

Division C - Merger Proceedings

29. Participation by Minister in merger proceedings

- (1) If the Minister participated in merger proceedings before the Commission, the Minister is a participant in proceedings concerning that merger before the Tribunal.
- (2) If the Minister did not participate in merger proceedings before the Commission the Minister may file a Minister's Notice of Intention to Participate in Form CC 5(2) within 5 business days after -
 - (a) the Commission refers a large merger to the Tribunal; or
 - (b) a person entitled to do so in terms of section 16(1) files a Request for Consideration in respect of an intermediate merger.
- (3) If the Minister files a Minister's Notice of Intention to Participate in terms of sub-rule (1) -
 - (a) the Minister is a participant in proceedings concerning that merger before the Tribunal, and
 - (b) the registrar must -
 - (i) deliver a copy of the Minister's Notice of Intention to Participate to every other participant; and
 - (ii) deliver to the Minister a copy of all documents filed in connection with the merger, up to the day on which the Minister's Notice of Intention to Participate was filed.
- (4) The registrar must deliver to the Minister any document that is filed in connection with a merger while the Minister is a participant in those merger proceedings.
- (5) The Minister may file a concise statement of the public interest grounds on which the Minister relies in respect of a particular merger, and a statement of the decision, if any that the Minister prefers, at any time between -
 - (a) The date on which the Minister became a participant in those proceedings; and
 - (b) 10 business days after receiving advice from the registrar in terms of sub-rule (6), if applicable.
- (6) If, in respect of a particular merger the Minister is a participant, but has not yet filed a statement in terms of sub-rule (5), the registrar must advise the Minister in writing at the time that the Tribunal is prepared to make a decision in terms of

section 16.

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

30. Minister of Finance intervention

(1) The Minister of Finance may issue a notice to the Tribunal in terms of section 18(2)(b) by filing Form CC 5(3) at any time between -

(a) The date on which the Commission refers a large merger to the Tribunal, or a person files a Request for Consideration in terms of section 16(1), as the case may be; and

(b) 10 business days after receiving advice from the registrar in terms of sub-rule (2), if applicable.

(2) If, in respect of a particular merger, the Commission served the Minister of Finance with a Notice as required under Commission Rule 36, but the Minister of Finance has not yet issued a notice in terms of sub-rule (1), the registrar must advise the Minister of Finance in writing at the time that the Tribunal is prepared to make a decision in terms of section 16.

(3) Upon receiving a notice from the Minister of Finance in terms of sub-rule (1), the registrar must serve a copy of the notice on the Commission and each other participant in those proceedings.

31. Preliminary merger decisions

(1) An application may be made by filing a Notice of Motion and affidavit, as described in Rule 42(1), for any of the following matters:

(a) For an order extending time in terms of section 14A(2).

(b) An appeal against directions by the Commission concerning the application of the Threshold requirements and fee calculations, in terms of Competition Commission Rule 26(3).

(c) An appeal against an opinion of the Commission concerning the jurisdiction of the Act, in terms of Competition Commission Rule 33.

(d) An appeal against Form CC 13(2) issued by the Commission in terms of Competition Commission Rule 30.

(e) An appeal against a Demand for Corrected Information issued by the Commission, in terms of Competition Commission Rule 32.

(f) For an order for a remission of filing fees, in terms of Competition Commission Rule 34(2).

(2) A person appealing against Form CC 13(2) in terms of both Competition Commission Rule 30(4) and Competition Commission Rule 33(3) must combine both appeals on a single Notice of Motion.

(3) A Notice of Motion and affidavit filed in terms of this Rule -

(a) must be served on the Commission, or if the Commission is the applicant, on the firm that filed the Merger Notice; and,

(b) if the applicant seeks an order in terms of Competition Commission Rule 33(3), must also be served on the other primary firm.

(4) Upon receiving a Notice of Motion and affidavit filed in terms of this Rule, the registrar must set the matter down for hearing at the earliest convenient date.

(5) A motion in terms of sub-rule (1)(a) may be heard by a single member of the Tribunal in terms of section 31(5).

(6) Division E, other than the requirements set out in Rule 42 (1) and (3), does not apply to a Notice of Motion brought in terms of this Rule.

(7) Upon hearing an appeal in terms of Competition Commission Rule 30 (3), the Tribunal may make an order -

(a) Setting aside Form CC 13(2) entirely;

(b) Confirming any or all of the requirements set out in Form CC 13(2);

(c) Substituting other requirements for any of the requirements set out in Form CC 13(2); or

(d) Combining any or all of the requirements set out in Form CC 13(2) with additional or substitute requirements.

32. Requests for consideration of small or intermediate mergers

(1) A person contemplated in section 16(1) may request the Tribunal to consider the Commission's decision in a merger in the manner allowed in that section, by filing a Request for Consideration in Form CT 4 within 10 business days after the Commission issues its decision in that merger.

(2) A Request for Consideration must contain a concise statement indicating whether party seeks to have the merger prohibited, approved without conditions, or approved with conditions, and if the latter, what conditions the party is prepared to accept, and must be -

- (a) accompanied by a summary of the factual and legal basis upon which the request is based; and
- (b) served on -
 - (i) the Commission; and
 - (ii) any participant in the relevant merger proceedings before the Commission who is not a party to the Request for Consideration.
- (3) Upon receiving a copy of a Request for Consideration, the Commission must give the Tribunal -
 - (a) a copy of the Clearance Certificate or Notice of Prohibition;
 - (b) a copy of the statement of reasons for the decision; and
 - (c) access to the Commission's file in respect of that merger.

33. Small or Intermediate merger pre-hearing procedures

- (1) When a Request for Consideration has been filed, the registrar must -
 - (a) schedule a date within 10 business days after the filing date for either -
 - (i) the beginning of the hearing of the Request; or
 - (ii) the beginning of a pre-hearing conference in terms of sub-rule (3); and
 - (b) serve a Notice of Set-Down in Form CT 15 on the Commission, on the party who filed the Request for Consideration and on each person who has indicated an intention to participate.
- (2) The period provided for in sub-rule (1) may be extended -
 - (a) for a further 10 business days by the Chairperson; or
 - (b) for a further period by the Chairperson with the consent of the primary acquiring firm and the primary target firm.
- (3) A member assigned by the Chairperson may convene a pre-hearing conference of those persons who have indicated an intention to participate either to the Commission or to the Tribunal and Rules 21 and 22, each read with the changes required by context, apply to that conference.
- (4) In addition to the provisions of Rules 21 and 22, at a pre-hearing conference in terms of this Rule, the member assigned by the Chairperson may also determine whether there will be a formal hearing or whether the matter may be decided on the basis of written argument only.

34. Small or Intermediate merger hearing procedures

After completing its hearing in respect of a small or intermediate merger, the Tribunal must -

- (a) either approve the merger, approve the merger subject to conditions, or prohibit the merger within 10 business days after the end of the hearing by issuing a certificate in the appropriate Form CT 10 or CT 11; and
- (b) within 20 business days after issuing a certificate -
 - (i) issue written reasons for its decision; and
 - (ii) publish a notice of its decision in the Gazette.

35. Referral of large mergers

(1) When a Merger Referral has been filed, the registrar must -

(a) schedule a date within 10 business days after the filing date for either -

- (i) the beginning of the hearing of the Referral; or
- (ii) the beginning of a pre-hearing conference in terms of sub-rule (3); and

(b) serve a Notice of Set-Down in Form CT 15 on the Commission and on each person who has indicated an intention to participate.

(2) The period provided for in sub-rule (1) may be extended -

- (a) for a further 10 business days by the Chairperson; or
- (b) for a further period by the Chairperson with the consent of the primary acquiring firm and the primary target firm.

(3) At any time after receiving a notice of a large merger in terms of section 14A(1)(a), but before the hearing, a member of the Tribunal assigned by the Chairperson may convene a pre-hearing conference of those persons who have indicated an intention to participate either to the Commission or the Tribunal, and Rules 21 and 22, each read with the changes required by context, apply to that conference.

(4) In addition to the provisions of Rules 21 and 22, at a pre-hearing conference in terms of this Rule, the assigned member of the Tribunal may also determine whether there will be a formal hearing or whether the matter may be decided on the basis of written argument only.

(5) After completing its hearing in respect of a merger, the Tribunal must -

(a) either approve the merger, approve the merger subject to conditions, or prohibit the merger within 10 business days after the end of the hearing by issuing a certificate in the appropriate Form CT 10, or CT 11; and

(b) within 20 business days after issuing a certificate -

(i) issue written reasons for its decision; and

(ii) publish a notice of its decision in the Gazette.

36. Applications in terms of section 14A (3)

(1) An application in terms of section 14A (3) must be made by Notice of Motion in Form CT6.

(2) The Chairperson may give procedural directions regarding an application under this Rule.

37. Revocation of approval or conditional approval

(1) In respect of a merger that has been approved or conditionally approved by the Tribunal, the Commission may file a Notice of Motion in Form CT 6 to revoke the approval or conditional approval of that merger provided, if the proposed revocation is based on section 15(1)(c), that it has taken the steps set out in Rule 39 of the Competition Commission Rules.

(2) A Notice of Motion in terms of sub-rule (1) must specify the provision of section 15(1) on which the request is based.

(3) Upon receiving a Notice of Motion in terms of sub-rule (1), the registrar must -

(a) advise any firm concerned, in writing, of the Notice; and

(b) publish a notice of the requested revocation in the Gazette.

(4) The Tribunal may request further information from any person who submits a representation in response to a notice published in terms of sub-rule (3)(b).

(5) After considering the application, and any submissions or other information received in relation to the requested revocation, the Tribunal must -

(a) either confirm the approval or conditional approval, as the case may be, in writing, or revoke it by issuing a Notice of Revocation in Form CT 12;

(b) publish a notice of that decision in the Gazette; and

(c) report its decision in writing to each participant in the merger proceedings.

(6) Within 10 business days after receiving a Notice of Revocation in terms of sub-rule (5)(a), the firm concerned may request the Court to review the notice on the grounds that there is no basis in terms of section 15(1) for the approval or conditional approval to be revoked.

(7) If no review is applied for in terms of sub-rule (6), or if the Court upholds the Notice of Revocation, the effect of that notice is -

(a) the Certificate of approval or conditional approval in respect of the relevant merger is deemed to have been rejected as of the date of that Certificate;

(b) each party to the merger is, for all purposes of the Act, in the same position as if they had never notified the Commission of that merger; and

(c) the Commission and the Tribunal may further consider that merger only if a party to the merger subsequently files a new Merger Notice with respect to it; and

(d) if a new Merger Notice is subsequently filed in respect of that merger, the Commission and Tribunal must consider that merger on the basis of that new notice without reference to any previous notice filed in respect of it.