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**GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS**

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**DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION**

NO. 3125

8 March 2023

**INVITATION FOR THE PUBLIC TO COMMENT ON THE DRAFT REGULATIONS RELATING TO APPEALS ARISING FROM MARKET INQUIRIES BEFORE THE COMPETITION TRIBUNAL IN TERMS OF SECTION 43F AND THE DRAFT 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) 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 for public comments the draft regulations as set out in the Schedules hereto.
2. The purpose of the draft regulations set out in the Schedules hereto is to make provision for the 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.
3. Stakeholders and interested persons are invited to submit comments in writing on the proposed regulations within a period of 30 days of the publication of this notice to the Minister of Trade, Industry and Competition, for the attention of Mrs Linda Herbst, email: [lherbst@thedtic.gov.za](mailto:lherbst@thedtic.gov.za) or hand delivered at 3<sup>rd</sup> Floor, Block E, 77 Meintjies Street, Sunnyside, 0132.

**EBRAHIM PATEL****MINISTER OF TRADE, INDUSTRY AND COMPETITION****DATE: 7 MARCH 2023**

## DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 3126

8 March 2023

**DRAFT 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 20 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) A Notice of Appeal under this Rule must name the Commission as a respondent, and must set out -
  - (a) the determination that is the subject of the appeal;
  - (b) whether the whole or part of the determination is the subject of the appeal;
  - (c) if only part/s of the determination are being appealed against, which part/s of the determination are the subject of the appeal;
  - (d) the grounds on which the appeal is based; and
  - (e) the relief sought.
- (4) A Notice of Appeal under this Rule 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 days of filing it with the Tribunal.

Appeal record

- (6) 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 that is the subject of the appeal.
- (7) The Commission may, on good cause, apply to the chairperson of the Tribunal for an extension of the period referred to in sub-rule (6).
- (8) The record referred to in sub-rule (6) 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 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 that is the subject of the appeal; and
  - (c) any written reasons given by the Commission for the determination that is the subject of the appeal.
- (9) The appellant may, within 15 business days of the filing of the record referred to in sub-rule (6), supplement the record.
- (10) 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

- (11) 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 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.
- (12) No later than 10 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.
- (13) 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, with due regard to the circumstances of the case, and the requirements of section 52(2) of the Act.

[Ends]

**DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION**

NO. 3127

8 March 2023

**DRAFT RULES RELATING TO A DIVESTITURE RECOMMENDATION BY THE COMMISSION IN TERMS OF SECTION 43D(2) OF THE ACT**

- (1) Within 90 business days after the Commission has published a report referred to in section 43B(6), the Commission may make a recommendation to the Tribunal in terms of section 43D(2) for an order in terms of section 60(2)(c).
- (2) A recommendation by the Commission to the Tribunal in terms of section 43D(2), must be made by filing a Notice of Motion in Form CT 6 and supporting affidavit setting out the facts upon which its recommendation is based.
- (3) A Notice of Motion in terms of this Rule must -
  - (a) indicate the order recommended by the Commission; and
  - (b) state the name and address of each person in respect of whom the order is recommended.
- (4) An affidavit in terms of this Rule must set out in numbered paragraphs -
  - (a) a concise statement of the grounds of the recommendation;
  - (b) the material facts or the points of law relevant to the recommendation and relied on by the Commission; and
  - (c) concise reasons as to why the order recommended is reasonable and practicable, taking into account relevant factors, including the factors referred to in section 43D(4).
- (5) The Commission must serve a copy of the Notice of Motion and affidavit on each respondent named in the Notice, within 5 business days of filing them.
- (6) Within 20 business days of being served with a Notice of Motion and affidavit in terms of this Rule, a respondent who wishes to oppose the recommendation must-
  - (a) serve a copy of their Answer on the Commission; and
  - (b) file the Answer with proof of service.
- (7) An Answer that raises only a point of law must set out the question of law to be resolved.
- (8) Any other Answer must be in affidavit form, setting out in numbered paragraphs—

- (a) a concise statement of the grounds on which the recommendation 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 recommendation.
- (9) An allegation of fact set out in the recommendation that is not specifically denied or admitted in an Answer will be deemed to have been admitted.
- (10) In an Answer, the respondent must qualify or explain a denial of an allegation, if necessary in the circumstances.
- (11) Within 15 business days of being served with an Answer that raises issues not addressed in the recommendation, other than a point of law alone, the Commission may-
- (a) serve a Reply; and
  - (b) file a copy of the reply and submit proof of service.
- (12) 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 Commission on any point of law raised in the Answer.
- (13) If the Commission does not file a Reply, it will be deemed to have denied each new issue raised in the Answer, and each allegation of fact relevant to those issues.
- (14) Rules 18 to 23, each read with changes required by the context, apply to an a recommendation under this Rule.

[Ends]

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