

RULES FOR THE CONDUCT OF PROCEEDINGS IN THE COMPETITION COMMISSION

(Published in Government Notice R## in Government Gazette ##### of 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.

TABLE OF CONTENTS

<i>Part 1 – General Provisions</i>	4
Division A - Interpretation	4
1. Short title.....	4
2. Repeal of previous rules.....	4
3. Interpretation	4
Division B – Commission Office Functions	7
4. Office hours and address of Commission.....	7
5. Condonation of time limits.....	8
6. Commissioner’s functions.....	8
<i>Part 2 – Delivery of Documents</i>	9
7. Delivery of documents	9
8. Issuing documents.....	10
9. Filing documents	10
10. Fees	11
11. Form of notices and applications	12
12. Form of Certificates and Notices of Referral.....	12
13. Form of Annual Report.....	13
<i>Part 3 - Access to Commission Records</i>	15
14. Restricted information.....	15
15. Access to information	17
<i>Part 4 – Complaint Procedures</i>	19
16. Withdrawal of complaints	19
17. Multiple complaints	19
18. Consent orders.....	20
<i>Part 5 – Exemption Procedures</i>	22
19. Procedures relating to exemption applications (Section 10).....	22
20. Procedures concerning practices that are not prohibited	23
21. Procedures related to revoking exemption certificates (Section 10)	24
22. Procedures relating to exemption applications (Schedule 1)	25
23. Procedures related to revoking exemption certificates (Schedule 1).....	25
<i>Part 6 - Merger Procedures</i>	27

Part 1 – General Provisions :

r1

24.	Review period and extensions	27
25.	Small merger notification	27
26.	General merger notification requirements	28
27.	Joint merger notification	28
28.	Separate merger notification	29
29.	Commencement of Initial Period	31
30.	Review of notification	31
31.	Request for additional information	33
32.	Apparently False or Misleading Information	33
33.	Questions of jurisdiction and categories	34
34.	Abandonment of merger	36
35.	Participation by Minister in Commission merger proceedings	37
36.	Minister of Finance intervention	38
37.	Trade Union or employee participation	39
38.	Small and intermediate merger procedures	39
39.	Breach of merger approval conditions or obligations	40
40.	Revocation of approval of small or intermediate merger	41
41.	Large mergers	42

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 R 1938, 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

Part 1 – General Provisions : Division A - Interpretation

r3

-
- 1 (c) a reference to a sub-rule or paragraph by number refers to the corresponding
2 item of the Rule in which the reference appears.
- 3 (4) In these Rules unless the context indicates otherwise,
- 4 (a) “Act” means the *Competition Act, 1998* (Act No.89 of 1998), as amended from
5 time to time;
- 6 (b) “application” means a request for an exemption submitted in terms of section
7 10, or in terms of item 1 of Schedule 1 of the Act;
- 8 (c) “certified copy” means a copy of a document certified by a Commissioner of
9 Oaths;
- 10 (d) “Commission” means the body established by section 19;
- 11 (e) “Commissioner” means the office holder appointed in terms of section 22;
- 12 (f) “Competition Tribunal Rules” means the rules promulgated in terms of the Act
13 for the regulation of procedures of the Tribunal;
- 14 (g) “complaint” means either
- 15 (i) a matter initiated by the Commissioner in terms of section 49B(1); or
- 16 (ii) a matter that has been submitted to the Commission in terms of section
17 49B(2)(b);
- 18 (h) “Court” means the Competition Appeal Court established by section 36;
- 19 (i) "deliver" depending on the context, means to serve, or to file, a document;
- 20 (j) “file”, when used as a verb, means to deposit with the Commission;
- 21 (k) “Judge President” means the Judge President of the Court;
- 22 (l) “Merger Notice” means a notification
- 23 (i) voluntarily submitted in terms of section 13(2), or

-
- 1 (ii) required in terms of either section 13 (3) or section 13A;
- 2 (m) “public holiday” means a public holiday referred to in section 1 of the Public
3 Holidays Act, 1994 (Act 36 of 1994);
- 4 (n) “Rule” includes any footnote to a Rule, and any Table included within or
5 referred to in a Rule;
- 6 (o) “serve” means to deliver a document to a person other than the Commission;
- 7 (p) "Tribunal", depending on the context, means either –
- 8 (i) the body established by section 26;
- 9 (ii) a panel of the Tribunal convened in terms of section 31;
- 10 (iii) a member of the Tribunal sitting in terms of section 31(5);or
- 11 (iv) the registrar of the Tribunal.
- 12

Part 1 – General Provisions : Division B – Commission Office Functions

r4

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

Glenfield Office Park

Cnr. Glenwood Road and Oberon Steet

Faerie Glen, Pretoria

Republic of South Africa

(b) Addressed by post to:

The Competition Commission

Private Bag X23

Lynnwood Ridge Pretoria 0040

Republic of South Africa

COMPETITION COMMISSION RULES

Part 1 – General Provisions : Division B – Commission Office Functions

r5-r6

1 (c) Communicated by telephone on 27 012 482 9000

2 (d) Transmitted by Fax on 27 012 482 9001; or

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

4 **5. Condonation of time limits**

5 On good cause shown, the Commissioner may condone late performance of an act in
6 respect of which these Rules prescribe a time limit, other than a time limit that is binding on
7 the Commission itself.

8 **6. Commissioner's functions**

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

11

Part 2 – Delivery of Documents :

r7

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.

1 8. Issuing documents

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

7 9. Filing documents

- 8 (1) The Commission must assign distinctive case numbers to each –
- 9 (a) Complaint;
- 10 (b) Application;
- 11 (c) Merger Notice; and
- 12 (d) Advisory Opinion.
- 13 (2) The Commission must ensure that every document subsequently filed in respect of
- 14 the same proceedings is marked with the same case number.
- 15 (3) The Commission may refuse to accept a document subsequently filed in respect of
- 16 the same proceedings that is not properly marked with the assigned case number.
- 17 (4) A person who files any document in terms of the Act or these rules must provide to
- 18 the Commission that person's -
- 19 (a) legal name;
- 20 (b) address for service;
- 21 (c) telephone number;
- 22 (d) if available, email address and fax number; and

Part 2 – Delivery of Documents :

r10

-
- 1 (e) if the person is not an individual, the name of the individual authorised to deal
2 with the Commission on behalf of the person filing the document.

3 10. Fees

- 4 (1) The Commission may not charge a fee to any person for filing a complaint.
- 5 (2) Subject to sub-rule (3), the fee for filing an application with the Commission is -
- 6 (a) for a single exemption –
- 7 (i) a filing fee of R 5000; plus
- 8 (ii) an annual fee, payable at the time of the application, equal to R 500
9 times the number of years for which the exemption is granted; or
- 10 (b) for a category exemption –
- 11 (i) a filing fee of R 100 000; plus
- 12 (ii) an annual fee, payable at the time of the application, equal to R1 000
13 times the number of years for which the exemption is granted; or
- 14 (c) for an exemption in terms of Schedule 1 of the Act, a filing fee of R 100 000.
- 15 (3) If an application is refused in terms of section 10 or Schedule 1, the Commission
16 must refund to the applicant the annual fee paid in respect of that application.
- 17 (4) The fee for an advisory opinion is R 2 500.
- 18 (5) The fee for filing a Merger Notice is –
- 19 (a) R 75 000 for an intermediate merger; or
- 20 (b) R 250 000 for a large merger.
- 21 (6) No fee is payable for filing a Merger Notice for a small merger.
- 22 (7) A fee payment will be deemed to be received by the Commission on –

-
- 1 (a) the date that a cheque or money order in payment of that fee is delivered to the
2 Commission; or
- 3 (b) the date that a direct deposit or an electronic transfer of funds in the amount of
4 that fee is credited to the account of the Commission at the financial institution
5 to which is it transferred.
- 6 (8) The Commission may charge a fee of R1-00 per A4-size page or part thereof to any
7 person wishing to copy a record in the possession of the Commission and R2-00 each
8 for the Commission's certificate on certified copies of documents.
- 9 (9) The amount of each fee set out in this Rule, or calculated in terms of this Rule, is
10 exclusive of VAT.

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

- 12 (1) Whenever a notice or application is required in terms of a section of the Act, or an
13 item of these Rules, shown in column 1 of Table CCR 2, for a purpose listed in
14 column 2 of that Table, the document must be substantially in the form of the
15 annexure listed opposite that section number in column 3 of that Table, and must be
16 produced subject to any conditions listed opposite that section number in column 4 of
17 that Table.
- 18 (2) Whenever these Rules require a document to be in a form whose number is prefixed
19 by the letters "CT", that document must be substantially in the corresponding form
20 prescribed in the Competition Tribunal Rules.

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

- 22 (1) Whenever the Commission is required to issue a Certificate, Notice or Receipt in
23 terms of a section of the Act, or an item of these Rules, shown in column 1 of Table
24 CCR 3, for a purpose listed in column 2 of that Table, the document must be
25 substantially in the form of the annexure listed opposite that section number in
26 column 3 of that Table, and must be produced subject to any conditions listed
27 opposite that section number in column 4 of that Table.

Part 2 – Delivery of Documents :

r13

-
- 1 (2) Whenever the Commission is required, either in terms of the Act or these Rules, to
2 publish a notice in the Gazette, that notice must contain at least the following
3 information:
- 4 (a) The name of any firm, or other person directly affected by the notice.
- 5 (b) The file number assigned by the Commission to the relevant matter.
- 6 (c) The provision of the Act or Rules in terms of which the notice is required.
- 7 (d) A brief and concise description of the nature of the relevant matter.
- 8 (e) If the notice invites submissions, the last date on which submissions may be
9 received.
- 10 (f) If the notice reports a decision –
- 11 (i) a brief and concise description of the nature of the relevant decision;
- 12 (ii) a statement indicating whether reasons for the decision have been
13 published, and if so, how a copy of those reasons may be obtained; and
- 14 (iii) a statement of any right of review of, or appeal from, that decision,
15 including the period during which a review or appeal may be lodged.
- 16 (g) The name, address and contact numbers of the person in the Commission
17 responsible for publishing the notice.

18 13. Form of Annual Report

- 19 (1) The Annual Report to be submitted by the Commission in terms of section 41 must
20 be divided into the following Parts:
- 21 (a) **Statement of Progress**, being the statement required by section 41(1)(d).
- 22 (b) **The Proceedings of the Commission**, being a summary report of the
23 Commission's work in relation to complaints, exemptions, mergers, and
24 compliance.

1 (c) **The Administrative Activities of the Commission**, being a summary report
2 concerning the Commission's management, staff, infrastructure, Rules and
3 related matters.

4 (d) **The Commission's Finances**, including the items required by section 41(1)(a)
5 and (b).

6 (2) In addition to the matters required in terms of section 41, each Annual Report must
7 include a report on the following matters:

8 (a) The Commission's public awareness programs.

9 (b) Relationships between the Commission and other regulatory authorities.

10 (c) Relationships between the Commission and foreign agencies.

11 (d) Research activities undertaken by the Commission and any proposals for law
12 reform published by the Commission.

13

Part 3 - Access to Commission Records :

r14

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 complaint, and any other information received by the Commission during its investigation of the complaint, is restricted information until the Competition Commission

-
- 1 issues a referral or notice of non-referral in respect of that complaint, but
2 a completed form CC 1 is not restricted information.
- 3 (ii) A Statement of Merger Information and any information annexed to it,
4 or received by the Commission during its investigation of that merger, is
5 restricted information until the Commission has issued a certificate, or
6 been deemed to have approved the merger, in terms of section 13 or 14,
7 or made a recommendation in terms of section 14A, as the case may be;
- 8 (iii) An application and any information received by the Commission during
9 its consideration of the application, or revocation of an exemption
10 granted to the applicant, is restricted information only to the extent that
11 it is restricted in terms of paragraph (a).
- 12 (d) A document -
- 13 (i) that contains -
- 14 (aa) an internal communication between officials of the Competition
15 Commission, or between one or more such officials and their
16 advisors;
- 17 (bb) an opinion, advice, report or recommendation obtained or
18 prepared by or for the Competition Commission;
- 19 (cc) an account of a consultation, discussion or deliberation that has
20 occurred, including, but not limited to, minutes of a meeting, for
21 the purpose of assisting to formulate a policy or take a decision in
22 the exercise of a power or performance of a duty conferred or
23 imposed on the Commission by law; or
- 24 (ii) the disclosure of which could reasonably be expected to frustrate the
25 deliberative process of the Competition Commission by inhibiting the
26 candid -
- 27 (aa) communication of an opinion, advice, report or recommendation;
28 or

Part 3 - Access to Commission Records :

r15

-
- 1 (bb) conduct of a consultation, discussion or deliberation; or
- 2 (iii) the disclosure of which could, by premature disclosure of a policy or
- 3 contemplated policy, reasonably be expected to frustrate the success of
- 4 that policy.
- 5 (e) Any other document to which a public body would be required or entitled to
- 6 restrict access in terms of the Promotion of Access to Information Act, 2000
- 7 (Act No. 2 of 2000).

8 15. Access to information

- 9 (1) Any person, upon payment of the prescribed fee, may inspect or copy any
- 10 Commission record -
- 11 (a) if it is not restricted information; or
- 12 (b) if it is restricted information, to the extent permitted, and subject to any
- 13 conditions imposed, by
- 14 (i) this Rule; or
- 15 (ii) an order of the Tribunal, or the Court.
- 16 (2) In a particular complaint the Commission may release otherwise restricted
- 17 information, other than confidential information, relating to a possible agreement of
- 18 terms of an appropriate order, or the consent of a complainant for an order to include
- 19 an award of damages, to –
- 20 (a) The respondent; or
- 21 (b) Any person who has filed Form CT 3 in respect of that complaint.
- 22 (3) In addition to the provisions of sub-rule (1) and (2), the Commission may release
- 23 restricted information to, or permit access to it by, only the following persons:
- 24 (a) the person who provided that information to the Commission;

-
- 1 (b) the firm to whom the confidential information belongs;
- 2 (c) a person who requires it for a purpose mentioned in section 69(2)(a) or (b);
- 3 (d) a person mentioned in section 69(2)(c);
- 4 (e) the Minister, if the information concerns a merger;
- 5 (f) the Minister of Finance, if the information concerns a merger referred to in
- 6 section 18(2); or
- 7 (g) any other person, with the written consent of the firm to whom the information
- 8 belongs.
- 9 (4) When the Commission submits a Complaint Referral to the Tribunal, makes a
- 10 recommendation to the Tribunal in respect of a large merger, or supplies any other
- 11 information to the Tribunal, the Minister, or the Minister of Finance, the Commission
- 12 must identify any information included in its submission –
- 13 (a) in respect of which a claim has been made in terms of Section 44, that has not
- 14 yet been determined by the Tribunal; or
- 15 (b) that has been finally determined to be confidential information.
- 16

Part 4 – Complaint Procedures :

r16-r17

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.

1 **18. Consent orders**

- 2 (1) If, at any time before issuing a Notice of Non-referral in Form CC 8, or referring a
3 complaint to the Tribunal in Form CT 1(1), it appears to the Commission that the
4 respondent may be prepared to agree terms of a proposed order, the Commission –
- 5 (a) must notify the complainant, in writing, that a consent order may be
6 recommended to the Tribunal; and
- 7 (b) invite the complainant to inform the Commission in writing within 10 business
8 days after receiving that notice –
- 9 (i) whether the complainant is prepared to accept damages under such an
10 order; and
- 11 (ii) if so, the amount of damages claimed.
- 12 (2) If the Commission and the respondent agree the terms of an appropriate order, the
13 Commission must –
- 14 (a) refer the complaint to the Tribunal in Form CT 1(1) to be proceeded with in
15 terms of section 49D;
- 16 (b) attach to the referral -
- 17 (i) a draft order
- 18 (aa) setting out the section of the Act that has been contravened;
- 19 (bb) setting out the terms agreed between the Commission and the
20 respondent, including, if applicable, the amount of damages
21 agreed between the respondent and the complainant; and
- 22 (cc) signed by the Commission and the respondent indicating their
23 consent to the draft order; and
- 24 (ii) Form CT 3, completed by the complainant, if applicable; and

Part 4 – Complaint Procedures :

r18

-
- 1 (c) serve a copy of the referral and draft order on the respondent and the
2 complainant.
- 3 (3) The Commission must not include an order of damages in a draft consent order
4 unless it is supported by a completed Form CT3.
- 5 (4) A draft consent order may be submitted to the Tribunal in terms of section 49D and
6 this Rule notwithstanding the refusal by a complainant to consent to including an
7 award of damages in that draft order.
- 8

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 –

Part 5 – Exemption Procedures :

r20

-
- 1 (a) must publish in the Gazette the notice of the application required by section
2 10(6)(a), and –
- 3 (b) may request further information from any person who submits
- 4 (i) an application for an exemption in terms of section 10(1) or (4), or
- 5 (ii) a representation in response to a notice published in terms of Section
6 10(6).
- 7 (5) Upon publishing a notice in terms of section 10(7), the Commission must provide
8 written reasons for its decision, unless the decision is a refusal in terms of section
9 10(2)(b)(ii) to grant an exemption.

10 20. Procedures concerning practices that are not prohibited

- 11 (1) If the Commission determines that an application does not concern a prohibited
12 practice (as contemplated by section 10(2)(b)(ii)), the following rules apply:
- 13 (a) The Commission must issue a notice of Refusal to Grant an Exemption, in
14 Form CC 11(1).
- 15 (b) The Commission may later withdraw its notice of Refusal to Grant an
16 Exemption, (as provided for in section 10 (9)), by –
- 17 (i) issuing notice in Form CC 11(3) to the applicant at least 60 business
18 days before the withdrawal will take effect; and
- 19 (ii) providing the applicant with written reasons for its action.
- 20 (c) Between the date that the Commission issues Form CC 11(1), and the date that
21 the subsequent notice in Form CC 11(3) takes effect, the Commission must not
22 initiate or accept a complaint against the applicant in respect of the specific
23 practice concerned.
- 24 (d) After the subsequent notice in Form CC 11(3) takes effect, the Commission
25 must not at any time initiate or accept a complaint against the applicant

1 concerning anything done by the applicant during the period described in
2 paragraph (c) above in respect of the specific practice concerned.

3 (2) An applicant who has received Form CC 11(3) in terms of sub-rule (1)(b)(i) -

4 (a) must either –

5 (i) repay the annual fee that had been refunded in terms of Rule 10(3); or

6 (ii) withdraw the application; and

7 (b) if it repays the annual fee, may file up-to date information to be considered by
8 the Commission in its reconsideration of the application, which is required by
9 section 10(9)(b).

10 (3) When the Commission reconsiders an application in terms of section 10(9)(b), the
11 provisions of Section 10 apply.

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

13 (1) If the Commission is contemplating revoking an exemption granted in terms of
14 section 10(5), the Commission must advise the firm concerned, in writing, of the
15 intention to do so, as well as publishing the notice required by Section 10(6).

16 (2) The Commission may request further information from –

17 (a) the firm concerned, or

18 (b) any person who submits a representation in response to a notice published in
19 terms of section 10(6).

20 (3) After considering any submissions or other information received in relation to the
21 proposed revocation, the Commission must –

22 (a) either revoke the exemption by issuing to the firm concerned a Notice of
23 Revocation in Form CC 12(1), or confirm the exemption as previously
24 granted, in writing to that applicant; and

Part 5 – Exemption Procedures :

r22-r23

-
- 1 (b) give written reasons for its decision, as well as publishing the notice required
2 by section 10(7).

22. Procedures relating to exemption applications (Schedule 1)

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

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

- 11 (1) If the Commission is contemplating revoking an exemption granted in terms of
12 Schedule 1, the Commission, in addition to the requirements of item 5 of that
13 Schedule, must advise the professional association concerned, in writing, of the
14 intention to do so.
- 15 (2) The Commission may request further information from –
16 (a) the professional association; or
17 (b) any person who submits a representation in response to a notice published in
18 terms of item 5 of Schedule 1.
- 19 (3) After considering any submissions or other information received in relation to the
20 proposed revocation, and consulting with the responsible Minister or member of the
21 Executive Council, the Commission must –
22 (a) either revoke the exemption by issuing to the professional association
23 concerned a Notice of Revocation of Exemption in Form CC 12(2), or confirm
24 the exemption as previously granted to the association, in writing;

- 1 (b) give written reasons for its decision; and
- 2 (c) publish a notice of that decision in the Gazette.
- 3

Part 6 - Merger Procedures :

r24-r25

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.

1 (3) If a small merger has already been implemented before the Commission serves Form
2 CC 9, the Commission will have complied with sub-rule (1) when it has served Form
3 CC 9 on the Primary Acquiring Firm.

4 (4) Rules 26 – 34 apply to the notification of a small merger, whether that notification is
5 voluntary in terms of section 13(2), or in response to Form CC 9.

6 **26. General merger notification requirements**

7 (1) Parties to a merger must notify the Commission of that merger –

8 (a) by filing a joint notification in terms of Rule 27, or

9 (b) if permitted by order of the Commission, by filing separately in terms of Rule
10 28.

11 (2) If, given the nature of a particular transaction, a firm is both a primary target firm and
12 a primary acquiring firm, that firm, before filing a Merger Notice, may request the
13 Commission to issue directions as to how, in the context of the transaction, to
14 calculate the filing fee and apply the threshold calculation.

15 (3) Within 5 business days after receiving a direction in terms of sub-rule (2), a firm
16 concerned may apply to the Tribunal to reconsider the direction of the Commission
17 with respect to the calculation of the filing fee, or the application of the threshold
18 calculation.

19 **27. Joint merger notification**

20 (1) A joint merger notification must be made in a single filing by one of the primary
21 firms, and must include:

22 (a) a Merger Notice in Form CC 4 (1), which must declare whether, in the opinion
23 of the filing firm, the merger is small, intermediate or large;

24 (b) for each of the Primary Acquiring Firm and the Primary Target Firm, a
25 Statement of Merger Information in Form CC 4 (2), which in each case -

Part 6 - Merger Procedures :

r28

-
- 1 (i) satisfies all the filing instructions set out in that Form, and
- 2 (ii) has attached to it all the documents required by those instructions;
- 3 (c) if the merger as declared on the Merger Notice is an intermediate or large
4 merger, proof of service of a copy of the Merger Notice as required in terms of
5 section 13A(2); and
- 6 (d) the prescribed merger notice fee, in the appropriate amount for the merger as
7 declared on the Merger Notice, subject to sub-rule (2).
- 8 (2) The prescribed merger notice fee may be paid separately from the remaining items
9 required under sub-rule (1), but must be received by the Commission on or before the
10 date of filing of those items.
- 11 (3) In respect of a merger that is jointly notified, the merger notification requirements of
12 every firm that is a party to the merger will have been fulfilled, when a primary firm
13 has fulfilled the notification requirements set out in Rule 27, subject to –
- 14 (a) any Notice of Incomplete Filing in Form CC 13(2) issued to it by the
15 Commission in terms of Rule 30, and either not appealed or confirmed on
16 appeal; or
- 17 (b) any Demand for Corrected Information in Form CC 13(4) issued to it by the
18 Commission in terms of Rule 32, and either not appealed or confirmed on
19 appeal.

20 28. Separate merger notification

- 21 (1) A primary firm may apply to the Commission for permission to file separate
22 notification of a merger and, on considering an application under this sub-rule, the
23 Commission –
- 24 (a) may allow separate filing if it is reasonable and just to do so in the
25 circumstances;

-
- 1 (b) may give appropriate directions to give effect to the requirements of the Act
2 and in particular, specifying which primary firm must satisfy which of the
3 requirements set out in Rule 27; and
- 4 (c) in an appropriate case, may further permit the applicant to file any document
5 on behalf of the other primary firm.
- 6 (2) A primary firm may apply to the Commission for an order on good cause shown
7 allowing it to file any document on behalf of the other primary firm, if that other
8 primary firm has failed within 10 business days to file -
- 9 (a) a document that the Commission or the Tribunal has ordered it to file; or-
- 10 (b) any other document or additional information required by the Commission in
11 terms of this Part.
- 12 (3) If a primary firm files a Statement of Merger Information on behalf of the other
13 primary firm, the firm that files that Statement is not required to file proof of service
14 of a copy of that statement on the other primary firm.
- 15 (4) In respect of a merger that is separately notified, the merger notification requirements
16 of each firm will have been fulfilled when the notification requirements of their
17 respective primary firms, as ordered by the Commission, have been fulfilled, subject
18 to -
- 19 (a) any Notice of Incomplete Filing in Form CC 13(2) issued to it by the
20 Commission in terms of Rule 30, and either not appealed or confirmed on
21 appeal; or
- 22 (b) any Demand for Corrected Information in Form CC 13(4) issued to it by the
23 Commission in terms of Rule 32, and either not appealed or confirmed on
24 appeal.

Part 6 - Merger Procedures :

r29-r30

1 29. Commencement of Initial Period

2 (1) The Initial Period for a merger begins on the business day following the date on
3 which a merger notification was filed unless –

4 (a) the Commission issues Form CC 13(2) to the filing firm within the time
5 allowed by Rule 30; and

6 (b) either the filing firm does not appeal against that form, or the Tribunal, on
7 hearing an appeal, does not set aside the form entirely.

8 (2) If the Commission issues Form CC 13(2), and it is not set aside entirely by the
9 Tribunal, the Initial Period for the merger begins on the business day following the
10 date on which the filing firm subsequently files documents in response to Form CC
11 13(2), if as a result of that filing, the Commission subsequently issues, or is deemed
12 to have issued, a Notice of Complete Filing in Form CC 13 (1).

13 30. Review of notification

14 (1) Within 5 business days after receiving a Merger Notice filed in respect of a merger
15 declared to be a large merger, or within 10 business days after receiving a Merger
16 Notice filed in respect of any other merger, the Commission must deliver to the filing
17 firm either –

18 (a) a Notice of Complete Filing in Form CC 13 (1); or

19 (b) a Notice of Incomplete Filing in Form CC 13 (2).

20 (2) The Competition Commission must issue Form CC 13 (1) in terms of sub-rule (1) if -

21 (a) the merger appears to fall within the jurisdiction of the Act;

22 (b) the declared category appears to be correct; and

23 (c) in the case of -

-
- 1 (i) a merger notified jointly, all the requirements set out in Rule 27 have
2 been satisfied,
- 3 (ii) a merger notified separately, all the requirements set out by order of the
4 Commission in terms of Rule 28 have been satisfied;
- 5 (iii) a subsequent filing by a firm in response to Form CC 13(2), all the
6 requirements set out in that Form have been satisfied; or
- 7 (iv) a subsequent filing by a firm in response to an order of the Tribunal in
8 terms of sub-rule (4), all the requirements set out in that order have been
9 satisfied.
- 10 (3) The Commission may issue Form CC 13(2) if after a filing of a merger notice, or
11 other information, the merger file does not meet the applicable criteria set out in sub-
12 rule (2).
- 13 (4) Within 5 business days after receiving Form CC 13 (2), the firm concerned may
14 appeal to the Tribunal for an order setting aside any requirement set out in that form.
- 15 (5) Upon hearing an appeal in terms of sub-rule (4), the Tribunal may make an order—
- 16 (a) Setting aside Form 13(2) entirely;
- 17 (b) Confirming any or all of the requirements set out in Form CC 13(2);
- 18 (c) Substituting other requirements for any of the requirements set out in Form CC
19 13(2); and
- 20 (d) Combining any or all of the requirements set out in Form 13(2) with additional
21 or substitute requirements.
- 22 (6) If the Commission does not issue either Form CC 13(1) or Form CC 13(2) within the
23 time allowed by sub-rule (1), or if the Tribunal sets aside all requirements set out by
24 the Commission in Form CC 13(2), the Commission will be deemed to have issued
25 Form CC 13(1) to the filing firm -
- 26 (a) as of the date on which the last material was filed; and

Part 6 - Merger Procedures :

r31-r32

1 (b) subject to further review and subsequent notice in terms of Rule 31 or 32.

2 (7) Sub-rules (1) - (6), read with the changes required by context, apply to a subsequent
3 filing by any party to the merger in response to -

4 (a) a notice issued to it in Form CC 13(2); or

5 (b) an order of the Tribunal in terms of sub-rule (4).

6 **31. Request for additional information**

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

8 (a) informally request additional information from a party to a merger; and

9 (b) require a party to a merger to provide additional information, at any time, as
10 provided in section 13B(2), by serving on the party a demand in Form CC
11 13(3), setting out the specific information that the Commission requires.

12 (2) A request or demand for information in terms of this Rule does not –

13 (a) delay the beginning of the Initial Period; or

14 (b) suspend the Initial Period or any extension.

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

16 (1) If, at any time, the Commission believes that a document filed in respect of a merger
17 contains false or misleading information, the Commission may issue a Demand for
18 Corrected Information in Form CC 13(4) to the firm that filed that document.

19 (2) Within 5 business days after being served with a Demand for Corrected Information,
20 the firm concerned may appeal to the Tribunal for an order confirming or setting
21 aside the Demand.

-
- 1 (3) If a firm does not appeal a Demand for Corrected Information within the time
2 allowed by sub-rule (1), or if the Tribunal, on hearing the appeal, confirms the
3 demand in whole or in part,
- 4 (a) the firm concerned must file corrected information;
- 5 (b) even if the Initial Period or an extension had already begun, the parties to the
6 merger will not have fulfilled their notification requirements until that
7 corrected information has been filed to the satisfaction of the Commission; and
- 8 (c) the Initial Period for that merger begins anew on the day following the date on
9 which the party concerned files replacing information to the satisfaction of the
10 Commission.
- 11 (4) If the Tribunal, on hearing an application in terms of sub-rule (2), sets aside the
12 Demand entirely, the Demand is a nullity, and the fact that it was issued does not
- 13 (a) delay the beginning of the Initial Period; or
- 14 (b) suspend the Initial Period or any extension.

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

- 16 (1) If the Commission has indicated on Form CC 13(2) that a merger appears to fall
17 outside the jurisdiction of the Act -
- 18 (a) the Commission must –
- 19 (i) refund the filing fee to the firm that paid it;
- 20 (ii) return the Merger Notice to the primary firm that submitted it; and
- 21 (iii) send a copy of Form CC 13(2) to –
- 22 (aa) the other primary firm if the filing was in terms of Rule 29; and

Part 6 - Merger Procedures :

r33

-
- 1 (bb) each person identified in the Merger Notice as being entitled to
2 receive a copy of the Merger Notice in terms of section 13A(2);
3 and
- 4 (b) no party to that merger is required to file any further documents concerning
5 that merger.
- 6 (2) If the Commission has indicated on Form CC 13(1) or CC13(2), as the case may be,
7 that the merger appears to fall within the jurisdiction of the Act, the Commission
8 must –
- 9 (a) send a copy of the Merger Notice and accompanying Statement of Merger
10 Information to the Minister;
- 11 (b) if it appears to be a large merger, send a copy of the Merger Notice to the
12 Tribunal.
- 13 (3) Within 5 business days after receiving Form CC 13(1) or Form CC 13(2), as the case
14 may be, the firm concerned may appeal to the Tribunal for an order setting aside the
15 opinion of the Commission –
- 16 (a) that the merger is within the jurisdiction of the Act; or
- 17 (b) in the case of Form CC 13(2), that the merger falls within a particular category
18 other than that declared on the Merger Notice.
- 19 (4) If, upon hearing an appeal in terms of sub-rule (2) –
- 20 (a) the Tribunal sets aside the opinion of the Commission that the merger is within
21 the jurisdiction of the Act, the provisions of sub-rule (1) apply; or
- 22 (b) the Tribunal sets aside the opinion of the Commission that the merger falls
23 within a particular category other than that declared on the Merger Notice, the
24 opinion of the Commission is a nullity.
- 25 (5) If, within the time allowed by sub-rule (4), a firm does not appeal against the opinion
26 of the Commission that the merger falls within a particular category other than that
27 declared on the Merger Notice, or if the Tribunal, on hearing the appeal, confirms the

1 Commission's opinion one of the primary parties must pay to the Commission the
2 difference between --

3 (a) the appropriate filing fee for the category determined by the Commission; and

4 (b) the filing fee previously paid in respect of the merger.

5 (6) The Initial Period for a merger referred to in this Rule begins -

6 (a) On the date following the day that the merger notice was filed if, following the
7 order of the Tribunal, there are no outstanding notification requirements, and

8 (i) The application to the Tribunal concerned only a matter of the
9 jurisdiction of the Act,

10 (ii) The Tribunal set aside the Commission's category determination, or

11 (iii) The Tribunal upheld the Commission's category determination and one
12 of the firms concerned paid the amount required in terms of sub-rule (5)
13 within 5 business days after the Tribunal makes its order; or

14 (b) In any case, on the date determined in accordance with Rule 29(2).

15 **34. Abandonment of merger**

16 (1) The primary acquiring firm may notify the Commission in Form CC 6 that it has
17 abandoned the intended merger transaction and has no intention to implement it.

18 (2) Upon the filing of Form CC 6 -

19 (a) the parties to the merger are in the same position as if the merger had never
20 been notified; and

21 (b) the filing fee paid in respect of that merger is forfeited to the Commission,
22 unless the party that paid the fee applies within 10 business days to the
23 Tribunal for a remission of the fee, and the Tribunal, on good cause shown,
24 orders the Commission to refund all or part of the fee.

Part 6 - Merger Procedures :

r35

1 35. Participation by Minister in Commission merger proceedings

- 2 (1) If the Minister decides to participate in any intermediate or large merger proceedings
3 before the Commission, the Minister must file a Minister's Notice of Intention to
4 Participate in Form CC 5(2) within 10 days after receiving a copy of the Merger
5 Notice from the Commission.
- 6 (2) Upon receipt of a Minister's Notice of Intention to Participate in terms of sub-rule
7 (1), the Commission -
- 8 (a) in the case of an intermediate merger, is deemed to have issued an extension
9 certificate for 40 business days in terms of section 14(1)(a);
- 10 (b) must deliver a copy of the Minister's Notice of Intention to Participate to the
11 primary acquiring firm and the primary target firm; and
- 12 (c) must deliver to the Minister a copy of all documents filed in connection with
13 the merger, up to the day on which the Minister's Notice of Intention to
14 Participate was filed.
- 15 (3) The Commission must deliver to the Minister any document that is filed in
16 connection with a merger after the Minister's Notice of Intention to Participate was
17 filed.
- 18 (4) The Minister may file a concise statement of the public interest grounds on which the
19 Minister relies in respect of a particular intermediate merger, and a statement of the
20 decision, if any that the Minister prefers, at any time between –
- 21 (a) The date on which the Minister filed a Notice of Intention to Participate; and
22 (b) 10 business days after receiving advice from the Commission in terms of sub-
23 rule (5), if applicable.
- 24 (5) If, in respect of a particular merger the Minister has filed a Notice of Intention to
25 Participate, but has not yet filed a statement in terms of sub-rule (4), the Commission
26 must advise the Minister in writing at the time that it is prepared to make a decision
27 in terms of section 13, 14 or 14A.

-
- 1 (6) Upon receiving a concise statement from the Minister in terms of sub-rule (4), the
2 Commission must serve a copy of the statement on each other participant in those
3 proceedings, and each participant may file a written response to the statement within
4 5 business days after it has been served on them.

5 **36. Minister of Finance intervention**

- 6 (1) The Commission must send to the Minister of Finance a copy of the Merger Notice,
7 and all other documents filed in respect of a merger, if the merger meets the criteria
8 set out in section 18(2)(a).
- 9 (2) The Minister of Finance may issue a notice to the Commission in terms of section
10 18(2)(b) by filing Form CC 5(3) at any time between –
- 11 (a) The date on which the Commission sends a notice in terms of Sub-Rule (1);
12 and
- 13 (b) 10 business days after receiving advice from the Commission in terms of sub-
14 rule (3), if applicable.
- 15 (3) If, in respect of a particular merger the Minister of Finance has received a notice in
16 terms of Sub-rule (1), but has not yet issued a notice in terms of sub-rule (2), the
17 Commission must advise the Minister of Finance in writing at the time that it is
18 prepared to make a decision in terms of section 13, 14 or 14A.
- 19 (4) Upon receiving a notice from the Minister of Finance in terms of sub-rule (2), the
20 Commission must –
- 21 (a) serve a copy of the notice on the Tribunal and each other participant in those
22 proceedings; and
- 23 (b) refund the filing fee to the firm that paid it.

Part 6 - Merger Procedures :

r37-r38

1 37. Trade Union or employee participation

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

5 38. Small and intermediate merger procedures

6 (1) If the Commission extends, or is deemed to have extended, the time period for
7 considering a small or intermediate merger, it must issue a copy of the Extension
8 Certificate in Form CC 14 to the firm that filed the merger notification.

9 (2) If the Commission is deemed to have approved a merger in terms of section 13(6), or
10 section 14(2), the Commission must –

11 (a) issue a Clearance Certificate, in Form CC 15, to the firm that filed the merger
12 notification; and

13 (b) publish a notice of that approval in the Gazette.

14 (3) After completing its investigation and consideration of a small or intermediate
15 merger, the Commission must –

16 (a) issue, in terms of section 13 (5) or 14(1)(b), either a Clearance Certificate in
17 Form CC 15, or a Notice of Prohibition in Form CC 16, to the firm that filed
18 the Merger Notice; and

19 (b) at the same time, make available to each participant a copy of its reasons for
20 decision, if required to issue reasons for decision by section 13 (7) or 14 (3);
21 and

22 (c) publish a notice of its decision in the Gazette, as required by section 13(7) or
23 14(3).

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

- 2 (1) If a firm appears to have breached an obligation that was part of an approval or
3 conditional approval of its merger, the Commission must deliver to that firm a Notice
4 of Apparent Breach in Form CC 19, before taking any action –
- 5 (a) in terms of section 15(1)(c) to revoke that approval or conditional approval; or
6 (b) in terms of section 59 or 60.
- 7 (2) Within 10 business days after receiving a Notice of Apparent Breach, a firm referred
8 to in sub-rule (1) may –
- 9 (a) submit to the Commission a plan to remedy the breach; or
10 (b) request the Competition Tribunal to review the Notice of Apparent Breach on
11 the grounds that the firm has substantially complied with its obligations with
12 respect to the approval or conditional approval of the merger.
- 13 (3) If a firm submits a plan to the Commission in terms of sub-rule (2)(a), the
14 Commission may either-
- 15 (a) accept the proposed plan; or
16 (b) reject the proposed plan, and invite the firm to consult with the Commission
17 concerning the apparent breach, with the aim of establishing a plan satisfactory
18 to the Commission by which all of the firm's obligations with respect to the
19 approval or conditional approval may be satisfied.
- 20 (4) If the Commission accepts a proposed plan, in terms of either sub-rule (3)(a) or (b),
21 the Commission must monitor the firm's compliance with the plan.
- 22 (5) The Commission may act in terms of section 15(1) to revoke the approval or
23 conditional approval of a merger referred to in sub-rule (1), or in terms of section 59
24 or 60, only if –
- 25 (a) the firm concerned does not respond to the Notice of Apparent Breach within
26 10 business days after receiving it, in the manner anticipated in sub-rule (2);

Part 6 - Merger Procedures :

r40

-
- 1 (b) the firm concerned does not agree to meet, or fails to meet as agreed, with the
2 Commission, as required by sub-rule (3)(b);
- 3 (c) the firm and the Commission are unable to agree a plan as contemplated in
4 sub-rule (3)(b);
- 5 (d) the firm acts in a manner calculated to frustrate the Commission's efforts to
6 monitor compliance with a plan, as required by sub-rule (4); or
- 7 (e) the firm fails to employ its best efforts to substantially comply with a plan
8 established in terms of sub-rule (3).

9 40. Revocation of approval of small or intermediate merger

- 10 (1) If the Commission is contemplating revoking its own decision to approve or
11 conditionally approve a merger in terms of section 15(1), the Commission must –
- 12 (a) if the proposed revocation is based on section 15(1)(c), comply with Rule 39
13 before taking any further steps in terms of this Rule; and
- 14 (b) in any case -
- 15 (i) advise any firm concerned, in writing, of the intention to do so; and
- 16 (ii) publish a notice of the proposed revocation in the Gazette.
- 17 (2) The Commission may request further information from any person who submits a
18 representation in response to a notice published in terms of sub-rule (1)(b).
- 19 (3) After considering any submissions or other information received in relation to the
20 proposed revocation, the Commission must –
- 21 (a) either -
- 22 (i) confirm the approval or conditional approval, as the case may be, in
23 writing, or

-
- 1 (ii) revoke it by issuing a Notice of Revocation of Merger Decision in Form
2 CC 18 to the firm that filed the merger notification; and
- 3 (b) publish a notice of that decision in the Gazette.
- 4 (4) Within 10 business days after receiving a Notice of Revocation of Merger Decision
5 in terms of sub-rule (3), the firm concerned may request the Competition Tribunal to
6 appeal against the notice on the grounds that there is no factual basis in terms of
7 section 15(1) for the approval or conditional approval to be revoked.
- 8 (5) If no appeal is brought in terms of sub-rule (4), or if the Competition Tribunal
9 upholds the Notice of Revocation of Merger Decision, the effect of that notice is –
- 10 (a) the Certificate of approval or conditional approval in respect of the relevant
11 merger is deemed to have been rejected as of the date of that Certificate;
- 12 (b) each party to the merger is, for all purposes of the Act, in the same position as
13 if they had never notified the Commission of that merger; and
- 14 (c) the Commission may further consider that merger only if the primary
15 acquiring firm subsequently files a new Merger Notice with respect to it; and
- 16 (d) if a new Merger Notice is subsequently filed in respect of that merger, the
17 Commission must consider that merger on the basis of that new notice without
18 reference to any previous notice filed in respect of it.

19 **41. Large mergers**

- 20 (1) The Commission must submit a recommendation in Form CC 17 in respect of a large
21 merger, with reasons for that recommendation, to the Tribunal and the Minister
22 within -
- 23 (a) 40 business days after receiving the Merger Notice; or
- 24 (b) a longer period established by the Tribunal for that merger in terms of section
25 14A(2).

Part 6 - Merger Procedures :**r41**

- 1 (2) The Commission must deliver a copy of its recommendation and reasons to the firm
2 that filed the merger notification, and to any other person, if required to do so in
3 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	Method of Delivery	Date and Time of Deemed delivery
ANY PERSON	By faxing the notice or a certified copy of the document to the person, if the person has a fax number; 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.
	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 computer used by the sender, unless there is conclusive evidence that it was delivered on a different date or at a different time.
	By sending the notice or a certified copy of the document by registered post to the person's last-known address; or	On the 7 th 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.

COMPETITION COMMISSION RULES

Part 6 - Merger Procedures : Table CCR 1 – Methods and times for delivery of Documents

r41

	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	On the date and at the time recorded on a receipt for the delivery.
	By any other means authorised by the Tribunal; or	In accordance with the order of the Tribunal.
	By any other method allowed for that person in terms of the following rows of this Table.	As provided for that method of delivery.
ANY NATURAL PERSON	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	On the date and at the time recorded on a receipt for the delivery.
	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	On the date and at the time recorded on a receipt for the delivery.

COMPETITION COMMISSION RULES

Part 6 - Merger Procedures : Table CCR 1 – Methods and times for delivery of Documents

r41

	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.	On the date and at the time recorded on a receipt for the delivery.
THE COMMISSION	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	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.
	By transmitting the document as a separate file attached to an electronic mail message addressed to the Commission; or	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.
	By sending a computer disk containing the document in electronic form, by registered post addressed to the Commission; or	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.

COMPETITION COMMISSION RULES

Part 6 - Merger Procedures : Table CCR 1 – Methods and times for delivery of Documents

r41

	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 Commission's office.	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.
A COMPANY OR SIMILAR BODY CORPORATE	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	On the date and at the time recorded on a receipt for the delivery.
	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.	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.
A TRADE UNION	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.	On the date and at the time recorded on a receipt for the delivery.

COMPETITION COMMISSION RULES

Part 6 - Merger Procedures : Table CCR 1 – Methods and times for delivery of Documents

r41

	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.	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.
EMPLOYEES OF FIRM	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.	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.
A PARTNERSHIP, FIRM OR ASSOCIATION	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	On the date and at the time recorded on a receipt for the delivery.
	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.	On the date and at the time recorded on a receipt for the delivery.

COMPETITION COMMISSION RULES

Part 6 - Merger Procedures : Table CCR 1 – Methods and times for delivery of Documents

r41

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

1

2

COMPETITION COMMISSION RULES

Part 6 - Merger Procedures : Table CCR 1 – Methods and times for delivery of Documents

r41

1

2

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 Propertyfor 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)	

COMPETITION COMMISSION RULES

Part 6 - Merger Procedures : Table CCR 1 – Methods and times for delivery of Documents

r41

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.

COMPETITION COMMISSION RULES

Part 6 - Merger Procedures : Table CCR 1 – Methods and times for delivery of Documents

r41

1

Table CCR 3 – Certificates and Notices of Referral

Section #	Purpose of Certificate or Notice	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)	

COMPETITION COMMISSION RULES

Part 6 - Merger Procedures : Table CCR 1 – Methods and times for delivery of Documents

r41

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	

COMPETITION COMMISSION RULES

Part 6 - Merger Procedures : Table CCR 1 – Methods and times for delivery of Documents

r41

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.

1

2