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## GENERAL NOTICE

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NOTICE 1255 OF 2005

### AMENDMENTS TO THE

### **RULES FOR THE CONDUCT OF PROCEEDINGS IN THE COMPETITION APPEAL COURT**

**Rule 2 is amended by -**

*THE INSERTION OF:*

**"business day" shall mean any day other than Saturday, Sunday or Public holiday and only business days shall be included in the computation of any time expressed in days prescribed by these rules or fixed in any order of court or practice directions;**

*THE SUBSTITUTION:*

for sub-rule (3), paragraph (a) of the following:

**(a) "Act" means the Competition Act, 1998 (Act No. 89 of 1998) as amended.**

*THE SUBSTITUTION:*

for sub-rule (3), paragraph (i) of the following paragraph:

**(t) "serve" means to serve in accordance with Rule 6 and "service" has a corresponding meaning: and"**

*THE INSERTION:*

in sub-rule (3), at the end of paragraph (h) of the following:

**"(h) "deliver" means to file and serve and "delivery" shall have a corresponding meaning.**

*THE SUBSTITUTION:*

for sub-rule (3), paragraph (u) of the following paragraph:

- (u) "Tribunal" depending on the context, means either -**
- (i) the body established by section 26;**
  - (ii) a panel 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"**

**Rule 3 is amended by:***THE SUBSTITUTION:*

For sub-rule (3) of the following paragraph:

- (a) Delivered by hand at:**  
**3<sup>rd</sup> Floor, Mulayo, the dti campus, 77 Meintjies Street,  
Sunnyside, Pretoria**
- (b) Addressed by post to:**  
**Private Bag X28, Lynnwood Ridge, 0040**
- (c) Transmitted by fax on**  
**012 394 0169**
- (d) Communicated by telephone on**  
**012 394 3354**
- (e) Transmitted by electronic mail to:**  
**cac@comptrib.co.za**

**Rule 4 is amended by:***THE SUBSTITUTION:*

For the existing rule of the following:

**"4. Condonation of Time Limits**

On good cause shown, the Court may condone late performance of an act in respect of which these rules prescribe a time limit."

**Rule 6 is amended by:***THE SUBSTITUTION:*

For sub-rule (1) of rule 6, of the following sub-rule -

**"(1) A notice or document may be delivered in any manner permitted in accordance with Table 1"**

*THE SUBSTITUTION:*

For sub-rule (4) of rule 6, of the following sub-rule -

**"(4) Subject to Rule 3(2), if a document referred to in Table 1 is delivered on a date or at a time that is outside of the office hours of the registrar as set out in Rule 3(1), that document will be deemed to have been delivered on the next business day."**

**Rule 7 is amended by:***THE INSERTION:*

following sub-rule (7) of the following sub-rules -

**"(8) A person who files any document in terms of the Act or these Rules must:**

**(a) provide to the registrar, in writing on the face of the document or on a separate filing sheet, that person's -**

**(i) legal name;**

**(ii) address for service;**

- (iii) **telephone number;**
  - (iv) **if available, e-mail address and fax number; and**
  - (v) **if that person is not an individual, the name and contact details of the individual authorised to deal with the Court on behalf of the person filing the document; and**
- (b) **if the person filing the document does so as a representative of another person, such person must comply with Rule 31.**

**Ad Rule 8(1):**

Why do copies of all documents filed "*in any proceedings*" with the CAC have to be delivered to the Commission and to the Tribunal as a matter of course? There are cost implications and issues of relevance here.

Unless there is a reason for this rule - it should be deleted.

**Ad Rule 8(2) and (3):**

The Act provides in chapter 3 for notification of mergers to the Minister. (See: section 14A). I am unsure to which "*proceedings*" sub-rule (2) refers.

The CAC only features in chapter 3 in sections 17 and 18. Section 18 permits the Minister to intervene before the CAC "in the prescribed manner". "*Prescribed*" is defined in the Act (section 191)(xx)) as "*means prescribed by regulation*".

"*Regulations*" are not the Rules of the CAC but are made by the Minister in terms of section 78 of the Act. Rules are made by the JP in terms of section 38(1)(c) of the Act.

I would recommend that sub-rules (2) and (3) be deleted and that the Minister be advised that he should issue the necessary regulations. We could offer to draft the necessary regulations.

**Rule 9 is amended by:***THE SUBSTITUTION:*

For the existing rule of the following:

**9. Format of Documents and Preparation of the Court Record**

- (1) Every document filed in terms of the Act or these Rules must:
  - (a) be typed or legibly written on white paper of A4 size. Typed documents shall be printed in a clear font of not less than 12 point on one side of the paper only and shall be double spaced. Documents filed by legal practitioners must, however, be typed;
  - (b) have a margin of at least 35 mm on the left side to facilitate binding. No notes, signatures, initials, stamps or other matter shall be placed in the binding margin;
  - (c) if smaller than A4 size, and intended to be placed before the Court, be affixed to a sheet of A4 paper;
  - (d) if larger than A4 size, be folded to A4 size to facilitate binding of the Court record;
  - (e) the registrar may refuse to accept for filing any document that does not comply with the requirements of this sub-rule.
- (2) The attorney acting for an applicant (or similar party initiating the proceedings), shall, before applying for a date of hearing, collate, number consecutively and suitable bind all the documents delivered and forming the Court record and shall deliver a complete index thereof as also an index to each separate bound volume. On a date between 10 and 15 business days before the hearing, the aforesaid attorney shall ensure that the record to be used by each Judge hearing the matter is complete and fully indexed. The aforesaid attorney shall, not later than 5 business days before the hearing, file a certificate confirming that the above matters have been attended to.
- (3) Whenever practical, the attorney acting for an applicant (or similar party initiating the proceedings) shall in consultation with the attorneys for all other represented parties and with unrepresented parties, prepared a separate bundle of essential core documents and/or a list of any pages in the record that the parties agree need not be read by the Court prior to the hearing. The essential core documents and/or aforesaid list shall be filed not less than 30 business days before the hearing.

**Rule 13 is amended by:***THE INSERTION:*

in sub-rule (2) after the words "*In addition to the provisions of sub-rule (1)*" of the words:

**"and subject to the terms of any order or determination."**

and:

*THE SUBSTITUTION:*

for sub-rule (5) of the following:

**"(5) The registrar shall allow a person to inspect a document filed under seal subject to the terms of any order or if the Judge President has given written permission for such person to inspect the document."**

**Rule 14 is amended by:***THE SUBSTITUTION:*

for the Rule of the following:

**"14. Sittings**

- (1) The Court will sit at a venue to be determined by the Judge President from time to time.
- (2) At any time at least one Duty Judge will be available to perform the duties that the Judge President directs, including hearings in terms of section 38(2A) of the Act. Whenever a Duty Judge has not been appointed, the Judge President or the next most senior available Judge will be deemed to be the Duty Judge."

**Rule 15 is amended by:***THE SUBSTITUTION:*

For sub-rule (1)(a) of the following:

- “(a) may be set down on a date determined by the registrar after consultation with the Judge President or the Duty Judge; and”**

*THE DELETION:*

of sub-rule (5).

**Rule 17 is amended by:***THE SUBSTITUTION:*

for the existing Rule of the following:

- “(1) Any party to an appeal or any application may address a request to the Court to expedite the hearing of the matter. Such request shall contain full reasons therefor and be delivered to all other parties.**
- (2) A request in terms of sub-rule (1) will be decided by the Judge President or, in his absence, by the Duty Judge.**
- (3) Upon determining a request in terms of sub-rule (1), the Judge President or Duty Judge may give directions for the expeditious hearing of the appeal or application.”**

**Rule 19 is amended by:***THE SUBSTITUTION:*

For the opening words of sub-rule (2), of the following:

- “2. An appellant may apply to the Judge President for an order to extend the time for delivery of the Appeal Record, if -”;**

*THE SUBSTITUTION:*

For sub-rule (3) of the following:

- “(3) An appellant who fails to deliver the Appeal Record as required by this Rule will be deemed to have withdrawn the appeal, unless, within the prescribed period the appellant has either -**
- (a) filed the respondent’s consent to extend the time; or**
  - (b) served on the respondent an order granted in terms of sub-rule (2) extending the time for delivery of the Appeal Record.”**

*THE SUBSTITUTION:*

For sub-rule (5) of the following:

- “(5) must deliver the Appeal Record within 40 business days after the date upon which the appellant withdrew the appeal, or on which the appeal was deemed to have been withdrawn.”**

*THE INSERTION:*

In sub-rule (5) of a dash after the words: “*sub-rule (4)*”.

**Rule 20 is amended by:***THE SUBSTITUTION:*

for sub-rule 2(b)(ix) of the following:

- “(ix) Heads of argument before the Commission and/or the Tribunal.”**



**Rule 23 is amended by:***THE SUBSTITUTION:*

in sub-rule (4), paragraph (f), sub-paragraph (i) of the word "fifteen" for the word "ten".

**Rule 29 is to be amended by:***THE INSERTION:*

of the following:

**"29. Procedure for leave to appeal a decision of the Court**

- (1) An application for leave or special leave to appeal to the Constitutional Court or the Supreme Court of Appeal from a decision of the court -
  - (a) may be
    - (i) made before the Court when the decision is handed down, stating the grounds for the proposed appeal; or
    - (ii) brought on notice stating the grounds for the proposed appeal, within ten business days of the decision that is the subject of the proposed appeal; and
  - (b) if brought on notice, be delivered to the registrar and to all parties to the proceedings.
- (2) The Judge President may, on good cause, extend the period within which a notice of appeal is to be delivered.
- (3) An application for leave to appeal must be considered by all the Judges who sat at the hearing when the decision was made.
- (4) The judge or judges considering an application under this rule  
my require oral argument at a time and place of which the registrar will give notice to all the parties.
- (5) After considering the application, the judge or judges may grant or refuse the application.

**Rule 33 is amended by:***THE SUBSTITUTION:*

for sub-rule (1), paragraph (b) of the following:

- “(b) The fees of each additional advocate or attorney authorised in terms of paragraph (a) must not exceed half of those of the first advocate or attorney unless the court directs otherwise.”**

*THE INSERTION:*

in sub-rule (1), paragraph (c):

insert the words *“a provincial division of”* between the words *“applicable in”* and *“the High Court”*.

*THE SUBSTITUTION:*

for sub-rule (2) of the following:

- “(2) The registrar and/or any other person who in the opinion of the Judge President is fit to perform the functions and duties assigned to and imposed on a taxing master by these rules, shall perform the functions and duties of a taxing master.”**

*THE SUBSTITUTION:*

for sub-rule (7) of the following:

- “(7) (a) The provisions of Uniform Rule 48 made pursuant to the provisions of section 43(2) of the Supreme Court Act No. 59 of 1959 and applicable in the various divisions of the High Court shall apply.**
- (b) The “judge” referred to in Uniform Rule 48 shall be a Judge of this Court appointed by the Judge President.”**

**Rule 35 is amended by:***THE SUBSTITUTION:*

for the existing Rule of the following:

**"35. Heads of Argument**

1. In all matters not dealt with in Rules 21 and 27 which are to be argued before the Court or a single Judge, heads of argument shall be filed -
  - (a) by the applicant or party initiating the hearing not later than -
    - (i) fifteen business days before the hearing; or
    - (ii) any earlier or later date determined by the Judge President or Duty Judge;
  - (b) by the respondent or party opposing or intervening not later than -
    - (i) fifteen business days before the hearing; or
    - (ii) any earlier or later date determined by the Judge President or Duty Judge;
  - (c) The number of copies of the heads of argument which must be filed shall be one more than the number of Judges who are to hear the matter."

**Rule 36 IS DELETED**

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