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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

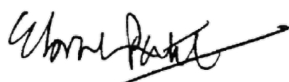
NO. 3445

24 May 2023

NOTICE IN TERMS OF THE COMPETITION ACT NO. 89 OF 1998 (AS AMENDED)**REGULATIONS RELATING TO APPEALS ARISING FROM MARKET INQUIRIES BEFORE THE COMPETITION TRIBUNAL IN TERMS OF SECTION 43F AND REGULATIONS RELATING TO A DIVESTITURE RECOMMENDATION BY THE COMMISSION IN TERMS OF SECTION 43D(2) OF THE COMPETITION ACT, NO.89 OF 1998, AS AMENDED**

1. By virtue of the powers vested in me in terms of section 21(4) read with 27(2) of the Competition Act No.89 of 1998, as amended (the Competition Act), I, Ebrahim Patel, Minister of Trade, Industry and Competition, after consultation with the Competition Tribunal, hereby publish regulations relating to appeals from market inquiries before the Competition Tribunal in terms of section 43F and regulations relating to a divestiture recommendation by the Competition Commission in terms of section 43D(2) of the Competition Act.
2. The purpose of the regulations set out in the Schedules hereto is to make provision for Competition Tribunal rules regulating:
 - 2.1 appeals in terms of section 43F: and
 - 2.2 processes for determining the Commission's recommendations for divestiture made in terms of section 43D(2) of the Competition Act.

The regulations will come into effect on the date of publication hereof in the Gazette.



EBRAHIM PATEL
MINISTER OF TRADE, INDUSTRY AND COMPETITION
DATE: 23 MAY 2023

RULES RELATING TO APPEALS ARISING FROM MARKET INQUIRIES BEFORE THE COMPETITION TRIBUNAL

Prescribed period and Notice of Appeal

- (1) A person referred to in section 43F(1) may initiate an appeal proceeding against a determination of the Commission in terms of section 43D by filing a Notice of Appeal with the Tribunal within 25 business days after receiving notice of such determination.
- (2) An appeal in terms of section 43F(1) shall be confined to the market inquiry record.
- (3) In exceptional circumstances and having regard to the requirements of section 52(2) of the Act, the Tribunal may, on application by any party to the appeal, allow new evidence, if *inter alia* the following requirements are met:
 - (a) there must be a reasonable explanation for failing to present the new evidence during the market inquiry;
 - (b) new evidence must be relevant to the determination of the issues before the Tribunal;
 - (c) new evidence must be weighty, material and to be believed; and
 - (d) new evidence must be incontrovertible or capable of easy verification.
- (4) A Notice of Appeal under this Rule must name the Commission as a respondent, and must set out -
 - (a) the determination or decision that is the subject of the appeal;
 - (b) whether the whole or part of the determination or decision is the subject of the appeal;
 - (c) if only part/s of the determination or decision are being appealed against, which part/s of the determination or decision are the subject of the appeal;
 - (d) the grounds on which the appeal is based; and
 - (e) the relief sought.
- (5) A Notice of Appeal under this Rule may set out alternative grounds of appeal based on the same facts.
- (6) The appellant must serve a copy of the Notice of Appeal on each respondent within 3 days of filing it with the Tribunal.

Appeal record

- (7) Within 40 business days after being served with a copy of a Notice of Appeal under this Rule, the Commission must file with the registrar of the Tribunal a copy of the record of the determination or decision that is the subject of the appeal.
- (8) The Commission may, on good cause, apply to the chairperson of the Tribunal for an extension of the period referred to in sub-rule (7).
- (9) The record referred to in sub-rule (7) must include copies of *inter alia* –
- (a) any documents and written representations submitted by any parties during the market inquiry that are relevant to the determination or decision that is the subject of the appeal;
 - (b) any correspondence exchanged between the Commission and any parties during the market inquiry that is relevant to the determination or decision that is the subject of the appeal; and
 - (c) any written reasons given by the Commission for the determination or decision that is the subject of the appeal.
- (10) The appellant may, within 15 business days of the filing of the record referred to in sub-rule (7), supplement the appeal record with any other documents contained in the market inquiry record relevant to the determination or decision that is the subject of the appeal.
- (11) Upon receipt of a Notice of Appeal referred to in sub-rule (2), 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.

Heads of argument

- (12) No later than 20 business days before the date set for hearing the appeal, or such other date as may be determined by the Tribunal, 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.
- (13) No later than 15 business days before the date set for hearing the appeal, or such other date as may be determined by the Tribunal, the Commission must:
- (a) serve a copy of its heads of argument on the appellant; and
 - (b) file those heads of argument and proof of service.

Determination of any matter of procedure

- (14) Subject to the provisions of these Regulations and the Tribunal's rules of procedure, the Tribunal member presiding at an appeal hearing may determine any matter of procedure for that hearing, including convening a pre-hearing conference, with due regard to the circumstances of the case, and the requirements of section 52(2) of the Act.

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