

# **COMPETITION COMMISSION**

**RULES FOR THE CONDUCT OF**

**PROCEEDINGS OF THE**

**COMPETITION COMMISSION**

**(made pursuant to the Competition Act 2009)**

***October 2012***

## **PREAMBLE**

The Competition Act No 17 of 2009 establishes the Competition Commission under section 9, with powers to adjudicate on matters brought before it by the Competition Authority. In terms of section 16 of the Act, the Commission shall regulate its own proceedings, having the power to determine any matter of procedure for a hearing, with due regard to circumstances of the case. The Commission is not enjoined to follow any formalised rules of procedure found in civil and criminal proceedings, but may condone any technical irregularities arising in any of its proceedings.

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# COMPETITION COMMISSION RULES

## REGULATING THE CONDUCT OF THE PROCEDURE OF THE COMPETITION COMMISSION

### PART 1- General Provisions

#### Interpretation

##### 1. Short Title

These Rules may be cited as the Rules of the Competition Commission.

##### 2. Interpretation

- (1) A word or expression that is defined in a chapter of the Competition Act bears the same meaning in these Rules as in the Act.
- (2) In these Rules unless the context indicates otherwise -
  - (a) “Act” means the Competition Act, 2009 (Act No.17 of 2009) as amended from time to time;
  - (b) “answer” means a document as described in Rule 13 and filed by the Respondent;
  - (c) “appellant” means a party which initiates an appeal from the Competition Commission to the High Court;
  - (d) “applicant” means a person who files an application to the Commission in terms of Part VIII of the Act;
  - (e) “application” means a request submitted in terms of Part VIII of the Act;
  - (f) “certified copy” means a copy of a document certified by a Commissioner of Oaths’ in terms of the Commissioners of Oaths Act;
  - (g) “Chairperson” means the officer of the Commission appointed in terms of section 10(3) of the Act;
  - (h) “Commission” means the body established by section 9 of the Act or, depending on the context, a panel of Commissioners convened in terms of section 17 of the Act;

- (i) “Commissioner” means the office holder appointed in terms section 10 of the Act;
- (j) “Competition Commission Rules” means the Rules promulgated in terms of the Act for the regulation of procedures of the Commission and includes any footnote to a Rule and any table included within or referred to in a Rule;
- (k) “complaint” means either -
  - (i) a matter initiated by the Authority in terms of section 35(1); or
  - (ii) a matter that has been submitted to the Commission in terms of section 39(6) of the Act;
- (l) “Court” means the High Court or the Court of Appeal of the Republic of Botswana, as the case may be;
- (m) “deliver”, depending on the context, means to serve or to file a document;
- (n) “Executive Secretary” means the Secretary of the Commission as set out in section 19 of the Act or any officer acting on his or her behalf;
- (o) “file”, when used as a verb, means to deposit with the Commission;
- (p) “High Court Rules” means the rules of the High Court of the Republic of Botswana;
- (q) “initiating document” means either an application, a complaint referral, notice of appeal or notice of motion, unless used to bring an interlocutory application in a matter before the Commission;
- (r) “initiating party,” depending on the context, means either -
  - (i) the Authority, in case of a complaint referral; or any other person referred to in section 39(6) of the Act;
  - (ii) in any other proceedings, the applicant or the appellant as the case may be.
- (s) “interested party” means any person who, in terms of section 39(1) of the Act, has been granted standing to take part in particular proceedings before the Commission;
- (t) “intervenor” means an interested or third party;

- (u) “member” means a person appointed to the Commission in terms of section 10 of the Act;
- (v) “panel” means a group of members assigned by the Chairperson to hear any particular matter before the Commission;
- (w) “presiding member” means a member chosen by the panel to preside over particular proceedings of the Commission;
- (x) “public holiday” means a public holiday referred to in section 1 of the Public Holidays Act (Cap 03:07);
- (y) “Registrar” in relation to the Commission, in these Rules means the Executive Secretary, or any other officer specifically appointed to that position;
- (z) “Regulations” means the Competition Regulations issued under section 80 of the Act;
- (aa) “reply” means a document as described in Rule 15 and filed by the respondent;
- (bb) “respondent” means -
  - (i) in respect of an application, the person or enterprise against whom the relief is sought;
  - (ii) in respect of complaint referral, a person or enterprise against whom that complaint has been initiated;
  - (iii) in respect of an appeal -
    - (aa) the Authority, and
    - (bb) the person or enterprise concerned, if that person or enterprise is not the appellant, or applicant, as the case may be.
- (cc) “serve” means to deliver a document to a person other than the Commission; and
- (dd) “Sheriff” means a person appointed in terms of the High Court Act.

## Part 2- Commission Office Hours

### 3. 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 9:00am to 4:30pm.
- (2) Notwithstanding sub-rule (1) -
  - (a) in exceptional circumstances the Commission may accept the documents for filing on any day and at any time; and
  - (b) the Registrar shall accept documents for filing as directed by either the Commission or a member of the Commission assigned by the Chairperson.
- (3) Subject to Rules 5 and 7, any communication to the Commission, or to a member of the staff of the Commission, may be -
  - (a) Delivered by hand and addressed to:

The Chairman  
Competition Commission  
c/o Competition Authority  
Fairgrounds, Plot 50664  
Paledi Morrison House  
Ground Floor  
Gaborone  
Botswana
  - (b) Addressed by post to:

The Chairman  
Competition Commission  
Private Bag 00101  
Gaborone  
Botswana

- (c) Communicated by telephone on +267 3934278;
- (d) Transmitted by Fax on 391 9358; or
- (e) Transmitted by electronic mail to [CC@competitionauthority.co.bw](mailto:CC@competitionauthority.co.bw).

## **PART 3- Delivery of Documents**

### **4. Delivery of Documents**

- (1) A notice or document may be delivered in any manner set out in table CCR A.
- (2) Subject to sub-rule (4), a document delivered by a method listed in the second column of table CCR A 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 -
  - (a) if the Commission is required to serve the document, the Registrar may apply to the High Court for an order of substituted service; and
  - (b) in any other case, the person concerned may apply to the High Court for an order of substituted service.
- (4) Subject to sub-rule (2), if the date and time for the delivery of a document referred to in table CCR A is outside of the office hours of the Commission as set out in sub-rule (1), that document will be deemed to have been delivered on the next business day, provided, however, that this sub-rule does not apply to the service of a document issued by the Commission.
- (5) A document that is delivered by fax must include a cover page, and a document that is transmitted by electronic mail must include a cover message, 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 a representative of that 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.

## **5. Issuing Documents**

If the Act or these Rules require the Commission to issue a document -

- (a) the document will have been issued by the Commission when it has been signed by the Registrar, and served on any person to whom it is addressed; and
- (b) the document may be signed and served any time of day, that despite Rule 4(1).

## **6. Filing Documents**

- (1) The Registrar must assign distinctive case numbers to each initiating document.
- (2) Before serving a copy of an initiating document on any person, the initiating party must -
  - (a) obtain a case number for that document from the Registrar; and
  - (b) note the case number on every copy of the initiating document.
- (3) The Registrar must ensure that every document subsequently filed in respect of the same proceedings is marked with the same case number.
- (4) The Registrar may refuse to accept a document subsequently filed in respect of the same proceedings that is not properly marked with the assigned case number.
- (5) A person who files any document in terms of the Act or these Rules must provide to the Registrar that person's -
  - (a) legal name;
  - (b) physical address for service;
  - (c) telephone number;
  - (d) if available, email address and fax number;
  - (e) if the person is not an individual, the name of the individual authorised to deal with the Commission on behalf of the person filing the document;

- (f) if the person filing the document does so as the representative of another person, he or she must notify the Registrar and every other party, advising them of the following -
  - (i) the representative's names;
  - (ii) the postal address and place of employment or business; and
  - (iii) a fax number and telephone number, where available.

## **7. Fees**

- (1) The fee for filing an initiating document is P250.00.
- (2) The Registrar may charge a fee for making a copy of a document in possession of the Commission.

## **8. Form of Notices and Applications**

- (1) Whenever an initiating document or other document is required to be filed for a purpose listed in column two of table CCR B, the document must be substantially in the form of the annexure listed opposite that section in column three of that table, and must be produced subject to any condition(s) listed opposite that section in column four of that table.
- (2) Whenever these Rules require a document to be in a form whose number is prefixed by the letters "CC", that document must be substantially in the corresponding form prescribed in these Rules.

## **9. Form of Notices**

- (1) Whenever the Commission is required to issue a document in terms of the Act, the document must be substantially in a form prescribed by the Commission.
- (2) Whenever the Commission is required, either in terms of the Act or these Rules, to publish a notice in the Government Gazette, that notice must contain at least the following information -
  - (a) the name of any enterprise or other person directly affected by the notice;
  - (b) the file number assigned by the Commission to the relevant matter;
  - (c) the provision of the Act or Rules in terms of which the notice is required;

- (d) a brief and concise description of the nature of the relevant matter;
- (e) if the notice invites submissions, the last date on which submissions may be received;
- (f) if the notice publishes a decision -
  - (i) a brief and concise description of the nature of the decision;
  - (ii) a statement indicating whether reasons for the decision have been published, and, if so, how a copy of those reasons may be obtained; and
  - (iii) a statement describing how any right of review or appeal may be lodged.

## **PART 4- Access to Commission Records**

### **10. Access to information**

Any person, upon payment of the prescribed fee of P100.00, may inspect or copy any Commission proceedings -

- (a) if it is not confidential information; or
- (b) if it is confidential information, to the extent permitted, and subject to any conditions imposed, by -
  - (i) this Rule; or
  - (ii) an order of the Commission, or a Court.

## **PART 5- Complaint Procedures**

### **11. Initiating Complaint Proceedings**

- (1) A complaint referral may be filed -
  - (a) by the Authority in terms of section 39 of the Act or in Form I of Regulation 14(4) of the Regulations;
  - (b) by a complainant in terms of section 39(6) of the Act or in Form I of Regulation 14(4) of the Regulations; or

- (c) by any other party to an action in a Court that has been referred to the Commission in terms of section 71(1) (a) of the Act.
- (2) If in respect of a particular matter more than one person files a complaint referral in terms of sub-rule (1), the Registrar must combine those referrals under a common case number.
- (3) A person who files a complaint referral, must, after filing, serve a copy within ten (10) working days on -
  - (a) the respondent;
  - (b) the Authority, if the Authority did not file the referral; and
  - (c) on each other person who has previously filed a complaint referral in that matter.

## **12. Form of Complaint Referral**

- (1) A complaint proceeding may be initiated only by filing a complaint referral Form I in terms of Regulation 14(4) of the Regulations, or section 71(1)(a) of the Act.
- (2) A complaint referral must be accompanied by an affidavit setting out in numbered paragraphs -
  - (a) a concise statement of the grounds of the complaint; and
  - (b) the material facts or the points of law relevant to the complaint and relied on by the Authority or complainant, as the case may be.
- (3) A complaint referral may allege alternative prohibited practices based on the same facts.

## **13. Answer**

- (1) Within ten (10) working days after being served with a complaint referral filed by the Authority, any respondent who wishes to oppose the complaint referral must -
  - (a) serve a copy of their answer on the Authority; and
  - (b) file the answer with proof of service.
- (2) Within ten (10) working days after being served with a complaint referral filed by a person other than the Authority, a respondent who wishes to oppose the complaint referral must -

- (a) serve a copy of their answer on the Authority, on the person who filed the referral, and on each other person who has previously filed a complaint referral in that matter; and
  - (b) file the answer with proof of service.
- (3) An answer that raises only a point of law must set out the question of law to be resolved.
- (4) Any other answer must be in affidavit form, setting out in numbered paragraphs -
  - (a) a concise statement of the grounds on which the complaint referral 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 complaint referral.
- (5) An allegation of fact set out in the complaint referral that is not specifically denied or admitted in an answer will be deemed to be admitted.
- (6) In an answer, the respondent must qualify or explain a denial of an allegation, if necessary in the circumstances.

#### **14. Reply to Answer**

- (1) Where the answer only raises a point of law and not any other issues raised in the complaint referral, the person who filed the complaint referral may within ten (10) working days after being served with an answer -
  - (a) serve a reply on the respondent and the Authority, if the Authority did not file the referral, and on each other person who filed a complaint referral in the matter; and
  - (b) file a copy of the reply and proof of service.
- (2) The reply must be in an 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 replying party on any point of law raised in the answer.

- (3) If a person who filed a complaint referral does not file a reply, they will be deemed to have denied each new issue raised in the answer, and each allegation of fact relevant to each of those issues.

#### **15. Amending Documents**

- (1) The person or enterprise who filed a complaint referral may apply to the Commission by notice of motion as prescribed in Form CCR 1 at any time prior to the end of the hearing of that complaint for an order authorising them to amend their Form I, as filed.
- (2) If the Commission allows an amendment, it must allow any other party affected by the amendment to file additional documents consequential to those amendments within a time period allowed by the Commission.

#### **16. Completion of Complaint File**

Subject to any Order made in terms of Rule 15, the filing of documents is complete when a complaint referral or answer has not been responded to within the time allowed.

#### **17. Appointment of Panels**

The Chairperson, Deputy Chairperson or any person acting on behalf of the Commission may, where applicable, appoint not more than three members of the Commission to hear an application filed in terms of these Rules or appoint not less than four members of the Commission to constitute a panel for purposes of hearing a case referred to the Commission in terms of sections 39(6) or 46 of the Act.

#### **18. Pre-hearing Conferences**

- (1) Before or within fourteen (14) working days after the filing of documents is completed, the Chairperson may convene a pre-hearing conference on a date and at a time determined by him or her with -
  - (a) the Authority;
  - (b) each complainant who has filed a complaint referral;
  - (c) the respondent; and
  - (d) interested parties.
- (2) If a point of law has been raised, and it appears to the Chairperson at a pre-hearing conference to be practical to resolve that question before proceeding with the conference, the Chairperson may -

- (a) direct the Registrar to set only that question down for hearing by the Commission; and
  - (b) adjourn the pre-hearing conference pending the resolution of that question by the Commission, or a Court, as the case may be.
- (3) The Chairperson may, where necessary, adjourn a pre-hearing conference.
- (4) Pre-hearing conferences may be conducted in person or by any other means authorised by the Commission.

## **19. Powers of the Chairperson at Pre-hearing Conferences**

The Chairperson may, at a pre-hearing conference -

- (a) establish procedures for protecting confidential information, including the terms under which the participants may have access to that information;
- (b) direct the Authority to investigate specific issues or obtain certain evidence;
- (c) require each participant to submit at a date to be determined, but before the hearing, a written statement summarising its arguments, if any, with respect to the complaint, and identifying what it believes are the major unresolved issues; or
- (d) issue an order recording any agreements or rulings arising from matters considered at the pre-hearing conference.

## **20. Settlement Conference**

At any time before the Commission makes a final order in complaint proceedings, the Commission, on its own initiative or at the request of the participants, may order an adjournment of the proceedings to allow the participants to attempt to reach an agreement on the outstanding issues.

## **21. Initiating Hearings**

- (1) If a complaint referral is to be proceeded with in terms of section 47 of the Act -
- (a) sub-rules 11(3), 12(2) and Rules 14-19 inclusive shall not apply to the complaint referral; and
  - (b) the person or enterprise filing the complaint referral must attach the following documents to it -

- (i) a notice of motion in Form CCR 1, for a consent order to be made; and
  - (ii) a draft order in the terms agreed, signed by the Authority and the respondent indicating their consent to the order.
- (2) At any time before the Commission makes a final order in a complaint proceeding, a party may request the Commission to make a consent order by filing a notice of motion in Form CCR 1 with the documents listed in sub-rule 1(b).
- (3) A party intending to file a notice of motion in terms of sub-rule (2) -
  - (a) must notify each complainant, in writing, that a consent order may be proposed to the Commission; and
  - (b) invite the complainant to inform the Authority in writing within ten (10) working days after receiving that notice -
    - (i) whether the complainant is prepared to accept damages under such order; and
    - (ii) if so, the amount of damages claimed.

## **22. Undertaking Hearings**

- (1) Upon receiving a complaint referral in terms of sub-rule 21(1), or a notice of motion in terms of sub-rule 21(2), the Registrar shall set down the hearing of the Commission at the earliest possible date.
- (2) If the Commission refuses to make a consent order as requested, or requires any changes that the party is unwilling to accept -
  - (a) the Authority or any other complainant, as the case may be, may, as of right, amend the referral and statement of particulars;
  - (b) the Registrar must serve each party, and the complainant if applicable, with -
    - (i) a notice that the motion for consent order has been denied; and
    - (ii) a copy of the complaint referral and statement of particulars in their original or amended form, as applicable;
  - (c) the Commission must proceed to consider the complaint in accordance with these Rules as they apply to contested complaints generally -

- (i) after the time for an appeal from the decision of the Commission in terms of sub-rule (2) has expired; or
  - (ii) if an appeal has been noted from that decision, after a Court has decided that appeal;
- (d) none of the members of the Commission who considered the motion for the consent order may participate in any further proceedings relating to that complaint.

## **PART 6- Application for an Interim Relief**

### **23. Commencing Relief Procedures**

- (1) An enterprise or person wishing to apply for an interim order in terms of section 46 of the Act must file a notice of motion in Form CCR 1, and supporting affidavits setting out the facts on which the application is based.
- (2) The applicant must serve a copy of the notice of motion and the supporting affidavit on the Authority and each respondent named in the notice of motion, within ten (10) working days after filing it.
- (3) A notice of motion in terms of this Rule must -
  - (a) allege each prohibited practice in respect of which the application is made by specific reference to the relevant section, sub-section, paragraph or sub-paragraph of the Act;
  - (b) indicate the order sought, and the section of the Act under which the order may be granted;
  - (c) state the name and address of each person in respect of whom an order is sought.
- (4) A notice of motion may allege alternative prohibited practices based on the same facts.
- (5) Rules 14 and 15, each read with changes required by the context, apply to an application under this Rule.

## **24. Answering and Replying Affidavits**

- (1) Within ten (10) working days after being served with a notice of motion, a respondent against whom an interim order is sought -
  - (a) may serve an answering affidavit on the Authority, the applicant and any other person against whom the order is sought; and
  - (b) must file proof of service by way of affidavit.
- (2) Within ten (10) working days after being served with the answering affidavit that raises issues not addressed in the notice of motion or its supporting affidavit, the applicant may -
  - (a) serve a replying affidavit on the respondent, the Authority, and on any other person against whom the order is sought; and
  - (b) file a copy of the replying affidavit with proof of service.

## **25. Interim Relief Hearings**

- (1) Rules 18, 19 and 20 each read with the changes required by the context, apply to the pre-hearing procedures of an interim relief application.
- (2) Subject to section 16(1) of the Act, evidence on an application for an interim relief must be by affidavit.
- (3) In urgent circumstances, the Commission, on good cause shown, may shorten any time period or dispense with any formalities provided for in this Part.

## **PART 7- Third Parties, Witnesses and Interpreters**

### **26. Joinder or substitution of parties**

- (1) The Commission, or any member/members as assigned by the Chairperson, as the case may be, may combine any number of persons, whether jointly or severally or in the alternative, as parties in the same proceedings, if their respective rights to relief depend on the determination of substantially the same question of law or facts.
- (2) If a party to any proceedings has been incorrectly or defectively cited, the Commission or the assigned member, as the case may be, on application and notice to the party concerned, may correct the error or defect and may make an order as to costs.

- (3) If in any proceedings it becomes necessary to substitute a person for an existing party, any party to those proceedings, on application and on notice to every other party, may apply to the Commission or the assigned member, as the case may be, for an order substituting that party for an existing party, and the Commission or the assigned member, as the case may be, may make an order, including an order as to costs, or give directions as to the further procedure in the proceedings.
- (4) An application to join any person as a party to proceedings, or to be substituted for an existing party, must be accompanied by copies of all documents previously delivered, unless the person concerned or that person's representative is already in possession of those documents.
- (5) No joinder or substitution in terms of this Rule will affect any prior steps taken in the proceedings.

## **27. Third Parties (Intervenors)**

- (1) At any time after an initiating document is filed with the Commission, any person who has a material interest in the relevant matter may apply to intervene in the Commission proceedings by filing a notice of motion, which must -
  - (a) include a concise statement of the nature of the person's interest in the proceedings, and the matters in respect of which the person will make representations; and
  - (b) be served on every other participant in the proceedings.
- (2) No more than ten (10) working days after receiving a motion to intervene, a member of the Commission assigned by the Chairperson must either -
  - (a) make an order allowing the applicant to intervene, subject to any limitations -
    - (i) necessary to ensure that the proceedings will be orderly and expeditious; or
    - (ii) on the matters with respect to which the person may participate, or the form of their participation; or
  - (b) deny the application, if the Commission or member concludes that the interests of the person are not within the scope of the Act, or are already represented by another participant in the proceedings.
- (3) Upon making an order in terms of sub-rule (2), the Commission or assigned member may make an appropriate order as to costs.

- (4) If an application to intervene is granted -
  - (a) the Registrar must send to the intervenor a list of all documents filed in the proceedings prior to the day on which the request for leave to intervene was granted; and
  - (b) access by an intervenor to a document filed or received in evidence is subject to any order of the Commission restricting access to the document.

## **28. Summoning Witnesses**

- (1) If the Commission requires a witness to attend any proceedings to give evidence, the Chairperson may have a summons issued in Form CCR 3 for that purpose.
- (2) If a witness is required to produce in evidence any document or thing in the witness's possession, the summons must specify the document or thing to be produced.
- (3) After the summons has been issued, it must be served by the sheriff in any manner authorised by the Rules of the High Court.
- (4) A witness who has been required to produce any documents or thing at the proceedings must hand it over to the Registrar as soon as possible after service of the summons, unless the witness claims that the document or thing is privileged in terms of section 37 of the Act.

## **29. Witness Fees**

- (1) A witness in any proceedings is entitled to be paid in accordance with the tariff of allowances prescribed by the Rules of the High Court.
- (2) Notwithstanding sub-rule (1), the Commission may order that no allowance or only a portion of the prescribed allowances be paid to any witness.

### **30. Interpreters and Translators**

- (1) Before an interpreter may interpret in Commission proceedings, the interpreter must take an oath or make an affirmation in the following form before a member of the Commission:

*“I.....(Full name)  
solemnly swear/ affirm that I will interpret or translate to the best of my  
ability, whenever called upon to do so by the Commission, the language I  
am asked to interpret or translate into the English language, and vice  
versa.”*

- (2) An oath or affirmation must be taken or made in the manner prescribed for the taking of an oath or the making of an affirmation in the Rules of the High Court, read with the changes required by the context and a printed copy of the oath or affirmation must be signed by the interpreter.
- (3) Any person requested or asked to interpret in any proceedings of the Commission, shall, upon being sworn, be deemed to be a sworn translator or interpreter of the Commission.

## **Part 8- Withdrawals, Postponements, Set-downs and Matters Struck-off**

### **31. Withdrawal of Complaints**

- (1) At any time before the Commission has determined a matter, the initiating party may withdraw all or part of the matter by -
  - (a) serving a notice of withdrawal in Form CCR 2 on each party; and
  - (b) filing the notice of withdrawal with proof of service.
- (2) If the parties agree to postpone a hearing, the initiating party must notify the Registrar as soon as possible.
- (3) A notice of withdrawal may include a consent to pay costs; and if no consent to pay costs is contained in a notice of withdrawal, the other party may apply to the Commission by notice of motion in Form CCR 1 for an appropriate order for costs.

### **32. Set-down of Matters**

- (1) If a matter has been postponed to a date to be determined in the near future, any party to the matter may apply to the Registrar for it to be re-enrolled, but no preference may be given to that matter on the roll, unless the Chairperson decides otherwise.
- (2) The Registrar must allocate a time, date and place for the hearing and send a notice of set-down in Form CCR 4 to each party.
- (3) If a matter is postponed to a specific date, the Registrar need not send a notice of set-down to the parties.

### **33. Matters Struck-off**

- (1) The Commission or Chairperson presiding at a hearing may strike a matter off the roll if the initiating party is not present.
- (2) If a matter is struck off the roll, the matter may not be re-enrolled unless -
  - (a) the party concerned files an affidavit setting out a satisfactory explanation for the failure to attend the hearing; and
  - (b) a member of the Commission assigned by the Chairperson, on considering the explanation offered, orders the matter to be re-enrolled.

### **34. Default Orders**

- (1) If a person served with an initiating document has not filed a response within the prescribed period, the initiating party may apply by notice of motion to have the order sought issued against that person by the Commission.
- (2) On an application in terms of sub-rule(1), the Commission may make an appropriate order -
  - (a) after it has heard any required evidence concerning the motion; and
  - (b) if it is satisfied that the initiating document was adequately served.
- (3) Upon an order being made in terms of sub-rule (2), the Registrar must serve the order on the person described in sub-rule (1) and on every other party, as the case may be.

### **35. Conduct of Hearings**

- (1) If, in the course of proceedings, a person is uncertain as to the practice and procedure to be followed, the Chairperson of the Commission or any assigned member presiding over a matter -
  - (a) may give directions on how to proceed; and
  - (b) for that purpose, if a question arises as to the practice or the procedure to be followed in cases not provided for by these Rules, the Chairperson or assigned member presiding may have regard to the Rules of the High Court.
- (2) Subject to these Rules, the Chairperson or an assigned member presiding over a matter may determine the time and place for the hearing before the Commission.
- (3) The Commission may condone any technical irregularities arising from the proceedings.

### **36. Record of Proceedings**

The Registrar must compile a record of any proceedings in which a hearing has been conducted, including -

- (a) the initiating document;
- (b) notice of any hearing;
- (c) any interlocutory orders made by the Commission;
- (d) all documentary evidence filed with the Commission;
- (e) the transcript, if any, of the oral evidence given at the hearing; and
- (f) the final decision of the Commission and the reasons therefore.

## **PART 9- Costs**

### **37. Costs**

- (1) Upon making an order under Part 8, the Commission may make an order for costs.
- (2) Where the Commission has made an order for costs against a party and the party is aggrieved by the order, he or she may appeal to the High Court.

# COMPETITION COMMISSION RULES

## Table CCR A

### Times and methods of delivery of documents

Nature of enterprise or person being served	Method of delivery	Date and time of assumed delivery
<p><b>The Commission</b></p>	<p>On the internet website of the Registrar, if the document is a prescribed form; or</p> <p>By registered post or courier addressed to the Registrar; or</p> <p>By handing the document or a computer disc, memory stick or other media containing the document in an electronic form to the Registrar.</p>	<p>On the date and the time recorded by the Registrar's computer system as verified, by fax reply to the sender of the information.</p> <p>On the date and at the time of delivery of the registered post or registered parcel to the Registrar, as recorded by the post office or the courier.</p> <p>On the date and at the time noted in a receipt issued by the Registrar of the Commission unless, the document is on a computer disc, memory stick or other media and, within one (1) working day after that date the Registrar advises the sender that the disc, memory stick or other media is unreadable.</p>
<p><b>A Company or Similar Body Corporate</b></p>	<p>By handing the notice or 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 Botswana; or</p> <p>If there is no employee willing to accept service, by fixing the notice or certified copy of the document to the main door of the office or place of business.</p>	<p>On the date and at the time recorded on a receipt for the delivery.</p> <p>On the date and at the time sworn by affidavit by 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.</p>

<p><b>The State or Government Ministry</b></p>	<p>By handing the notice or certified copy of the document to a responsible employee in any office of Attorney General or Government Ministry or Agency.</p>	<p>On the date and at the time recorded on receipt for the delivery.</p>
<p><b>Regulatory Bodies and Statutory Corporations</b></p>	<p>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 the body, or any person acting on behalf of that body.</p>	<p>On the date and at the time recorded on the receipt.</p>
<p><b>Any Person</b></p>	<p>By faxing the notice or a certified copy of the document to the person, if the person has a fax number; or</p> <p>By sending a notice or a copy of the document by electronic mail if the person has an address for receiving electronic mail; or</p> <p>By sending the notice or certified copy of the document by registered post to the person's last known address; or</p> <p>By any other means authorised by the High Court; or</p> <p>By any other method allowed for that person in this Table.</p>	<p>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.</p> <p>On the date and at the time recorded by the computer used by the sender, unless there is conclusive evidence that it was delivered at a different date or at a different time.</p> <p>On the 10<sup>th</sup> day following the day on which notice or the document was posted as recorded by the post office, unless there is conclusive evidence that it was delivered on a different date.</p> <p>In accordance with the order of the High Court.</p> <p>As provided for that method of delivery.</p>
<p><b>Employees of the Enterprise</b></p>	<p>By fixing the notice or certified copy of the document, in a prominent place in the workplace where it can easily be read by employees.</p>	<p>On the date and at time sworn to by affidavit of the person who affixed the document, unless there is conclusive evidence that the document was delivered on a different date and at a different time.</p>

<p><b>A Partnership, Enterprise or Association</b></p>	<p>By handing over the notice or certified copy of the document to a person who is apparently in charge of the premises and at least 16 years of age and above, at the place of business of the Partnership, firm or Association; or</p> <p>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.</p>	<p>On the date and at the time recorded on a receipt for delivery.</p> <p>On the date and at the time recorded on a receipt for delivery.</p>
<p><b>Local Government or Councils</b></p>	<p>By handing the notice or a certified copy of the document to the Town Clerk, Council Secretary or any of their assistants or any person acting on behalf of that person.</p>	<p>On the date and at the time recorded on a receipt for delivery.</p>
<p><b>Any Natural Person</b></p>	<p>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</p> <p>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 at least 16 years and above and in charge of the premises at the time; or</p> <p>By leaving the notice or a certified copy of the document at the person's place of employment with any person who is at least 16 years or above and apparently in authority.</p>	<p>On the date and at the time recorded on a receipt for delivery.</p> <p>On the date and at the time recorded on a receipt for delivery.</p> <p>On the date and at the time recorded on a receipt for delivery.</p>

# COMPETITION COMMISSION RULES

## Table CCR B

### Notices and Applications

Rule No.	Purpose of Notice or Application	Form No.	Conditions
Rules 15, 21,22,23,27 and 34	Notice of Motion	CCR 1	Brought before the Commission for any type of relief as envisaged in the Act.
Rule 31	Notice of Withdrawal	CCR 2	Issued when a Party has decided not to continue with part or all of the matter.
Rule 28	Commission Summons	CCR 3	Issued as and when the Commission requires a person to give evidence in its proceedings.
Rule 32	Notice of Set-down	CCR 4	When the pleadings are completed and a Party wants the matter heard.
Section 75 of the Act	Certificate of Decision		As may be requested by a Court.

# FORM CCR 1

## GENERAL FORM OF NOTICE OF MOTION

(Rules 15, 21, 22, 23, 27 and 34)

In the Competition Commission held at .....

In the matter between

Case No:.....

..... **Applicant**

**And**

.....**Respondent**

TAKE NOTICE THAT .....(hereinafter called the applicant”) intends to make an application to this Commission for an order:

- (a) .....
- (b) .....
- (c) .....

And that the affidavit of ..... annexed hereto will be used in support thereof.

TAKE FURTHER NOTICE that the applicant has appointed .....

(here set forth an address in Botswana at which he or she will accept notice and service of all process in these proceedings).

TAKE FURTHER NOTICE that if you intend opposing this application you are required:

- (a) to notify the applicant’s attorney in writing on or before the .....; and
- (b) within ..... days of the service of this notice upon you, to file your answering affidavits if any; and further that you are required to appoint in such notification an address within Botswana at which you will accept notice and service of all documents in these proceedings.

If no such notice of intention to oppose is given, the application will be made on the ..... at ..... o’ clock.

DATED at ..... this ..... day of ....., Year .....

To: Respondent (Address)

AND TO: Registrar

**FORM CCR 2**

**NOTICE OF WITHDRAWAL**

**(Rule 31)**

In the Competition Commission held at .....

In the matter between

Case No:.....

..... **Plaintiff**

**And**

.....**Defendant**

**NOTICE OF WITHDRAWAL**

TAKE NOTICE that the above named plaintiff hereby withdraws the above action and consents to pay the defendant's agreed or taxed costs.

DATED at ..... this..... day of ..... Year.....

.....  
Plaintiffs/ Plaintiff's Attorney

TO: Defendant/ Defendant's Attorney.....

AND TO: Registrar

**FORM CCR 3**  
**COMMISSION SUMMONS**  
**(Rule 28)**

In the Competition Commission held at .....

In the matter between

Case No:.....

..... **Plaintiff**

**And**

.....**Defendant**

To:

1..... of .....

2.....of .....

You are hereby required to appear in person before the Competition Commission at ..... on the ..... day of .....Year..... at ..... o' clock and so from the day until this action is tried, to give evidence in this action, and to bring with you and then produce to the Commission the several documents specified in the list hereunder:

(a).....

(b).....

DATED at ..... this ..... day of ..... 20.....

.....  
Registrar

**FORM CCR 4**

**NOTICE OF SET-DOWN**

**(Rule 32)**

In the Competition Commission held at .....

In the matter between

Case No:.....

..... **Plaintiff**

**And**

.....**Defendant**

**NOTICE OF SET-DOWN**

TAKE NOTICE that the above cause has been set-down and will be heard and determined by the Competition Commission at ..... on the ..... day of .....20..... at ..... o' clock.

DATED at ..... this..... day of ..... 20.....

.....  
Registrar

TO: .....Plaintiff/ Plaintiff's Attorney

.....Defendant/ Defendant's Attorney