-size page or part thereof to any person wishing to copy a record in the possession of the Commission and R2-00 each for the Commission's certificate on certified copies of documents.
- (9) The amount of each fee set out in this Rule, or calculated in terms of this Rule, is exclusive of VAT.

## **11. Form of notices and applications**

- (1) Whenever a notice or application is required in terms of a section of the Act, or an item of these Rules, shown in column 1 of Table CCR 2, 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, 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 “CT”, that document must be substantially in the corresponding form prescribed in the Competition Tribunal Rules.

## **12. Form of Certificates and Notices of Referral**

- (1) Whenever the Commission is required to issue a Certificate, Notice or Receipt in terms of a section of the Act, or an item of these Rules, shown in column 1 of Table CCR 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, and must be produced subject to any conditions listed opposite that section number in column 4 of that Table.
- (2) Whenever the Commission 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 Commission 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 the relevant 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.
- (g) The name, address and contact numbers of the person in the Commission responsible for publishing the notice.

### 13. Form of Annual Report

- (1) The Annual Report to be submitted by the Commission in terms of section 41 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 Commission**, being a summary report of the Commission's work in relation to complaints, exemptions, mergers, and compliance.
  - (c) **The Administrative Activities of the Commission**, being a summary report concerning the Commission's management, staff, infrastructure, Rules and related matters.
  - (d) **The Commission's Finances**, including the items required by section 41(1)(a) and (b).
- (2) In addition to the matters required in terms of section 41, each Annual Report must include a report on the following matters:
  - (a) The Commission's public awareness programs.

- (b) Relationships between the Commission and other regulatory authorities.
- (c) Relationships between the Commission and foreign agencies.
- (d) Research activities undertaken by the Commission and any proposals for law reform published by the Commission.



## **PART 3 – Access to Commission Records**

### **14. Restricted information**

- (1) For the purpose of this Part, the following five classes of information are restricted:
- (a) Information –
    - (i) that has been determined to be confidential information in terms of section 45(4), or
    - (ii) that, in terms of section 45(3), must be treated as confidential information.
  - (b) Identity of a complainant, in the following circumstances:
    - (i) A person who provides information in terms of section 49B(2)(a) may request that the Commission treat their identity as restricted information; but that person may be a complainant in the relevant matter only if they subsequently waive the request in writing.
    - (ii) If a person has requested in terms of sub-paragraph (i) that the Commission treat their identity as restricted information –
      - (aa) The Commission must accept that request; and
      - (bb) That information is restricted unless the person subsequently waives the request in writing.
  - (c) Information that has been received by the Commission in a particular matter, other than that referred to in paragraphs (a) and (b), as follows:
    - (i) The Description of Conduct attached to a com-

- plaint, and any other information received by the Commission during its investigation of the complaint, is restricted information until the Competition Commission issues a referral or notice of non-referral in respect of that complaint, but a completed form CC 1 is not restricted information.
- (ii) A Statement of Merger Information and any information annexed to it, or received by the Commission during its investigation of that merger, is restricted information until the Commission has issued a certificate, or been deemed to have approved the merger, in terms of section 13 or 14, or made a recommendation in terms of section 14A, as the case may be;
  - (iii) An application and any information received by the Commission during its consideration of the application, or revocation of an exemption granted to the applicant, is restricted information only to the extent that it is restricted in terms of paragraph (a).
- (d) A document –
- (i) that contains –
    - (aa) an internal communication between officials of the Competition Commission, or between one or more such officials and their advisors;
    - (bb) an opinion, advice, report or recommendation obtained or prepared by or for the Competition Commission;

- (cc) an account of a consultation, discussion or deliberation that has occurred, including, but not limited to, minutes of a meeting, for the purpose of assisting to formulate a policy or take a decision in the exercise of a power or performance of a duty conferred or imposed on the Commission by law; or
- (ii) the disclosure of which could reasonably be expected to frustrate the deliberative process of the Competition Commission by inhibiting the candid –
  - (aa) communication of an opinion, advice, report or recommendation; or
  - (bb) conduct of a consultation, discussion or deliberation; or
- (iii) the disclosure of which could, by premature disclosure of a policy or contemplated policy, reasonably be expected to frustrate the success of that policy.
- (e) Any other document to which a public body would be required or entitled to restrict access in terms of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

## **15. Access to information**

- (1) Any person, upon payment of the prescribed fee, may inspect or copy any Commission record –
  - (a) if it is not restricted information; or
  - (b) if it is restricted 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 a particular complaint the Commission may release otherwise restricted information, other than confidential information, relating to a possible agreement of terms of an appropriate order, or the consent of a complainant for an order to include an award of damages, to –
- (a) The respondent; or
  - (b) Any person who has filed Form CT 3 in respect of that complaint.
- (3) In addition to the provisions of sub-rule (1) and (2), the Commission may release restricted information to, or permit access to it by, only the following persons:
- (a) the person who provided that information to the Commission;
  - (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);
  - (e) the Minister, if the information concerns a merger;
  - (f) the Minister of Finance, if the information concerns a merger referred to in section 18(2); or
  - (g) any other person, with the written consent of the firm to whom the information belongs.
- (4) When the Commission submits a Complaint Referral to the Tribunal, makes a recommendation to the Tribunal in respect of a large merger, or supplies any other information to the Tribunal, the Minister, or the Minister of Finance, the

Commission must identify any information included in its submission –

- (a) in respect of which a claim has been made in terms of Section 44, that has not yet been determined by the Tribunal; or
- (b) that has been finally determined to be confidential information.

## **PART 4 – Complaint Procedures**

### **16. Withdrawal of complaints**

- (1) At any time before the Commission has referred a complaint to the Tribunal, the complainant may withdraw the complaint.
- (2) The Commission may continue to investigate a complaint after it has been withdrawn, as if the Commissioner had initiated it.

### **17. Multiple complaints**

- (1) At any time after a complaint has been initiated by the Commissioner, or submitted by another person, the Commission may publish a notice disclosing an alleged prohibited practice and inviting any person who believes that the alleged practice has affected or is affecting a material interest of that person to file a complaint in respect of that matter.
- (2) The Commission may consolidate two or more complaints under a common investigation if they concern the same firm as potential respondent.
- (3) If the Commission consolidates two or more complaints as permitted by sub-rule (2) –
  - (a) Each of those complaints must continue to be separately identified by its own complaint number;
  - (b) Each person who submitted one of those complaints to the Commission remains the complainant with respect to the complaint that they submitted; and
  - (c) After referring one of those consolidated complaints

to the Competition Tribunal, or issuing a notice of non-referral in respect of it, the Commission may continue to investigate any of the remaining consolidated complaints, subject only to the time constraints set out in section 50.

## **18. Consent orders**

- (1) If, at any time before issuing a Notice of Non-referral in Form CC 8, or referring a complaint to the Tribunal in Form CT 1(1), it appears to the Commission that the respondent may be prepared to agree terms of a proposed order, the Commission –
  - (a) must notify the complainant, in writing, that a consent order may be recommended to the Tribunal; and
  - (b) invite the complainant to inform the Commission in writing within 10 business days after receiving that notice –
    - (i) whether the complainant is prepared to accept damages under such an order; and
    - (ii) if so, the amount of damages claimed.
- (2) If the Commission and the respondent agree the terms of an appropriate order, the Commission must –
  - (a) refer the complaint to the Tribunal in Form CT 1(1) to be proceeded with in terms of section 49D;
  - (b) attach to the referral –
    - (i) a draft order
      - (aa) setting out the section of the Act that has been contravened;
      - (bb) setting out the terms agreed between

- the Commission and the respondent, including, if applicable, the amount of damages agreed between the respondent and the complainant; and
- (cc) signed by the Commission and the respondent indicating their consent to the draft order; and
  - (ii) Form CT 3, completed by the complainant, if applicable; and
- (c) serve a copy of the referral and draft order on the respondent and the complainant.
- (3) The Commission must not include an order of damages in a draft consent order unless it is supported by a completed Form CT3.
- (4) A draft consent order may be submitted to the Tribunal in terms of section 49D and this Rule notwithstanding the refusal by a complainant to consent to including an award of damages in that draft order.



## **PART 5 – Exemption Procedures**

### **19. Procedures relating to exemption applications (Section 10)**

- (1) Upon receiving an application for exemption in terms of section 10, the Commission, by issuing Form CC 10(3) to the applicant, may –
  - (a) if the application is materially incomplete, advise the applicant of any further information required before the application will be considered; or
  - (b) if the application does not specify a specific agreement, practice or category of agreements or practices, require the applicant to more specifically state the exemption sought before the application will be considered.
- (2) If the applicant
  - (a) does not respond to the Commission within 20 business days after being served with Form CC 10(3), the application will be deemed to have been abandoned by the applicant, and the filing fees paid by the applicant will be forfeited to the Commission; or
  - (b) responds to the Commission, but does not, to the satisfaction of the Commission, meet the requirements set out in the Form CC 10(3) as issued, the Commission, by issuing a new Form CC 10(3) to the applicant, may again stipulate any further information, or clarification, required before the application will be considered, and the provisions of this sub-rule (2) apply to such a new Form CC 10(3).
- (3) If an application is deemed to have been abandoned in terms of sub-rule (2), the Commission may close its file on

that application without making a decision contemplated in section 10.

- (4) After receiving adequate information to begin consideration of an application, the Commission –
  - (a) must publish in the Gazette the notice of the application required by section 10(6)(a), and –
  - (b) may request further information from any person who submits
    - (i) an application for an exemption in terms of section 10(1) or (4), or
    - (ii) a representation in response to a notice published in terms of section 10(6).
- (5) Upon publishing a notice in terms of section 10(7), the Commission must provide written reasons for its decision, unless the decision is a refusal in terms of section 10(2)(b)(ii) to grant an exemption.

## **20. Procedures concerning practices that are not prohibited**

- (1) If the Commission determines that an application does not concern a prohibited practice (as contemplated by section 10(2)(b)(ii)), the following rules apply:
  - (a) The Commission must issue a notice of Refusal to Grant an Exemption, in Form CC 11(1).
  - (b) The Commission may later withdraw its notice of Refusal to Grant an Exemption, (as provided for in section 10(9)), by –
    - (i) issuing notice in Form CC 11(3) to the applicant at least 60 business days before the withdrawal will take effect; and
    - (ii) providing the applicant with written reasons for

its action.

- (c) Between the date that the Commission issues Form CC 11(1), and the date that the subsequent notice in Form CC 11(3) takes effect, the Commission must not initiate or accept a complaint against the applicant in respect of the specific practice concerned.
  - (d) After the subsequent notice in Form CC 11(3) takes effect, the Commission must not at any time initiate or accept a complaint against the applicant concerning anything done by the applicant during the period described in paragraph (c) above in respect of the specific practice concerned.
- (2) An applicant who has received Form CC 11(3) in terms of sub-rule (1)(b)(i) –
- (a) must either –
    - (i) repay the annual fee that had been refunded in terms of Rule 10(3); or
    - (ii) withdraw the application; and
  - (b) if it repays the annual fee, may file up-to date information to be considered by the Commission in its reconsideration of the application, which is required by section 10(9)(b).
- (3) When the Commission reconsiders an application in terms of section 10(9)(b), the provisions of section 10 apply.

## **21. Procedures related to revoking exemption certificates (Section 10)**

- (1) If the Commission is contemplating revoking an exemption granted in terms of section 10(5), the Commission must

- advise the firm concerned, in writing, of the intention to do so, as well as publishing the notice required by section 10(6).
- (2) The Commission may request further information from –
    - (a) the firm concerned, or
    - (b) any person who submits a representation in response to a notice published in terms of section 10(6).
  - (3) After considering any submissions or other information received in relation to the proposed revocation, the Commission must –
    - (a) either revoke the exemption by issuing to the firm concerned a Notice of Revocation in Form CC 12(1), or confirm the exemption as previously granted, in writing to that applicant; and
    - (b) give written reasons for its decision, as well as publishing the notice required by section 10(7).

## **22. Procedures relating to exemption applications (Schedule 1)**

- (1) The Commission may request further information from any person who submits
  - (a) an application for an exemption in terms of item 1 of Schedule 1; or
  - (b) a representation in response to a notice published in terms of item 3 of Schedule 1.
- (2) Rule 19 (1) – (3), read with the changes required by context, applies to the consideration of an application for exemption in terms of Schedule 1.

**23. Procedures related to revoking exemption certificates (Schedule 1)**

- (1) If the Commission is contemplating revoking an exemption granted in terms of Schedule 1, the Commission, in addition to the requirements of item 5 of that Schedule, must advise the professional association concerned, in writing, of the intention to do so.
- (2) The Commission may request further information from –
  - (a) the professional association; or
  - (b) any person who submits a representation in response to a notice published in terms of item 5 of Schedule 1.
- (3) After considering any submissions or other information received in relation to the proposed revocation, and consulting with the responsible Minister or member of the Executive Council, the Commission must –
  - (a) either revoke the exemption by issuing to the professional association concerned a Notice of Revocation of Exemption in Form CC 12(2), or confirm the exemption as previously granted to the association, in writing;
  - (b) give written reasons for its decision; and
  - (c) publish a notice of that decision in the Gazette.

## **PART 6 – Merger Procedures**

### **24. Review period and extensions**

- (1) In this Part, “Initial Period” means the 20 business day period allowed by section 13(5)(a), or section 14(1)(a), for the consideration of a small or intermediate merger, and the 40 business day period allowed by section 14A(1)(b) for the consideration of a large merger.
- (2) For each merger, the Initial Period begins on the date determined in accordance with Rule 29.
- (3) An extension of time, whether granted by the Commission in terms of section 13(5)(a) or 14(1)(a), or deemed to have been granted by the Commission in terms of Rule 34(2)(a), or granted to the Commission by the Tribunal in terms of section 14A(2), begins –
  - (a) on the business day following the date on which the Initial Period expires, or
  - (b) in the case of a second or subsequent extension granted in terms of section 14A(2), on the business day following the date on which the previous extension expires.
- (4) For each merger, the Initial Period, and any extension, once begun, continues without interruption for any reason, other than the issuance of a Demand for Corrected Information in Form CC 13(4), and then only to the extent allowed by Rule 32.

### **25. Small merger notification**

- (1) The Commission may require the parties to a small merger to notify the Commission of that merger in terms of section

- 13(3), by serving Form CC 9 on the parties to the merger.
- (2) The parties to a small merger must fulfil the notification requirements set out in this Part within 20 business days after receiving Form CC 9.
  - (3) If a small merger has already been implemented before the Commission serves Form CC 9, the Commission will have complied with sub-rule (1) when it has served Form CC 9 on the Primary Acquiring Firm.
  - (4) Rules 26 – 34 apply to the notification of a small merger, whether that notification is voluntary in terms of section 13(2), or in response to Form CC 9.

## **26. General merger notification requirements**

- (1) Parties to a merger must notify the Commission of that merger –
  - (a) by filing a joint notification in terms of Rule 27, or
  - (b) if permitted by order of the Commission, by filing separately in terms of Rule 28.
- (2) If, given the nature of a particular transaction, a firm is both a primary target firm and a primary acquiring firm, that firm, before filing a Merger Notice, may request the Commission to issue directions as to how, in the context of the transaction, to calculate the filing fee and apply the threshold calculation.
- (3) Within 5 business days after receiving a direction in terms of sub-rule (2), a firm concerned may apply to the Tribunal to reconsider the direction of the Commission with respect to the calculation of the filing fee, or the application of the threshold calculation.

## **27. Joint merger notification**

- (1) A joint merger notification must be made in a single filing by one of the primary firms, and must include:
  - (a) a Merger Notice in Form CC 4(1), which must declare whether, in the opinion of the filing firm, the merger is small, intermediate or large;
  - (b) for each of the Primary Acquiring Firm and the Primary Target Firm, a Statement of Merger Information in Form CC 4(2), which in each case –
    - (i) satisfies all the filing instructions set out in that Form, and
    - (ii) has attached to it all the documents required by those instructions;
  - (c) if the merger as declared on the Merger Notice is an intermediate or large merger, proof of service of a copy of the Merger Notice as required in terms of section 13A(2); and
  - (d) the prescribed merger notice fee, in the appropriate amount for the merger as declared on the Merger Notice, subject to sub-rule (2).
- (2) The prescribed merger notice fee may be paid separately from the remaining items required under sub-rule (1), but must be received by the Commission on or before the date of filing of those items.
- (3) In respect of a merger that is jointly notified, the merger notification requirements of every firm that is a party to the merger will have been fulfilled, when a primary firm has fulfilled the notification requirements set out in Rule 27, subject to –
  - (a) any Notice of Incomplete Filing in Form CC 13(2)



- issued to it by the Commission in terms of Rule 30, and either not appealed or confirmed on appeal; or
- (b) any Demand for Corrected Information in Form CC 13(4) issued to it by the Commission in terms of Rule 32, and either not appealed or confirmed on appeal.

## **28. Separate merger notification**

- (1) A primary firm may apply to the Commission for permission to file separate notification of a merger and, on considering an application under this sub-rule, the Commission –
- (a) may allow separate filing if it is reasonable and just to do so in the circumstances;
- (b) may give appropriate directions to give effect to the requirements of the Act and in particular, specifying which primary firm must satisfy which of the requirements set out in Rule 27; and
- (c) in an appropriate case, may further permit the applicant to file any document on behalf of the other primary firm.
- (2) A primary firm may apply to the Commission for an order on good cause shown allowing it to file any document on behalf of the other primary firm, if that other primary firm has failed within 10 business days to file –
- (a) a document that the Commission or the Tribunal has ordered it to file; or –
- (b) any other document or additional information required by the Commission in terms of this Part.
- (3) If a primary firm files a Statement of Merger Information on behalf of the other primary firm, the firm that files that

Statement is not required to file proof of service of a copy of that statement on the other primary firm.

- (4) In respect of a merger that is separately notified, the merger notification requirements of each firm will have been fulfilled when the notification requirements of their respective primary firms, as ordered by the Commission, have been fulfilled, subject to –
  - (a) any Notice of Incomplete Filing in Form CC 13(2) issued to it by the Commission in terms of Rule 30, and either not appealed or confirmed on appeal; or
  - (b) any Demand for Corrected Information in Form CC 13(4) issued to it by the Commission in terms of Rule 32, and either not appealed or confirmed on appeal.

## **29. Commencement of Initial Period**

- (1) The Initial Period for a merger begins on the business day following the date on which a merger notification was filed unless –
  - (a) the Commission issues Form CC 13(2) to the filing firm within the time allowed by Rule 30; and
  - (b) either the filing firm does not appeal against that form, or the Tribunal, on hearing an appeal, does not set aside the form entirely.
- (2) If the Commission issues Form CC 13(2), and it is not set aside entirely by the Tribunal, the Initial Period for the merger begins on the business day following the date on which the filing firm subsequently files documents in response to Form CC 13(2), if as a result of that filing, the Commission subsequently issues, or is deemed to have issued, a Notice of Complete Filing in Form CC 13(1).

### 30. Review of notification

- (1) Within 5 business days after receiving a Merger Notice filed in respect of a merger declared to be a large merger, or within 10 business days after receiving a Merger Notice filed in respect of any other merger, the Commission must deliver to the filing firm either –
  - (a) a Notice of Complete Filing in Form CC 13(1); or
  - (b) a Notice of Incomplete Filing in Form CC 13(2).
- (2) The Competition Commission must issue Form CC 13(1) in terms of sub-rule (1) if –
  - (a) the merger appears to fall within the jurisdiction of the Act;
  - (b) the declared category appears to be correct; and
  - (c) in the case of –
    - (i) a merger notified jointly, all the requirements set out in Rule 27 have been satisfied,
    - (ii) a merger notified separately, all the requirements set out by order of the Commission in terms of Rule 28 have been satisfied;
    - (iii) a subsequent filing by a firm in response to Form CC 13(2), all the requirements set out in that Form have been satisfied; or
    - (iv) a subsequent filing by a firm in response to an order of the Tribunal in terms of sub-rule (4), all the requirements set out in that order have been satisfied.
- (3) The Commission may issue Form CC 13(2) if after a filing of a merger notice, or other information, the merger file does not meet the applicable criteria set out in sub-rule (2).
- (4) Within 5 business days after receiving Form CC 13(2), the

- firm concerned may appeal to the Tribunal for an order setting aside any requirement set out in that form.
- (5) Upon hearing an appeal in terms of sub-rule (4), the Tribunal may make an order –
    - (a) Setting aside Form CC 13(2) entirely;
    - (b) Confirming any or all of the requirements set out in Form CC 13(2);
    - (c) Substituting other requirements for any of the requirements set out in Form CC 13(2); and
    - (d) Combining any or all of the requirements set out in Form CC 13(2) with additional or substitute requirements.
  - (6) If the Commission does not issue either Form CC 13(1) or Form CC 13(2) within the time allowed by sub-rule (1), or if the Tribunal sets aside all requirements set out by the Commission in Form CC 13(2), the Commission will be deemed to have issued Form CC 13(1) to the filing firm–
    - (a) as of the date on which the last material was filed; and
    - (b) subject to further review and subsequent notice in terms of Rule 31 or 32.
  - (7) Sub-rules (1) – (6), read with the changes required by context, apply to a subsequent filing by any party to the merger in response to –
    - (a) a notice issued to it in Form CC 13(2); or
    - (b) an order of the Tribunal in terms of sub-rule (4).

### **31. Request for additional information**

- (1) At any time during a merger investigation, the Commission may –

- (a) informally request additional information from a party to a merger; and
  - (b) require a party to a merger to provide additional information, at any time, as provided in section 13B(2), by serving on the party a demand in Form CC 13(3), setting out the specific information that the Commission requires.
- (2) A request or demand for information in terms of this Rule does not –
- (a) delay the beginning of the Initial Period; or
  - (b) suspend the Initial Period or any extension.

### **32. Apparently False or Misleading Information**

- (1) If, at any time, the Commission believes that a document filed in respect of a merger contains false or misleading information, the Commission may issue a Demand for Corrected Information in Form CC 13(4) to the firm that filed that document.
- (2) Within 5 business days after being served with a Demand for Corrected Information, the firm concerned may appeal to the Tribunal for an order confirming or setting aside the Demand.
- (3) If a firm does not appeal a Demand for Corrected Information within the time allowed by sub-rule (1), or if the Tribunal, on hearing the appeal, confirms the demand in whole or in part,
  - (a) the firm concerned must file corrected information;
  - (b) even if the Initial Period or an extension had already begun, the parties to the merger will not have fulfilled their notification requirements until that correct-

- ed information has been filed to the satisfaction of the Commission; and
- (c) the Initial Period for that merger begins anew on the day following the date on which the party concerned files replacing information to the satisfaction of the Commission.
- (4) If the Tribunal, on hearing an application in terms of sub-rule (2), sets aside the Demand entirely, the Demand is a nullity, and the fact that it was issued does not
- (a) delay the beginning of the Initial Period; or
  - (b) suspend the Initial Period or any extension.

### **33. Questions of jurisdiction and categories**

- (1) If the Commission has indicated on Form CC 13(2) that a merger appears to fall outside the jurisdiction of the Act –
- (a) the Commission must –
    - (i) refund the filing fee to the firm that paid it;
    - (ii) return the Merger Notice to the primary firm that submitted it; and
    - (iii) send a copy of Form CC 13(2) to –
      - (aa) the other primary firm if the filing was in terms of Rule 29; and
      - (bb) each person identified in the Merger Notice as being entitled to receive a copy of the Merger Notice in terms of section 13A(2); and
  - (b) no party to that merger is required to file any further documents concerning that merger.
- (2) If the Commission has indicated on Form CC 13(1) or CC 13(2), as the case may be, that the merger appears to

- fall within the jurisdiction of the Act, the Commission must –
- (a) send a copy of the Merger Notice and accompanying Statement of Merger Information to the Minister;
  - (b) if it appears to be a large merger, send a copy of the Merger Notice to the Tribunal.
- (3) Within 5 business days after receiving Form CC 13(1) or Form CC 13(2), as the case may be, the firm concerned may appeal to the Tribunal for an order setting aside the opinion of the Commission –
- (a) that the merger is within the jurisdiction of the Act; or
  - (b) in the case of Form CC 13(2), that the merger falls within a particular category other than that declared on the Merger Notice.
- (4) If, upon hearing an appeal in terms of sub-rule (2) –
- (a) the Tribunal sets aside the opinion of the Commission that the merger is within the jurisdiction of the Act, the provisions of sub-rule (1) apply; or
  - (b) the Tribunal sets aside the opinion of the Commission that the merger falls within a particular category other than that declared on the Merger Notice, the opinion of the Commission is a nullity.
- (5) If, within the time allowed by sub-rule (4), a firm does not appeal against the opinion of the Commission that the merger falls within a particular category other than that declared on the Merger Notice, or if the Tribunal, on hearing the appeal, confirms the Commission's opinion one of the primary parties must pay to the Commission the difference between –
- (a) the appropriate filing fee for the category deter-

- mined by the Commission; and
  - (b) the filing fee previously paid in respect of the merger.
- (6) The Initial Period for a merger referred to in this Rule begins –
- (a) On the date following the day that the merger notice was filed if, following the order of the Tribunal, there are no outstanding notification requirements, and
    - (i) The application to the Tribunal concerned only a matter of the jurisdiction of the Act,
    - (ii) The Tribunal set aside the Commission's category determination, or
    - (iii) The Tribunal upheld the Commission's category determination and one of the firms concerned paid the amount required in terms of sub-rule (5) within 5 business days after the Tribunal makes its order; or
  - (b) In any case, on the date determined in accordance with Rule 29(2).

#### **34. Abandonment of merger**

- (1) The primary acquiring firm may notify the Commission in Form CC 6 that it has abandoned the intended merger transaction and has no intention to implement it.
- (2) Upon the filing of Form CC 6 –
  - (a) the parties to the merger are in the same position as if the merger had never been notified; and
  - (b) the filing fee paid in respect of that merger is forfeited to the Commission, unless the party that paid the fee applies within 10 business days to the Tribunal for a remission of the fee, and the Tribunal, on good



cause shown, orders the Commission to refund all or part of the fee.

### **35. Participation by Minister in Commission merger proceedings**

- (1) If the Minister decides to participate in any intermediate or large merger proceedings before the Commission, the Minister must file a Minister's Notice of Intention to Participate in Form CC 5(2) within 10 days after receiving a copy of the Merger Notice from the Commission.
- (2) Upon receipt of a Minister's Notice of Intention to Participate in terms of sub-rule (1), the Commission –
  - (a) in the case of an intermediate merger, is deemed to have issued an extension certificate for 40 business days in terms of section 14(1)(a);
  - (b) must deliver a copy of the Minister's Notice of Intention to Participate to the primary acquiring firm and the primary target firm; and
  - (c) must 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 Commission 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 intermediate 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 business days after receiving advice from the Commission 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 Commission must advise the Minister in writing at the time that it is prepared to make a decision in terms of section 13, 14 or 14A.
- (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 business days after it has been served on them.

### **36. Minister of Finance intervention**

- (1) The Commission must send to the Minister of Finance a copy of the Merger Notice, and all other documents filed in respect of a merger, if the merger meets the criteria set out in section 18(2)(a).
- (2) The Minister of Finance may issue a notice to the Commission in terms of section 18(2)(b) by filing Form CC 5(3) at any time between –
  - (a) The date on which the Commission sends a notice in terms of sub-Rule (1); and
  - (b) 10 business days after receiving advice from the Commission in terms of sub-rule (3), if applicable.
- (3) If, in respect of a particular merger the Minister of Finance has received a notice in terms of sub-rule (1), but has not

yet issued a notice in terms of sub-rule (2), the Commission must advise the Minister of Finance in writing at the time that it is prepared to make a decision in terms of section 13, 14 or 14A.

- (4) Upon receiving a notice from the Minister of Finance in terms of sub-rule (2), the Commission must –
  - (a) serve a copy of the notice on the Tribunal and each other participant in those proceedings; and
  - (b) refund the filing fee to the firm that paid it.

### **37. Trade Union or employee participation**

A person who receives a notice in terms of section 13A(2) may notify the Commission of its desire to participate in Merger proceedings by filing Form CC 5(1) within 5 business days after the date on which that person received the notice.

### **38. Small and intermediate merger procedures**

- (1) If the Commission extends, or is deemed to have extended, the time period for considering a small or intermediate merger, it must issue a copy of the Extension Certificate in Form CC 14 to the firm that filed the merger notification.
- (2) If the Commission is deemed to have approved a merger in terms of section 13(6), or section 14(2), the Commission must –
  - (a) issue a Clearance Certificate, in Form CC 15, to the firm that filed the merger notification; and
  - (b) publish a notice of that approval in the Gazette.
- (3) After completing its investigation and consideration of a small or intermediate merger, the Commission must –
  - (a) issue, in terms of section 13(5) or 14(1)(b), either a

Clearance Certificate in Form CC 15, or a Notice of Prohibition in Form CC 16, to the firm that filed the Merger Notice; and

- (b) at the same time, make available to each participant a copy of its reasons for decision, if required to issue reasons for decision by section 13(7) or 14(3); and
- (c) publish a notice of its decision in the Gazette, as required by section 13(7) or 14(3).

### **39. Breach of merger approval conditions or obligations**

- (1) If a firm appears to have breached an obligation that was part of an approval or conditional approval of its merger, the Commission must deliver to that firm a Notice of Apparent Breach in Form CC 19, before taking any action –
  - (a) in terms of section 15(1)(c) to revoke that approval or conditional approval; or
  - (b) in terms of section 59 or 60.
- (2) Within 10 business days after receiving a Notice of Apparent Breach, a firm referred to in sub-rule (1) may –
  - (a) submit to the Commission a plan to remedy the breach; or
  - (b) request the Competition Tribunal to review the Notice of Apparent Breach on the grounds that the firm has substantially complied with its obligations with respect to the approval or conditional approval of the merger.
- (3) If a firm submits a plan to the Commission in terms of sub-rule (2)(a), the Commission may either –
  - (a) accept the proposed plan; or

- (b) reject the proposed plan, and invite the firm to consult with the Commission concerning the apparent breach, with the aim of establishing a plan satisfactory to the Commission by which all of the firm's obligations with respect to the approval or conditional approval may be satisfied.
- (4) If the Commission accepts a proposed plan, in terms of either sub-rule (3)(a) or (b), the Commission must monitor the firm's compliance with the plan.
  - (5) The Commission may act in terms of section 15(1) to revoke the approval or conditional approval of a merger referred to in sub-rule (1), or in terms of section 59 or 60, only if –
    - (a) the firm concerned does not respond to the Notice of Apparent Breach within 10 business days after receiving it, in the manner anticipated in sub-Rule (2);
    - (b) the firm concerned does not agree to meet, or fails to meet as agreed, with the Commission, as required by sub-rule (3)(b);
    - (c) the firm and the Commission are unable to agree a plan as contemplated in sub-rule (3)(b);
    - (d) the firm acts in a manner calculated to frustrate the Commission's efforts to monitor compliance with a plan, as required by sub-rule (4); or
    - (e) the firm fails to employ its best efforts to substantially comply with a plan established in terms of sub-rule (3).

#### **40. Revocation of approval of small or intermediate merger**

- (1) If the Commission is contemplating revoking its own decision to approve or conditionally approve a merger in terms of section 15(1), the Commission must –
  - (a) if the proposed revocation is based on section 15(1)(c), comply with Rule 39 before taking any further steps in terms of this Rule; and
  - (b) in any case –
    - (i) advise any firm concerned, in writing, of the intention to do so; and
    - (ii) publish a notice of the proposed revocation in the Gazette.
- (2) The Commission may request further information from any person who submits a representation in response to a notice published in terms of sub-rule (1)(b).
- (3) After considering any submissions or other information received in relation to the proposed revocation, the Commission must –
  - (a) either –
    - (i) confirm the approval or conditional approval, as the case may be, in writing, or
    - (ii) revoke it by issuing a Notice of Revocation of Merger Decision in Form CC 18 to the firm that filed the merger notification; and
  - (b) publish a notice of that decision in the Gazette.
- (4) Within 10 business days after receiving a Notice of Revocation of Merger Decision in terms of sub-rule (3), the firm concerned may request the Competition Tribunal to appeal against the notice on the grounds that there is no factual basis in terms of section 15(1) for the approval or

conditional approval to be revoked.

- (5) If no appeal is brought in terms of sub-rule (4), or if the Competition Tribunal upholds the Notice of Revocation of Merger Decision, 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 may further consider that merger only if the primary acquiring firm 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 must consider that merger on the basis of that new notice without reference to any previous notice filed in respect of it.

#### **41. Large mergers**

- (1) The Commission must submit a recommendation in Form CC 17 in respect of a large merger, with reasons for that recommendation, to the Tribunal and the Minister within –
  - (a) 40 business days after receiving the Merger Notice; or
  - (b) a longer period established by the Tribunal for that merger in terms of section 14A(2).
- (2) The Commission must deliver a copy of its recommendation and reasons to the firm that filed the merger notification, and to any other person, if required to do so in terms of an order made in terms of Rule 28.

# COMPETITION COMMISSION RULES

## REGULATING THE FUNCTIONS OF THE COMPETITION COMMISSION Annexure 1 – Tables

**Table CCR 1 – Methods and times for delivery of Documents**

Nature of Person Being Served	Method of Delivery	Date and Time of Deemed delivery
<b>ANY PERSON</b>	<p>By faxing the notice or a certified copy of the document to the person, if the person has a fax number; or</p> <p>By sending the notice or a copy of the document by electronic mail, if the person has an address for receiving electronic mail; or</p>	<p>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.</p> <p>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.</p>



	<p>By sending the notice or a certified copy of the document by registered post to the person's last-known address; or</p> <p>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</p> <p>By any other means authorised by the Tribunal; or</p> <p>By any other method allowed for that person in terms of the following rows of this Table.</p>	<p>On the 7th 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.</p> <p>On the date and at the time recorded on a receipt for the delivery.</p> <p>In accordance with the order of the Tribunal.</p> <p>As provided for that method of delivery.</p>
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<p><b>ANY NATURAL PERSON</b></p>	<p>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</p> <p>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</p> <p>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.</p>	<p>On the date and at the time recorded on a receipt for the delivery.</p> <p>On the date and at the time recorded on a receipt for the delivery.</p> <p>On the date and at the time recorded on a receipt for the delivery.</p>
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<b>THE COMMISSION</b>	<p>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</p> <p>By transmitting the document as a separate file attached to an electronic mail message addressed to the Commission; or</p> <p>By sending a computer disk containing the document in electronic form, by registered post addressed to the Commission; or</p>	<p>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.</p> <p>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.</p> <p>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.</p>
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<p><b>A COMPANY OR SIMILAR BODY CORPORATE</b></p>	<p>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 Commissioner's office.</p> <p>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</p> <p>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.</p>	<p>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.</p> <p>On the date and at the time recorded on a receipt for the delivery.</p> <p>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.</p>
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<p><b>A TRADE UNION</b></p>	<p>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.</p>	<p>On the date and at the time recorded on a receipt for the delivery.</p>
<p><b>EMPLOYEES OF FIRM</b></p>	<p>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.</p>	<p>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.</p>
		<p>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.</p>

<p><b>A PARTNERSHIP, FIRM OR ASSOCIATION</b></p>	<p>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</p> <p>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.</p>	<p>On the date and at the time recorded on a receipt for the delivery.</p>
<p><b>A MUNICIPALITY</b></p>	<p>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.</p>	<p>On the date and at the time recorded on a receipt for the delivery.</p>

<p><b>A STATUTORY BODY OTHER THAN THE COMMISSION</b></p>	<p>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.</p>	<p>On the date and at the time recorded on a receipt for the delivery.</p>
<p><b>THE STATE OR A PROVINCE</b></p>	<p>By handing the notice or a certified copy of the document to a responsible employee in any office of the State Attorney.</p>	<p>On the date and at the time recorded on a receipt for the delivery.</p>

**Table CCR 2 – Notices and Applications**

Section #	Purpose of notice or Application	Form #	Conditions
49B	Complaint	CC 1	
10(1)	Application for Exemption from Chapter 2	CC 3(1)	Payment of a filing fee.
10(4)	Application for Exemption re: intellectual Property for Professional Association Rules	CC 3 2)	Payment of a filing fee.
Schedule 1	Application for Exemption re: Professional Association Rules	CC 3(3)	Payment of a filing fee.
13 and 13A	Merger Notice	CC 4(1)	Payment of a filing fee calculated in accordance with Rule 10(5).  Must have Form CC 4(2) (Statement of Merger Information) attached.



13 and 13A	Statement of Merger Information	CC 4(2)	Must be filed by one of the Primary firms involved in the merger.
Rule 37	Notice of Intention to Participate [13(2)]	CC 5(1)	
s.18; Rule 35	Minister's Notice of Intention to Participate	CC 5(2)	
s. 18(2)	Minister of Finance Certificate	CC 5(3)	
Rule 34	Notice of Abandoned Merger	CC 6	
44	Claim that information is confidential	CC 7	Must be filed with the information to which it relates

**Table CCR 3 – Certificates and Notices of Referral**

Section #	Purpose of notice or Application	Form #	Conditions
50	Notice of Non-referral of Complaint	CC 8	
13(3)	Notice to report a Small Merger	CC 9	
10	Exemption Certificate (Chapter 2)	CC 10(1)	
Schedule 1	Exemption Certificate (Schedule 1)	CC 10(2)	
Rule 19	Request for Further Particulars (Chapter 2)	CC 10(3)	
Rule 22	Request for Further Particulars (Schedule 1)	CC 10(4)	
10	Notice of refusal to grant exemption (Chapter 2)	CC 11(1)	

Schedule 1	Rejection of Application (Schedule 1)	CC 11(2)	
10	Withdrawal of Notice 11(1)	CC 11(3)	
10	Notice of Revocation (of Chapter 2 Exemption Certificate)	CC 12(1)	
Schedule 1	Notice of Revocation (of Schedule 1 Exemption Certificate)	CC 12(2)	
Rule 30	Notice of Complete Filing	CC 13(1)	
Rule 30	Notice of Incomplete Filing	CC 13(2)	
13B(2); Rule 31	Demand for Additional Merger Information	CC 13(3)	
Rule 32	Demand for Corrected Information	CC 13(4)	
14	Extension Certificate	CC 14	

14	Merger Clearance Certificate	CC 15	May be used either with or without conditions.
14	Notice of Prohibition of Merger	CC 16	
14A	Referral of Large Merger to Minister and Tribunal, with recommendation	CC 17	
15	Notice of Revocation of Merger Decision	CC 18	
Rules 39, 40	Notice of Apparent Breach	CC 19	
49A	Commission Summons	CC 20	
49	Receipt for items removed during search	CC 21	Must be distinctively numbered and produced in duplicate.
24	Appointment of Inspector	CC 22	May be supplemented by a card in a smaller size.



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

*(Published in Government Notice No. 22025 in Government Gazette Vol. 428 on 1 February 2001).*

**In terms of section 27(2) of the Competition Act, 1998 (Act No. 89 of 1998), as amended, The Minister of Trade and Industry, in consultation with the Chairperson of the Competition Tribunal, has made the following regulations relating to the functions of the Competition Tribunal to come into operation at the time that the Competition Second Amendment Act, 2000 (Act No. 39 of 2000) comes 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. Repeal of previous rules**

The Competition Tribunal Rules published in Government Notice R1 940 of 1999, in Government Gazette 20386 of 20 August 1999, are repealed.

**3. Interpretation**

- (1) Section 1 applies to the interpretation of these Rules.
- (2) A word or expression that is defined in a chapter of the Act bears the same meaning in these Rules as in the Act.
- (3) 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.

- (4) In these Rules unless the context indicates otherwise,
- (a) “Act” means the *Competition Act*, 1998 (Act No. 89 of 1998), as amended from time to time;
  - (b) “Answer” means a document as described in Rule 16 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” means a copy of a 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) “complaint” means either
    - (i) a matter initiated by the Commission in terms of section 49B(1); or
    - (ii) a matter that has been submitted to the Commission in terms of section 49B(2)(b);
  - (k) “Competition Commission Rules” means the rules promulgated in terms of the Act for the regulation of procedures of the Commission;
  - (l) “Complaint Referral” means an initiating document as described in Rule 14;

- (m) “Court” means the Competition Appeal Court established by section 36;
- (n) “deliver” depending on the context, means to serve, or to file, a document;
- (o) “Deputy Chairperson” means the officer appointed in terms of section 30;
- (p) “file”, when used as a verb, means to deposit with the registrar;
- (q) “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;
- (r) “initiating document”, depending on the context, means either an Application, Complaint Referral, Notice of Appeal, a Merger Referral or Request for Consideration, or a Notice of Motion unless used to bring an interlocutory application in a matter before the Tribunal;
- (s) “initiating party”, depending on the context, means either
  - (i) in the case of a Complaint Referral, the Commission, or other person referred to in Rule 14(1)(b);
  - (ii) in the case of a Merger Referral, the Commission;
  - (iii) in the case of consideration of a small or 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;

- (t) “intervenor” means any person who, in terms of the Act or Rule 46, has been granted standing to participate in particular proceedings before the Tribunal;
- (u) “Judge President” means the Judge President of the Court;
- (v) “member” means a person appointed to the Tribunal in terms of section 26;
- (w) “Merger Notice” means a notification –
  - (i) voluntarily submitted in terms of section 13(2);
  - or
  - (ii) required in terms of either section 13(3) or section 13A;
- (x) “Merger Referral” means an initiating document as described in Rule 35;
- (y) “Notice of Appeal” means an initiating document as described in Rule 38;
- (z) “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;
- (aa) “panel” means the group of members assigned by the chairperson in terms of section 31(1) to hear any particular matter before the Tribunal;
- (bb) “presiding member” means the member designated by the chair to preside over particular proceedings of the Tribunal;

- (cc) “public holiday” means a public holiday referred to in section 1 of the Public Holidays Act, 1994 (Act 36 of 1994);
- (dd) “registrar” means the officer of the Tribunal appointed in terms of Rule 5 and includes any acting or assistant registrar;
- (ee) “Reply” means a document as described in Rule 17 and filed by a respondent;
- (ff) “Request for Consideration” means a document filed in terms of Rule 33;
- (gg) “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;
- (hh) “Rule” includes any footnote to a Rule, and any Table included within or referred to in a Rule;
- (ii) “serve” means to deliver a document to a person other than the registrar;
- (jj) “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
- (kk) “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);
- (iii) a member of the Tribunal sitting in terms of section 31(5);or
- (iv) the registrar of the Tribunal.

## **Division B – Tribunal Office Functions**

### **4. Office hours and address of Tribunal**

- (1) The offices of the Tribunal 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 Rules 6 and 8, any communication to the Tribunal, or a member of the staff of the Tribunal, may be –
  - (a) Delivered by hand to:  
The Registrar,  
The Competition Tribunal  
the dti Campus  
Building C: Mulayo  
77 Meintjies Street, Sunnyside, Pretoria  
Republic of South Africa
  - (b) Addressed by post to:  
The Competition Tribunal  
Private Bag X28  
Lynnwood Ridge, Pretoria 0040  
Republic of South Africa
  - (c) Communicated by telephone on 27 012 394 3300
  - (d) Transmitted by Fax on 27 012 394 0169; or
  - (e) Transmitted by electronic mail to  
ctsa@comptrib.co.za



## **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.

## **PART 2 – Delivery of Documents**

### **6. Delivery of documents**

- (1) A notice or document may be delivered in any manner set out in Table CTR 1.
- (2) Subject to sub-rule (4), a document delivered by a method listed in the second column of Table CTR 1 will be deemed to have been delivered to 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; and
  - (b) in any other case, the person concerned may apply to the Tribunal for an order of substituted service.
- (4) Subject to Rule 4(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 4(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.

## **7. Issuing documents**

- (1) If the Act or these Rules require the Tribunal to issue a document –
  - (a) the document will have been issued by the Tribunal when it has been signed, and served on any person to whom it is addressed; and
  - (b) the document may be signed and served at any time of day, despite Rule 4(1).
- (2) Rule 6(4) does not apply to the service of a document issued by the Tribunal.

## **8. 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.
- (5) A person who files any document in terms of the Act or these rules must provide to the registrar that person's –
  - (a) legal name;
  - (b) address for service;
  - (c) telephone number;
  - (d) if available, email address and fax number;
  - (e) if the person is not an individual, the name of the individual authorised to deal with the Tribunal on behalf of the person filing the document; and
  - (f) if the person filing the document does so as the representative of another person, they must comply with Rule 44(1).

## **9. Fees**

- (1) The fee for filing an initiating document, other than a Merger Referral or request for Consideration, is R100-00.
- (2) The registrar may charge a fee of R1-00 per A4-size page or part thereof to any person wishing to copy a document in the possession of the Tribunal and R2-00 each for the registrar's certificate on certified copies of documents.

## **10. 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.

## **11. 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.

## **12. 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**

### **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);
  - (e) The Minister, if the information concerns a merger; or
  - (f) The Minister of Finance, if the information concerns a merger referred to in section 18(2).
- (3) When the Tribunal supplies any information to the Minister, or the Minister of Finance, the registrar must identify any information included in its submission –
  - (a) in respect of which a claim has been made in terms of Section 44 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. Initiating complaint proceedings**

- (1) A Complaint Referral may be filed –
  - (a) by the Commission, in terms of section 50(1) or 50(2)(a), in Form CT 1(1);
  - (b) by a complainant, in terms of section 51(1), 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 to that complainant; 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) If, in respect of a particular matter, more than one person files a Complaint Referral in terms of sub-rule (1), the registrar must combine those referrals under a common case number.
- (3) The person who files a Complaint Referral must serve a copy of it within 3 business days after filing on –
  - (a) The respondent;
  - (b) The Commission, if the Commission did not file the Referral; and
  - (c) On each other person who has previously filed a Complaint Referral in that matter.



## **15. 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), as required by Rule 14.
- (2) Subject to Rule 24 (1), a Complaint Referral must be supported by an affidavit setting out in numbered paragraphs –
  - (a) a concise statement of the grounds of the complaint; and
  - (b) the material facts or the points of law relevant to the complaint and relied on by the Commission or complainant, as the case may be.
- (3) A Complaint Referral may allege alternative prohibited practices based on the same facts.

## **16. Answer**

- (1) Within 20 business days after being served with a Complaint Referral filed by the Commission, a respondent who wishes to oppose the Complaint Referral must –
  - (a) serve a copy of their Answer on the Commission; and
  - (b) file the Answer with proof of service.
- (2) Within 20 business days after being served with a Complaint Referral filed by a person other than the Commission, a respondent who wishes to oppose the Complaint Referral must –
  - (a) serve a copy of their Answer on the Commission, on the person who filed the Referral, and on each 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.

- (3) An Answer that raises only a point of law must set out the question of law to be resolved.
- (4) Any other Answer must be in affidavit form, setting out in numbered paragraphs –
  - (a) a concise statement of the grounds on which the Complaint Referral 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.
- (5) 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.
- (6) In an answer, the respondent must qualify or explain a denial of an allegation, if necessary in the circumstances.

## **17. 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 each 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 in numbered paragraphs –

- (a) an admission or denial of each new ground or material fact raised in the Answer; 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.

## **18. 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.

## **19. Completion of complaint file**

Subject to any order made in terms of Rule 18 or Rule 22, the filing of documents is complete when a Complaint Referral or Answer has not been responded to within the time allowed.

## **20. Complaint hearings**

Proceedings in a complaint hearing, other than a hearing under section 49D, will be governed by orders made in terms of Rule 22, except to the extent that the presiding member at the hearing rules otherwise.

## **21. Pre-hearing conferences**

- (1) Before, or within 20 business days after, the filing of documents is completed, a member of the Tribunal assigned by the Chairperson may convene a pre-hearing conference on a date and at a time determined by that member with –
  - (a) the Commission;
  - (b) each complainant who has filed a Complaint Referral, subject to section 53(a)(ii);
  - (c) intervenors; and
  - (d) 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.

## **22. 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 partici-

- pants 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 a pre-hearing conference, the assigned member of the Tribunal may require each participant to submit at a date to be determined, but before the hearing, a written statement summarising its argument, if any, with respect to the com-

plaint, and identifying what it believes are the major unresolved issues.

- (3) 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.
- (4) A member of the Tribunal assigned by the Chairperson may schedule a further pre-hearing conference on their own motion, and the provisions of this rule apply to such a conference.

### **23. 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.

### **24. Initiating consent hearings**

- (1) If a Complaint Referral is to be proceeded with in terms of section 49D(1) –
  - (a) Rules 14(3), 15(2) and 16 – 23 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 copy of each Form CT 3 filed with the Commission in respect of the matter, if any; and
    - (iii) a draft order in the terms agreed, signed by the

Commission and the respondent indicating their consent to the order.

- (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).
- (3) A party intending to file a Notice of Motion in terms of sub-rule (2) –
  - (a) must notify each complainant, in writing, that a consent order may be proposed to the Tribunal; and
  - (b) invite the complainant to inform the Commission in writing within 10 business days after receiving that notice –
    - (i) whether the complainant is prepared to accept damages under such an order; and
    - (ii) if so, the amount of damages claimed.
- (4) A draft order filed in terms of this Rule must meet the requirements set out in Competition Commission Rule 18(2) – (4), read with the changes required by context.

## **25. Consent hearings**

- (1) Upon receiving a Complaint Referral in terms of Rule 24(1), or a Notice of Motion in terms of Rule 24(2), the registrar must convene a hearing of the Tribunal at the earliest possible date.
- (2) 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 complainant, 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 –
    - (i) after 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 49C**

### **26. Initiating interim relief procedures**

- (1) A person wishing to apply for an interim order in terms of section 49C(1) must file 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 the Commission and each respondent named in the Notice of Motion, within 3 business 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) Rules 18 and 19, each read with changes required by the context, apply to an application under this Rule.

### **27. 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 Commission, the applicant and any other person against whom the order is sought; and

- (b) must file proof of service with the affidavit.
- (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 Commission and on any other person against whom the order is sought; and
  - (b) file a copy of the replying affidavit and proof of service.

**28. Interim relief hearings**

- (1) Rules 21, 22 and 23, each read with the changes required by context, apply to the pre-hearing procedures of an interim relief application.
- (2) Subject to section 55, evidence on an application for interim relief must be by affidavit.
- (3) In urgent circumstances, the Tribunal on good cause shown may shorten any time period or dispense with any formalities provided for in this Division.

## Division C – Merger Proceedings

### 29. Participation by Minister in merger proceedings

- (1) If the Minister participated in merger proceedings before the Commission, the Minister is a participant in proceedings concerning that merger before the Tribunal.
- (2) If the Minister did not participate in merger proceedings before the Commission the Minister may file a Minister's Notice of Intention to Participate in Form CC 5(2) within 5 business days after –
  - (a) the Commission refers a large merger to the Tribunal; or
  - (b) a person entitled to do so in terms of section 16(1) files a Request for Consideration in respect of an intermediate merger.
- (3) If the Minister files a Minister's Notice of Intention to Participate in terms of sub-Rule (1) –
  - (a) the Minister is a participant in proceedings concerning that merger before the Tribunal, and
  - (b) the registrar must –
    - (i) deliver a copy of the Minister's Notice of Intention to Participate to every other participant; and
    - (ii) 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.
- (4) The registrar must deliver to the Minister any document that is filed in connection with a merger while the Minister is a participant in those merger proceedings.

- (5) 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 became a participant in those proceedings; and
  - (b) 10 business days after receiving advice from the registrar in terms of sub-rule (6), if applicable.
- (6) If, in respect of a particular merger the Minister is a participant, but has not yet filed a statement in terms of sub-rule (5), the registrar must advise the Minister in writing at the time that the Tribunal is prepared to make a decision in terms of section 16.
- (7) Upon receiving a concise statement from the Minister in terms of sub-rule (5), the registrar 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 business days after it has been served on them.

### **30. Minister of Finance intervention**

- (1) The Minister of Finance may issue a notice to the Tribunal in terms of section 18(2)(b) by filing Form CC 5(3) at any time between –
  - (a) The date on which the Commission refers a large merger to the Tribunal, or a person files a Request for Consideration in terms of section 16(1), as the case may be; and
  - (b) 10 business days after receiving advice from the registrar in terms of sub-rule (2), if applicable.

- (2) If, in respect of a particular merger, the Commission served the Minister of Finance with a Notice as required under Commission Rule 36, but the Minister of Finance has not yet issued a notice in terms of sub-rule (1), the registrar must advise the Minister of Finance in writing at the time that the Tribunal is prepared to make a decision in terms of section 16.
- (3) Upon receiving a notice from the Minister of Finance in terms of sub-rule (1), the registrar must serve a copy of the notice on the Commission and each other participant in those proceedings.

### **31. Preliminary merger decisions**

- (1) An application may be made by filing a Notice of Motion and affidavit, as described in Rule 42(1), for any of the following matters:
  - (a) For an order extending time in terms of section 14A(2).
  - (b) An appeal against directions by the Commission concerning the application of the Threshold requirements and fee calculations, in terms of Competition Commission Rule 26(3).
  - (c) An appeal against an opinion of the Commission concerning the jurisdiction of the Act, in terms of Competition Commission Rule 33.
  - (d) An appeal against Form CC 13(2) issued by the Commission in terms of Competition Commission Rule 30.
  - (e) An appeal against a Demand for Corrected Information issued by the Commission, in terms of Competition Commission Rule 32.

- (f) For an order for a remission of filing fees, in terms of Competition Commission Rule 34(2).
- (2) A person appealing against Form CC 13(2) in terms of both Competition Commission Rule 30(4) and Competition Commission Rule 33(3) must combine both appeals on a single Notice of Motion.
- (3) A Notice of Motion and affidavit filed in terms of this Rule –
  - (a) must be served on the Commission, or if the Commission is the applicant, on the firm that filed the Merger Notice; and,
  - (b) if the applicant seeks an order in terms of Competition Commission Rule 33(3), must also be served on the other primary firm.
- (4) Upon receiving a Notice of Motion and affidavit filed in terms of this Rule, the registrar must set the matter down for hearing at the earliest convenient date.
- (5) A motion in terms of sub-rule (1)(a) may be heard by a single member of the Tribunal in terms of section 31(5).
- (6) Division E, other than the requirements set out in Rule 42(1) and (3), does not apply to a Notice of Motion brought in terms of this Rule.
- (7) Upon hearing an appeal in terms of Competition Commission Rule 30(3), the Tribunal may make an order –
  - (a) Setting aside Form CC 13(2) entirely;
  - (b) Confirming any or all of the requirements set out in Form CC 13(2);
  - (c) Substituting other requirements for any of the requirements set out in Form CC 13(2); or
  - (d) Combining any or all of the requirements set out in Form CC 13(2) with additional or substitute requirements.

### **32. Requests for consideration of small or intermediate mergers**

- (1) A person contemplated in section 16(1) may request the Tribunal to consider the Commission's decision in a merger in the manner allowed in that section, by filing a Request for Consideration in Form CT 4 within 10 business days after the Commission issues its decision in that merger.
- (2) A Request for Consideration must contain a concise statement indicating whether party seeks to have the merger prohibited, approved without conditions, or approved with conditions, and if the latter, what conditions the party is prepared to accept, 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.

### **33. Small or Intermediate merger pre-hearing procedures**

- (1) When a Request for Consideration has been filed, the registrar must –

- (a) schedule a date within 10 business days after the filing date for either –
    - (i) the beginning of the hearing of the Request; or
    - (ii) the beginning of a pre-hearing conference in terms of sub-Rule (3); and
  - (b) serve a Notice of Set-Down in Form CT 15 on the Commission, on the party who filed the Request for Consideration and on each person who has indicated an intention to participate.
- (2) The period provided for in sub-rule (1) may be extended –
- (a) for a further 10 business 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.
- (3) 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 21 and 22, each read with the changes required by context, apply to that conference.
- (4) In addition to the provisions of Rules 21 and 22, 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.

#### **34. Small or Intermediate merger hearing procedures**

After completing its hearing in respect of a small or intermediate merger, the Tribunal must -

- (a) either approve the merger, approve the merger subject to conditions, or prohibit the merger within 10



business days after the end of the hearing by issuing a certificate in the appropriate Form CT 10 or CT 11; and

- (b) within 20 business days after issuing a certificate –
  - (i) issue written reasons for its decision; and
  - (ii) publish a notice of its decision in the Gazette.

### **35. Referral of large mergers**

- (1) When a Merger Referral has been filed, the registrar must –
  - (a) schedule a date within 10 business days after the filing date for either –
    - (i) the beginning of the hearing of the Referral; or
    - (ii) the beginning of a pre-hearing conference in terms of sub-rule (3); and
  - (b) serve a Notice of Set-Down in Form CT 15 on the Commission and on each person who has indicated an intention to participate.
- (2) The period provided for in sub-rule (1) may be extended –
  - (a) for a further 10 business 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.
- (3) At any time after receiving a notice of a large merger in terms of section 14A(1)(a), but 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 21 and 22, each read with the changes required by context, apply to that conference.

- (4) In addition to the provisions of Rules 21 and 22, 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) 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 10 business days after the end of the hearing by issuing a certificate in the appropriate Form CT 10, or CT 11; and
  - (b) within 20 business days after issuing a certificate –
    - (i) issue written reasons for its decision; and
    - (ii) publish a notice of its decision in the Gazette.

**36. Applications in terms of section 14A (3)**

- (1) An application in terms of section 14A (3) must be made by Notice of Motion in Form CT6.
- (2) The Chairperson may give procedural directions regarding an application under this Rule.

**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 15(1)(c), that it has taken the steps set out in Rule 39 of the Competition Commission Rules.

- (2) A Notice of Motion in terms of sub-rule (1) must specify the provision of section 15(1) 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 business 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 15(1) for the approval or conditional approval to be revoked.
- (7) If no review is applied for in terms of sub-rule (6), 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) A person referred to in section 10(8), or Item 8 of Schedule 1, may initiate an exemption appeal proceeding in terms of that section by filing a Notice of Appeal in Form CT 7 within 20 business days after notice of the relevant decision is published in the Gazette.
- (2) 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 that has been revoked remains in effect; and
  - (c) a refusal to grant an exemption remains in effect.
- (3) 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.
- (4) A Notice of Appeal may set out alternative grounds of appeal based on the same facts.

- (5) The appellant must serve a copy of the Notice of Appeal on each respondent, within 3 business days after filing it.
- (6) 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 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) set down a date and time for the hearing of the appeal; and
  - (b) serve a Notice of Set-Down in Form CT 15 on the Appellant and each respondent.
- (2) 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) indicate the basis of the application; or
  - (b) 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 or Commission Rule in respect of which the applicant seeks condonation;
    - (iv) allege conduct referred to in –
      - (aa) section 59(1)(c) in respect of which the Commission seeks an administrative fine; or
      - (bb) section 60(1) in respect of which the Commission seeks an order of divestiture;
  - (c) indicate the order sought; and
  - (d) 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 Commission and on any other person against whom the order is sought; and
  - (b) file a copy of the Replying affidavit and proof of service.

## **PART 5 – Representation of Parties, Intervenors, Witnesses, and Interpreters**

### **44. 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.
  - (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.

#### **45. 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.

#### **46. Intervenor**

- (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 the member 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.

#### **47. Summoning witnesses**

- (1) If the Tribunal requires a witness to attend any proceedings to give evidence the presiding member may have a summons issued 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.

#### **48. 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.

#### **49. 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**

### **50. 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.

### **51. 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.

## **52. 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.

## **53. Default orders**

- (1) If a person served with an initiating document has not filed a response within the prescribed period, the initiating party may apply in accordance with Part 4 - Division E 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 initiating document was adequately served.
- (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.



## **PART 7 – Procedures Generally**

### **54. Late filing, extension and reduction of time**

- (1) A party to any matter may apply to the Tribunal to condone late filing of a document, or to request an extension or reduction of the time for filing a document, by filing a request in Form CT 6.
- (2) Upon receiving a request in terms of sub-rule (1), the registrar, after consulting the parties to the matter, must set the matter down for hearing in terms of section 31(5) at the earliest convenient date.

### **55. 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.

### **56. 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.

#### **57. 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**

### **58. Costs and taxation**

- (1) Upon making an order under Part 4, the Tribunal may make an order for costs.
- (2) 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 paragraph (a) 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 signed 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 Tribunal.
- (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 being served	Method of Delivery	Date and Time of Deemed delivery
<b>ANY PERSON</b>	By faxing the notice or a certified copy of the document to the person, if the person has a fax number; or  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 fax receiver, unless there is conclusive evidence that it was delivered on a different date or at a different time.  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.

<p><b>ANY NATURAL PERSON</b></p>	<p>By sending the notice or a certified copy of the document by registered post to the person's last-known address; or</p> <p>By any other means authorised by the High Court; or</p> <p>By any other method allowed for that person in terms of the following rows of this Table.</p> <p>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</p>	<p>On the 7th 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.</p> <p>In accordance with the order of the High Court.</p> <p>As provided for that method of delivery.</p> <p>On the date and at the time recorded on a receipt for the delivery.</p>
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<p><b>THE TRIBUNAL</b></p>	<p>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</p> <p>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.</p> <p>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</p>	<p>On the date and at the time recorded on a receipt for the delivery.</p> <p>On the date and at the time recorded on a receipt for the delivery.</p> <p>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.</p>
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<p>By transmitting the document as a separate file attached to an electronic mail message addressed to the registrar of the Tribunal; or</p> <p>By sending a computer disk containing the document in electronic form, by registered post addressed to the registrar of the Tribunal; or</p> <p>By handing the document, or a computer disk containing the document in electronic form, to the registrar of the Tribunal.</p>	<p>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.</p> <p>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.</p> <p>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.</p>
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<b>THE COMMISSION</b>	<p>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</p> <p>By transmitting the document as a separate file attached to an electronic mail message addressed to the Commission; or</p> <p>By sending a computer disk containing the document in electronic form, by registered post addressed to the registrar of the Commission; or</p>	<p>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.</p> <p>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.</p> <p>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.</p>
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<p><b>A COMPANY OR SIMILAR BODY CORPORATE</b></p>	<p>By handing the document, or a computer disk containing the document in electronic form, to the Commission, or a responsible employee who is apparently in charge of the Commission's office.</p> <p>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</p> <p>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.</p>	<p>On the date and at the time noted in a receipt issued by the Commission 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.</p> <p>On the date and at the time recorded on a receipt for the delivery.</p> <p>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.</p>
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<p><b>A TRADE UNION</b></p>	<p>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.</p> <p>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.</p>	<p>On the date and at the time recorded on a receipt for the delivery.</p> <p>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.</p>
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<p><b>EMPLOYEES OF FIRM</b></p>	<p>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.</p>	<p>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.</p>
<p><b>A PARTNERSHIP, FIRM OR ASSOCIATION</b></p>	<p>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</p> <p>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.</p>	<p>On the date and at the time recorded on a receipt for the delivery.</p>

<p><b>A MUNICIPALITY</b></p>	<p>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.</p>	<p>On the date and at the time recorded on a receipt for the delivery.</p>
<p><b>A STATUTORY BODY OTHER THAN THE COMMISSION AND TRIBUNAL</b></p>	<p>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.</p>	<p>On the date and at the time recorded on a receipt for the delivery.</p>
<p><b>THE STATE OR A PROVINCE</b></p>	<p>By handing the notice or a certified copy of the document to a Responsible employee in any office of the State Attorney.</p>	<p>On the date and at the time recorded on a receipt for the delivery.</p>

# COMPETITION TRIBUNAL RULES

## Division B – Interim Relief in terms of Section 49C: Part 8 – Orders, Costs and Taxation

Table CTR 2 – Notices and Applications

Rule #	Purpose of notice or Application	Form #	Conditions
Section 50	Referral of Complaint by Commission	CT 1(1)	
Section 51	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.
Section 14(1)(c)	Referral of Complaint by Complainant	CT 1(3)	Must be attached to a Referral of Complaint and Draft Order in Form CT 6.
Rules 24 and 25	Content to include damages in consent order	CT 3	

Rule 32	Request for Consideration of an Intermediate Merger	CT 4	
Several	Notice of Motion	CT 6	
Rule 38	Notice of Appeal	CT 7	
Rule 50	Notice of Withdrawal	CT 8	
Section 14A	Extension Certificate	CT 9	
Section 16	Merger Clearance Certificate	CT 10	May be used either with or without conditions.
Section 16	Notice of Prohibition of Merger	CT 11	
Section 16(3)	Notice of Revocation of Merger Decision	CT 12	

Section 54 & Rule 47	Tribunal Summons	CT 13
Several	Notice of Set-Down	CT 15
Section 65(6)(b)	Certificate of Decision	CT 16





# GENERAL NOTICE

## NOTICE 253 OF 2001

### DEPARTMENT OF TRADE AND INDUSTRY

## THE COMPETITION ACT, 1998

### (ACT 89 OF 1998)

#### Determination of Threshold

I, Alexander Erwin, Minister of Trade and Industry, in consultation with the Competition Commission, do hereby determine in terms of section 6(1) of the Competition Act, 1998 (Act 89 of 1998), and section 23 of the Competition Second Amendment Act, 2000 (Act 39 of 2000) (collectively, "the Act") as follows:

- (1) Part B of Chapter 2 of the Act applies to any firm –
  - (a) whose annual turnover in, into or from the Republic is valued at or above R 5 million; or
  - (b) whose assets in the Republic are valued at or above R 5 million.
- (2) For the purposes of Section 6 of the Act, the assets and the turnover of a firm in, into or from the Republic must be calculated in accordance with the provisions of the following Schedule.

# SCHEDULE

## Method of Calculation

### 1. Generally accepted accounting practices apply

For the purposes of section 11 of the Act, the assets, and the turnover, of a firm must be calculated in accordance with South African generally accepted accounting practice (“G.A.A.P.”), subject only to the following provisions of this notice.

### 2. Valuation of Assets

- (1) For the purpose of section 11 of the Act, the asset value of a firm at any time is based on the gross value of the firm’s assets as recorded on the firm’s balance sheet for the end of the immediately previous financial year, subject to the provisions of sub-items (2) and (3).
- (2) In particular –
  - (a) the asset value equals the total assets less any amount shown on that balance sheet for depreciation or diminution of value;
  - (b) the assets are to include all assets on the balance sheets of the firm, including any goodwill or intangible assets included in their balance sheets;
  - (c) no deduction may be taken for liabilities or encumbrances of the firm;
  - (d) assets in the Republic includes all assets arising from activities in the Republic.
- (3) If, between the date of the financial statements being used to calculate the asset value of a firm, and the date on which that calculation is being made, the firm has acquired any

subsidiary company, associated company or joint venture not shown on those financial statements, or divested itself of any subsidiary company, associated company or joint venture shown on those financial statements –

- (a) The following items must be added to the calculation of the firm's asset value if these items should in terms of G.A.A.P. be included in the firm's asset value;
  - (i) The value of those recently acquired assets; and
  - (ii) Any asset received in exchange for those recently divested assets.
- (b) The following items may be deducted in calculating the firm's asset value if these items were included in the firm's asset value:
  - (i) The value of those recently divested assets at the date of their divestiture; and
  - (ii) Any asset that was shown on the balance sheet and was subsequently used to acquire the recently acquired asset.

### **3. Calculation of annual turnover**

- (1) For the purpose of section 6 of the Act, the annual turnover of a firm at any time is the gross revenue of that firm from income in, into or from the Republic, arising from the following transactions and events as recorded on the firm's income statement for the immediately previous financial year, subject to the provisions of sub-items (2), (3) and (4):
  - (a) the sale of goods;
  - (b) the rendering of services; and

- (c) the use by others of the firm's assets yielding interest, royalties and dividends.
- (2) In particular –
- (a) When calculating turnover the following amounts may be excluded:
    - (i) any amount that is properly excluded from gross revenue in accordance with G.A.A.P.;
    - (ii) taxes, rebates, or any similar amount calculated and paid in direct relation to revenue, as for example, sales tax, value added tax, excise duties, and sales rebates, may be deducted from gross revenue;
  - (b) revenue excludes gains arising from non current assets and from foreign currency transactions; and
  - (c) for banks and insurance firms revenue includes those amounts of income required to be included in an income statement in terms of generally accepted accounting practice, but excluding those amounts noted in 3(2)(b).
- (3) If, between the date of the most recent financial statements being used to calculate the turnover of a firm, and the date on which that calculation is being made, the firm has acquired any subsidiary company, associated company or joint venture not shown on those financial statements, or divested itself of any subsidiary company, associated company or joint venture shown on those financial statements –
- (a) the turnover generated by those recently acquired assets must be included in the calculation of the firm's turnover if this turnover should in terms of

- (b) G.A.A.P. be included in the turnover of the firm; and the turnover generated by those recently divested assets in the immediately previous financial year may be deducted from the firm's turnover if this turnover was included in the turnover of the firm.
- (4) If the financial statements used as a basis for calculating turnover or the turnover included in terms of sub-item 3(a) are for more or less than twelve months, the values recorded on those statements must be pro-rated to the equivalent of twelve months.

#### **4. Form of financial statements**

Financial statements used as a basis for calculating assets or turnover of a firm –

- (a) must be the firm's audited financial statements, if, –
  - (i) in terms of any law, the firm is required to produce such statements; or
  - (ii) the firm has audited statements for the relevant period; and
- (b) otherwise, must be prepared in accordance with G.A.A.P.



# GENERAL NOTICE

NOTICE 216 OF 2009

## DEPARTMENT OF TRADE AND INDUSTRY

### THE COMPETITION ACT, 1998 (ACT 89 OF 1998)

#### Determination of Merger Thresholds and Method of Calculation

Notice is hereby given that, in terms of section 11 of the Competition Act, 1998 (Act No. 89 of 1998), the Minister of Trade and Industry, in consultation with the Competition Commission, hereby

- (a) withdraws the determination of merger thresholds and method of calculation published by Government Notice No. 254 of 1 February 2001, as amended by Government Notice No. 930 of 7 May 2001; and
- (b) makes a new determination for merger thresholds as set out in the Schedule hereto.

The Schedule shall come into operation on 1 April 2009.

#### Determination of Thresholds

##### Definitions

1. In this notice any word or expression to which a meaning has been ascribed in the Act bears the same meaning as in the Act



unless the context indicates otherwise, and

“**G.A.A.P**” means generally accepted accounting practice in South Africa;

“**the Act**” means the Competition Act, 1998 (Act no. 89 of 1998); and

“**transferred firm**” means –

- (a) a firm, or the business or assets of the firm, that as a result of a transaction in any circumstances set out in section 12 of the Act, would become directly or indirectly controlled by an acquiring firm; and
- (b) any other firm, or business or assets of the firm, the whole or part of whose business is directly or indirectly controlled by a firm contemplated in paragraph (a).

### **Lower thresholds**

2. The lower threshold required to be determined in terms of section 11 of the Act is reached in respect of a merger if the value of that merger equals or exceeds both of the values set out in sub-items (1) and (2):

(1) Either –

- (a) the combined annual turnover in, into or from the Republic of the acquiring firms and the transferred firms is valued below R 560 million; or
- (b) the combined assets in the Republic of the acquiring firms and the transferred firms are valued at less than R 560 million; or
- (c) the annual turnover in, into or from the Republic of the acquiring firms plus the assets in the Republic of the transferred firms are valued at less than R 560 million; or

- (d) the annual turnover in, into or from the Republic of the transferred firms plus the assets in the Republic of the acquiring firms are valued at less than R 560 million
- (2) Either –
  - (a) the annual turnover in, into or from the Republic, of the transferred firms is less than R 80 million; or
  - (b) the asset value of the transferred firm is less than R 80 million.

### **Higher thresholds**

3. The higher threshold required to be determined in terms of section 11 of the Act is reached in respect of a merger if the value of that merger equals or exceeds both of the values set out in sub-items (1) and (2):
- (1) Either –
    - (a) the combined annual turnover in, into or from the Republic of the acquiring firms and the transferred firms is valued at or above R 6,6 billion; or
    - (b) the combined assets in the Republic of the acquiring firms and the transferred firms are valued at or above R 6,6 billion; or
    - (c) the annual turnover in, into or from the Republic of the acquiring firms plus the assets in the Republic of the transferred firms are at or above R 6,6 billion; or
    - (d) the annual turnover in, into or from the Republic of the transferred firms plus the assets in the Republic of the acquiring firms are at or above R 6,6 billion.
  - (2) Either –
    - (a) the annual turnover in, into or from the Republic,

- of the transferred firms is valued at or above R 190 million; or
- (b) the asset value of the transferred firm is valued at or above R 190 million.
4. The provisions of the Act in respect of:
- (a) a small merger, apply to a merger if it falls below either value of the lower threshold;
  - (b) an intermediate merger, apply to a merger if -
    - (i) it equals or exceeds both values of the lower threshold; but
    - (ii) falls below either value of the higher threshold; and
  - (c) a large merger, apply to a merger if it equals or exceeds both values of the higher threshold.

## SCHEDULE

### Method of Calculation

#### Generally accepted accounting practices apply

5. For the purposes of section 11 of the Act, the assets, and the turnover, of a firm in, into or from the Republic must be calculated in accordance with G.A.A.P., subject to the provisions of this notice.

#### Valuation of Assets

6. For the purpose of section 11 of the Act, the asset value of a firm at any time is based on the gross value of the firm's assets as recorded on the firm's balance sheet for the end of the immediately previous financial year, subject to sub-items (1) and (2).

- (1) In particular –
  - (a) the asset value equals the total assets less any amount shown on that balance sheet for depreciation or diminution of value;
  - (b) the combined assets are to include all assets on the balance sheets of the firms concerned, including any goodwill or intangible assets included in their balance sheets;
  - (c) no deduction may be taken for liabilities or encumbrances of the firm;
  - (d) the combined assets are to be calculated on the basis of the combined assets before giving affect to the merger and accordingly the combined assets do not include any goodwill or intangible assets that would arise as a result of the merger;
  - (e) the combined assets are not adjusted for any investments the acquiring firm might have in the transferred firm or amounts due by one firm to the other; and
  - (f) assets in the Republic includes all assets arising from activities in the Republic.
- (2) If, between the date of the financial statements being used to calculate the asset value of a firm, and the date on which that calculation is being made, the firm has acquired any subsidiary company, associated company or joint venture not shown on those financial statements, or divested itself of any subsidiary company, associated company or joint venture shown on those financial statements –
  - (a) The following items must be added to the calculation of the firm's asset value if these items should,

in terms of G.A.A.P., be included in the firm's asset value;

- (i) The value of those recently acquired assets; and
  - (ii) Any asset received in exchange for those recently divested assets.
- (b) The following items may be deducted in calculating the firm's asset value if these items were included in the firm's asset value:
- (i) The value of those recently divested assets at the date of their divestiture; and
  - (ii) Any asset that was shown on the balance sheet and was subsequently used to acquire the recently acquired asset.

### **Calculation of annual turnover**

7. (1) For the purpose of section 11 of the Act, the annual turnover of a firm at any time is the gross revenue of that firm from income in, into or from the Republic, arising from the following transactions and events as recorded on the firm's income statement for the immediately previous financial year, subject to the provisions of sub-items (2), (3) and (4):
- (a) the sale of goods;
  - (b) the rendering of services; and
  - (c) the use by others of the firm's assets yielding interest, royalties and dividends.
- (2) In particular –
- (a) When calculating turnover the following amounts may be excluded:
    - (i) any amount that is properly excluded from

- gross revenue in accordance with G.A.A.P.;
      - (ii) taxes, rebates, or any similar amount calculated and paid in direct relation to revenue, as for example, sales tax, value added tax, excise duties, and sales rebates, may be deducted from gross revenue;
    - (b) no adjustment is made for any amount that represents a duplication arising from transactions between the acquiring firm and the transferred firm;
    - (c) revenue excludes gains arising from non current assets and from foreign currency transactions; and
    - (d) for banks and insurance firms revenue includes those amounts of income required to be included in an income statement in terms of G.A.A.P., but excluding those amounts contemplated in paragraph (c).
- (3) If, between the date of the most recent financial statements being used to calculate the turnover of a firm, and the date on which that calculation is being made, the firm has acquired any subsidiary company, associated company or joint venture not shown on those financial statements, or divested itself of any subsidiary company, associated company or joint venture shown on those financial statements –
  - (a) the turnover generated by those recently acquired assets must be included in the calculation of the firm's turnover if this turnover should in terms of G.A.A.P. be included in the turnover of the firm; and
  - (b) the turnover generated by those recently divested assets in the immediately previous financial year

may be deducted from the firm's turnover if this turnover was included in the turnover of the firm.

- (4) If the financial statements used as a basis for calculating turnover or the turnover included in terms of sub-item 3(a) are for more or less than 12 months, the values recorded on those statements must be pro-rated to the equivalent of 12 months.

### **Combined valuation of firms**

8. (1) If the acquiring firm is a subsidiary of a group of companies as contemplated in the Companies Act, 1973 (Act No. 61 of 1973) for the purposes of calculations required in terms of this notice –
- (a) the combined assets of the firms that are part of that group, and the combined turnover of those firms, must be consolidated; and
  - (b) the consolidated assets and turnover of the group are to exclude turnover or assets arising as a result of transactions by one part of the group with another part of the same group.
- (2) If the transferred firm controls any other firm or business for the purposes of calculations required in terms of this notice –
- (a) the combined assets of those firms and businesses, and their combined turnover, must be consolidated; and
  - (b) the consolidated assets and turnover of the group are to exclude turnover or assets arising as a result of transactions by one part of the group with another part of the same group.

### **Form of financial statements**

9. (1) Financial statements used as a basis for calculating assets or turnover of a firm must –
- (a) be the firm's audited financial statements, if, –
    - (i) in terms of any law, the firm is required to produce such statements; or
    - (ii) the firm has audited statements for the relevant period.
  - (b) otherwise, be prepared in accordance with G.A.A.P.

## **COMPETITION FORMS**

Competition Forms may be collected from the Competition Commission or Competition Tribunal. Alternatively, please call the Commission at (012) 394-3200 or download the forms from the Competition Commission's website at **[www.compcom.co.za](http://www.compcom.co.za)**.

Competition Commission forms may also be electronically submitted.