

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 6920

12 December 2025

INVITATION FOR THE PUBLIC TO COMMENT ON 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, 1998 (Act No. 89 of 1998) as amended (the Competition Act), I, Mr. Mpho Parks Tau, Minister of Trade, Industry and Competition, after consultation with the Competition Tribunal, hereby republish for public comments the draft regulations as set out in the Schedule hereto.
2. The purpose of these draft regulations is to make provision for the Competition Tribunal rules regulating the processes for determining the Commission's recommendations for divestiture made in terms of section 43D(2) of the Competition Act.
3. These draft regulations were initially published in Government Notice No. 3125 of Government Gazette No. 48184 on 8 March 2023.
4. Stakeholders and interested persons are invited to submit comments in writing on the proposed regulations within a period of 30 business days of the publication of this notice to the Minister of Trade, Industry and Competition, for the attention of Mr Ivan Galodikwe, email IGalodikwe@thedtic.gov.za or hand delivered at 3rd Floor, Block E, 77 Meintjies Street, Sunnyside, 0132.



MR MPHO PARKS TAU, MP

MINISTER OF TRADE, INDUSTRY AND COMPETITION

Date: 05/12/2025

SCHEDULE

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 a recommendation under this Rule.