

**LEGAL SUPPLEMENT**

**737**

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*Government Notice No. 161 of 2009*

**THE COMPETITION ACT 2007**

**Notice is hereby given that the Competition Commission has, pursuant to section 38 of the Competition Act 2007, made the following procedural rules –**

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### **PART I: PRELIMINARY**

#### **1. Short title**

These rules may be cited as the Competition Commission Rules of Procedure 2009.

#### **2. Interpretation**

(1) In these rules –

“Act” means the Competition Act 2007;

“auxiliary party” means a party who has an interest in the matter and has provided evidence to the Commission or to the Executive Director and includes a complainant;

“complaint” means a complaint made under rule 6;

“hearing” means hearing proceedings held by the Commission by virtue of sections 55 and 56 of the Act;

“main party” means the party who is subject of an investigation;

“person” and words applied to a person or individual shall apply to and include a group of persons, whether corporate or unincorporate;

“provisional finding” means a finding contained in a preliminary report;

“public holiday” means a day prescribed as such in the Public Holidays Act.

- (2)
  - (a) Words importing the masculine shall include the feminine and the neuter.
  - (b) Words in the singular shall include the plural.
  - (c) Words in the plural shall include the singular.
  - (d) References to the whole shall include references to a part.
- (3) Where a word or expression is defined or explained in the Act, the word or expression shall have the same meaning in these rules.
- (4) Effect shall be given to these rules according to its true intent, meaning and spirit.
- (5) Where a word or expression is defined in these rules, the definition shall with necessary modification extend to any grammatical variation or cognate expression of that word or expression.
- (6) In computing time for the purposes of these rules, recourse shall be had to section 38 of the Interpretation and General Clauses Act.
- (7) Any order, warrant or process may be issued, served or executed and any search or seizure may be carried out or made on any day, whether a public holiday or not, and at any hour of the day or night.
- (8) Where these rules provide that a person shall take an oath, that person may make an affirmation or declaration in lieu of the oath.

**3. Application and effect of the rules**

- (1) These rules shall apply in relation to a merger, a monopoly situation, collusive agreements and any other restrictive business practice falling under the Act.
- (2) These rules, which concern the functions of the Executive Director and the Commission, are binding on –
  - (a) the Commissioners;
  - (b) the Executive Director;
  - (c) any staff of the Commission; and
  - (d) any person or enterprise who or which is an auxiliary party or a main party.
- (3) If at any time the Executive Director or Commission encounters a situation which is not provided for in these rules, he or it shall determine the procedure to be adopted.
- (4) Any person to whom the Executive Director has delegated his powers pursuant to section 31 of the Act may exercise any of the powers conferred on the Executive Director in these rules other than the power to make a finding or a report.

**PART II: INITIATION OF PROCEEDINGS**

**4. Duty of the Executive Director**

The Executive Director shall, subject to section 5(4), investigate or cause to be investigated what he has reasonable grounds to believe is a restrictive business practice where:

- (a) he has received a complaint that a restrictive business practice may have occurred or may be occurring or about to occur; or

- (b) it has otherwise come to his knowledge that a restrictive business practice may have occurred or may be occurring or about to occur.

## **5. Enquiry by the Executive Director**

- (1) The Executive Director may make such enquiries as he thinks appropriate:
  - (a) pursuant to his powers to keep markets in Mauritius and conditions of competition in those markets in constant review under section 30(a) of the Act;
  - (b) pursuant to his powers to undertake general studies on the effectiveness of competition in individual sectors of the economy in Mauritius under section 30(h) of the Act;
  - (c) in order to satisfy himself that there is reasonable ground to believe that a restrictive business practice has occurred or is occurring or about to occur; or
  - (d) where the Commission requests him to do so in relation to an application made under section 7.
- (2) An enquiry made by the Executive Director may include:
  - (a) a specific request for information from any enterprise or groups of enterprises;
  - (b) an invitation to provide information on any specific matter, case, event or business agreement or transaction;
  - (c) an invitation to attend the office of the Executive Director for an interview;
  - (d) a request for written explanations or otherwise as required for the purposes of the issue at hand; or

- (e) a visit to a locus or site, whether accompanied or not by officers of the Commission.
- (3) The Executive Director shall keep a written record of any such enquiry.
- (4) The Executive Director may, where any enterprise is not collaborating or is delaying unreasonably in relation to an enquiry, consider that state of affairs as being reasonable grounds for believing that a restrictive business practice has occurred or is occurring or is about to occur.

**6. Complaint**

- (1) A complaint shall be lodged with the Executive Director by filling in the form available on the Commission's website or the business premises of the Commission.
- (2) The lodging of a complaint may be made by email to the address mentioned on the Commission's web site or by physical delivery to the Commission, and addressed to the Executive Director.
- (3) The Executive Director shall respect the anonymity of the complainant, at his request, where the Executive Director is of the view that the interests of the complainant would be harmed by the disclosure of his name.
- (4) There shall be kept at the Commission a register of complaints which shall be accessible to the public during office hours of the Commission.
- (5) Where, at any time after receipt of a complaint, the Executive Director is satisfied that the matter raised in the complaint is directly and substantially similar to a previous complaint, he may consolidate two or more similar complaints, as the case may be, for consideration.

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- (6) Within a period to be determined by the Executive Director, which shall in no case exceed 2 years, he shall:
- (a) deal with the complaint by forwarding his report to the Commission where he has established that a restrictive business practice has occurred or is occurring or about to occur; or
  - (b) inform the Commission that there is no restrictive business practice which has occurred or is occurring or about to occur and issue a notice to that effect to the complainant.

**7. Application for guidance**

- (1) An enterprise may where it wishes to obtain guidance from the Commission before proceeding with a merger, apply to the Commission for guidance.
- (2) An application for guidance under paragraph (1) shall contain –
  - (a) the name of the applicant;
  - (b) the business address of the applicant;
  - (c) a succinct narrative of the effect of the merger;
  - (d) the signature of any authorized representative of the enterprise;
  - (e) such other particulars as are relevant to the proposed merger; and
  - (f) any other information that the Commission may deem necessary.
- (3) An enterprise may where it wishes to propose an undertaking to the Commission to address any concern that has arisen, or is likely to arise during an investigation, apply to the Commission for guidance.

- (4) An application for an undertaking guidance under paragraph (3) shall contain –
- (a) the name of the applicant;
  - (b) the business address of the applicant;
  - (c) a succinct narrative of the alleged contraventions of the Act;
  - (d) the signature of any authorized representative of the enterprise;
  - (e) such other particulars as are relevant to the undertaking; and
  - (f) any other information that the Executive Director may deem necessary.
- (5) Where, at any time after receipt of an application under paragraph (1) and (3), the Executive Director is satisfied that the matter raised in the application is directly and substantially similar to a previous application, it may consolidate two or more similar applications for consideration.

### **PART III: INVESTIGATION BY EXECUTIVE DIRECTOR**

#### **8. Prioritisation**

Where the Executive Director is in receipt of 2 or more complaints or has already identified on his own any investigation to be conducted, he may prioritise investigations.

#### **9. Time Table**

- (1) The Executive Director shall make arrangements for an administrative timetable to be drawn up which shall make provision for the major stages of an investigation.

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- (2) The major stages of an investigation may include –
    - (a) gathering information;
    - (b) examining parties or witnesses;
    - (c) verifying information;
    - (d) setting out a statement of issues;
    - (e) considering responses to a statement of issues;
    - (f) notifying of provisional findings;
    - (g) notifying and considering possible remedies;
    - (h) considering exclusion from disclosure; and
    - (i) submitting his report to the Commissioners.
  - (3) The Executive Director may, when drawing up the administrative timetable, have regard to any comments which the parties involved have submitted to him.
  - (4) Once the administrative timetable has been drawn up, the Executive Director shall make such arrangements as he thinks appropriate for it to be notified to all the parties involved and the Executive Director may provide notification of the timetable on its website or any other media, he considers appropriate.
  - (5) The administrative timetable should normally provide that the duration of an investigation shall not –
    - (a) in the case of a merger, exceed 6 months;
    - (b) in the case of any other restrictive business practices, exceed 18 months.
  - (6) Where at any point during an investigation, the Executive Director has reason to believe that the administrative

timetable will not be met for any reason, he shall prepare a revised timetable to which the notification requirements contained in paragraph(4) shall apply.

#### **10. Production of documents or information**

- (1) Where the Executive Director exercises his powers of investigation, he may require any person to produce any book, document, record or article or to provide specified information in a written statement, which relates to any matter relevant to the investigation including market share information or a description of a particular market.
- (2) Any request under paragraph (1) shall be exercised by service of a written notice signed by the Executive Director.
- (3) A request under paragraph (1) shall not be limited to any number, and the Executive Director may require a person to produce further information after considering the material produced in response to an earlier notice.
- (4) A request for information may be made to any person including an enterprise suspected of breach, its officers (past or present) or any third parties, including a complainant, supplier, customer, a competitor or any other enterprise.
- (5) Where material related to an investigation consists of information stored in a computer, disc, cassette, or on microfilm, or preserved by any mechanical or electronic device, the request from the Executive Director shall be taken to require the person named in the notice to produce or give access to it in a form in which it can be taken away and in which it is visible and legible.

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- (6) Where he has requested a person to produce a document, the Executive Director may –
- (a) take copies or extracts from any document produced; or
  - (b) require the person served with a notice to produce the document (or any past or present officer or employee of that person) to provide an explanation of the document produced.
- (7) The Executive Director may require information to be compiled and produced if it is not already in recorded form.

#### **11. Particulars of notice**

- (1) A notice under section 10(2) shall –
- (a) state the subject matter and purpose of the investigation;
  - (b) generally describe or specify the document or information, or categories of documents or information, required;
  - (c) set out the nature of the offence that may be committed if a person fails to comply with the notice;
  - (d) state the time and place at which a document or information must be produced and the manner and form in which it is to be produced; and
  - (e) set out the time and place where an oral examination shall be conducted.
- (2) A person who provides information to the Executive Director will be given the opportunity to amend, add to

or delete from the written record and will be asked to sign against the record.

- (3) (a) The notice may be delivered personally or sent by registered post to the last known address of a person.
  - (b) Service by registered post shall be effected by addressing and posting a letter containing the document and be presumed to have been effected at the time when the letter would be delivered in the ordinary course of post.
  - (c) Service of the notice may also be effected by sending through facsimile transmission or by electronic mail.
- (4) Where the notice is required to be served on a company, société or other corporate body, it shall be served by leaving it:
  - (a) at the registered office or principal place of business of the entity; or
  - (b) in the case of a foreign entity, with a person authorized to accept service of process on its behalf.
- (5) Where the Executive Director is satisfied that the recipient of the order is avoiding service or that for any other reason it cannot be served in the ordinary way, he may effect service by an advertisement in any local newspaper.
- (6) When setting the appropriate time limit for the production of a document or information, the Executive Director

shall consider, inter alia, the amount and complexity of the information required, the resources available to the recipient of the notice and the urgency of the case.

## **12. Entry and search**

- (1) Where the Executive Director exercises his powers of investigation, he may enter and search the premises of any person and take possession of documents or copies of them with a warrant signed by a Magistrate.
- (2) Any owner, occupier or person in charge of the premises shall provide the Executive Director with a properly executed warrant with all reasonable facilities and assistance in the exercise of his powers.
- (3) The Executive Director will cause to be provided to the occupier or his representative a list of any documents removed from the premises.
- (4) Where an original document is removed, it shall, if a request is made, be returned within a reasonable period, having regard to the complexity of the document or the investigation unless the document is required for the purposes of evidence.
- (5) Where an original document which has been removed is retained by the Executive Director, the occupier of the premises or his representative may ask for and obtain a copy at his own cost.
- (6) The Executive Director may take any other step which he feels necessary in order to preserve a document or prevent interference with it.
- (7) The Executive Director may also –
  - (a) require any person to provide an explanation on

any document or to state where the document may be found;

- (b) require any information which is stored in any electronic form and is accessible from the premises, to be produced in such form in which it can be taken away and read;
- (c) remove from the premises for examination any equipment or article which relates to any matter relevant to the investigation, such as a computer, a data storage device or a recording device; or
- (d) seize and detain any items on the premises which may be required for the purposes of evidence.

### **13. Report on interim measures**

- (1) The Executive Director may make a report on interim measures on any matter that is the subject of an enquiry or investigation –
  - (a) where there is a risk of serious or irreparable damage to any person; or
  - (b) to prevent pre-emptive action being taken by an enterprise.
- (2) The Executive Director shall state in the report on interim measures, what, in his opinion, may constitute serious damage, but such opinion shall be based on facts and will depend upon the circumstances of each case and, in assessing serious damage, the Executive Director shall consider –
  - (a) whether a particular person or category of persons may suffer considerable competitive disadvantage which is likely to have a lasting effect on his position;

- (b) significant financial loss which may occur to a person (to be assessed with reference to that person's size of business or financial resources as well as the proportion of the loss in relation to the person's total revenue);
- (c) significant damage to the goodwill or reputation of a person;
- (d) threat of insolvency; or
- (e) any other form of damage, which although less serious, but may still be irreparable, in so far as it cannot be remedied in later intervention.

#### **14. Provisional finding**

- (1) On the completion of his investigation, the Executive Director may make a provisional finding which he shall produce as a provisional or preliminary report which –
  - (a) he shall notify to all parties to the enquiry or investigation, within 7 days of the provisional report being finalized;
  - (b) the notice shall –
    - (i) describe the provisional findings in clear terms and provide an explanation of his reasons for the finding;
    - (ii) invite the parties, within such period being not less than 21 days as may be specified in the notice, to provide the Executive Director with reasons in writing as to why such provisional findings should not become final; and

- (iii) not contain any information that the Executive Director considers should be excluded from the notice having regard to any confidentiality provisions under any enactment, or any commercially sensitive information.
- (c) any comment on a provisional finding shall be made in writing to the Executive Director who may hold additional meetings or carry out further investigation as required to complete his investigation pursuant to any new information received in the comment.
- (d) where any party provides a written comment after the date specified in the notice, the Executive Director shall not be obliged to take them into account, unless there are valid reasons for non-compliance with the date by which the response should have been submitted.

## **15. Final findings and report**

- (1) Once the Executive Director has had regard to any reasons in writing or oral evidence submitted or given to him following a notice of a provisional finding, he shall take his final decision and proceed to make the report final and submit it to the Commission with his recommendations.
- (2) The Executive Director may, for the purpose of preparing his report, send any material which has been produced back to any person or body so that its accuracy can be verified.
- (3) Any party to whom material has been sent back pursuant

to paragraph (2) may request the Executive Director to exclude it from his report.

- (4) The Executive Director may exclude any matter from a report where he considers that publication of the matter would be inappropriate, and in deciding what is inappropriate for this purpose, he shall have regard to the confidentiality provisions under any enactment or any other commercially sensitive information.
- (5) Any such exclusion shall not prejudice an enterprise in relation to obtaining any information it requires to meet the case which has been put against it.
- (6) Where the Executive Director submits his report to the Commission, he may –
  - (a) refer to all the particulars of the complaint;
  - (b) refer only to some of the particulars of the complaint; or
  - (c) add particulars to the complaint; or
  - (d) notify the Commission of any agreement of confidentiality which has been reached between the complainant and himself.
- (7) A copy of the report shall be published on the Commission's website.

## **16. Remedies**

- (1) The Executive Director shall have regard to the desirability of giving notice of any action which he considers may be taken by the Commission for the purpose of remedying the effects of, or ceasing, a restrictive business practice or any relevant penalty.

- (2) A notice under paragraph (1) of proposed remedies may be contained in the provisional report but, if it is not, the Executive Director shall notify the parties as soon as is reasonably practicable after he has notified them of a provisional finding.
- (3) A copy of a notice on remedies shall be published on the Commission's website and in such other media as the Executive Director may consider appropriate.
- (4) A notice published under paragraph (3) shall not contain any information which the Executive Director considers should be excluded from the notice having regard to the confidentiality provisions in any enactment or any commercially sensitive information.

#### **17. Procedure for other matters**

The Executive Director shall, for matters in relation to an undertaking on a proposed merger situation referred to the Commission, also carry out such relevant enquiry or investigation required and follow the same procedure as set out in this Part.

### **PART IV: PROCEEDINGS BEFORE THE COMMISSION**

#### **18. The Secretary**

- (1) The Commission shall appoint a fit and proper person who shall be the Secretary to the Commission.
- (2) The Secretary shall –
  - (a) be the custodian of the records of the Commission;
  - (b) allow inspection of the records relevant to a hearing subject to any instructions for such exclusion given by the Chairperson in relation to non-disclosure of any matter on record;

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- (c) keep a register of complaints received by him which shall be open to public inspection;
  - (d) compile a record of any proceeding during a meeting of the Commission including –
    - (i) the chronology of events;
    - (ii) the initiating document;
    - (iii) the notice of meeting;
    - (iv) a report of the Executive Director, if any;
    - (v) any interim order or direction made or given;
    - (vi) all documentary evidence filed;
    - (vii) the transcript, if any of oral evidence given;
    - (viii) the final order or direction of the Commission;
    - (ix) any notice of appeal; and
    - (x) any review of any order or remedy.
  - (e) take written notes of the hearing proceedings before the Commission;
  - (f) keep two records for each case file as follows –
    - (i) one for the purposes of the Commission which includes every item of information, including those which are confidential under the Act; and
    - (ii) one for the purposes of inspection or publication, which excludes all information which may be considered confidential by the Commission; and

- (g) exercise such other functions as may be assigned to him by the Chairperson or the Executive Director.

**19. Meetings of the Commission**

- (1) The Commission shall meet at such time and place as may be determined by the Chairperson for the purposes of discharging its functions under the Act.
- (2) The Secretary and any other officer of the Commission whose presence is required shall attend a meeting of the Commission.
- (3) The duration of each hearing shall be as directed by the Chairperson and every party to the proceedings shall be granted such opportunity to present its case as is considered appropriate by the Commission.
- (4) The Commission may direct any party to file written submissions which shall be considered with the replies of the other parties to the proceedings or grant an oral hearing to any party if it considers necessary.
- (5) The Commission may, for reasons to be recorded in writing, adjourn a meeting.

**20. Direction on Interim Measures**

- (1) The Commission may give such directions on interim measures as it considers appropriate, and in particular, require the enterprise concerned to –
  - (a) terminate an agreement;
  - (b) cease the conduct in question;
  - (c) prevent irreversible integration of the two businesses in case of a merger; or
  - (d) modify the agreement or conduct.

- (2) Where the Commission intends to give an enterprise a direction on interim measures, it shall inform the enterprise of –
  - (a) its intention to give the direction;
  - (b) the nature and type of the direction; and
  - (c) the reasons for giving the direction.
- (3) The Commission shall, before the direction is given, give the enterprise an opportunity to make representations in writing or, if the enterprise so requests, orally.
- (4) The Commission may, if representations are made within 21 days by the enterprise and the Commission is satisfied with the representations, vary the direction or decide not to issue it.

## **21. Duration of interim measures**

- (1) A direction on interim measures shall have effect until –
  - (a) the Executive Director has discontinued his investigation;
  - (b) the Executive Director has completed his investigation and recommends the termination of the interim measures, and the Commission is satisfied by the recommendations of the Executive Director; or
  - (c) the Commission considers there is no longer any necessity to act as a matter of urgency to prevent any serious or irreparable damage to a particular person or category of persons or for the protection of the public interest.
- (2) Where a review or investigation has been completed and

the Commission has decided that a breach of section 41 or 42 or 43 of the Act has taken place, it may replace the direction on interim measures with such direction as it considers appropriate.

## **22. Requirement for hearing**

- (1) The Commission may conduct a hearing on receipt of a report under section 52 of the Act, if the party under investigation has made a request for a hearing.
- (2) The Commission shall conduct a hearing where –
  - (a) it intends to issue a direction as provided for in section 58 of the Act; or
  - (b) it proposes to make an order for a penalty as provided for in section 59 of the Act.
- (3)
  - (a) Where the Commission proposes to give a direction or impose a penalty under section 58 or 59 of the Act against an enterprise, it shall issue a notice to the enterprise stating –
    - (i) the intention of the Commission to impose a penalty or issue a direction;
    - (ii) the type and terms of the sanction; and
    - (iii) the right of the enterprise to appear before the Commission for a hearing within such time as the Commission considers appropriate in the circumstances, but not exceeding 21 days from the date of the notice.
  - (b) Where a person is unable to attend a hearing within the period of 21 days and proves to the satisfaction of the Commission that his inability to do so was

due to an illness or any other reasonable cause, the Commission may accept to hear the person at a later date, on such terms and conditions as it may determine.

- (4) Where the Commission receives representations from the Executive Director regarding compliance or non-compliance with a direction or performance or non-performance of an undertaking by an enterprise, the Commission shall, before reviewing the matter with a view to taking any action under section 64 or 65 of the Act, conduct a hearing.

### **23. Conduct of Hearing**

- (1) The Executive Director or any other officer shall have the right to be present during a hearing and to make submissions on any matter before the Commission, as well as to present any document or other evidence that may be relevant to the matter.
- (2) The relevant enterprise and the complainant shall, subject to paragraph (3), have a right to make representations on any matter before the Commission, as well as to present any document or other evidence that may be relevant to the matter.
- (3) A party to the proceedings shall not be entitled to produce before the Commission additional evidence, either oral or documentary, which was in his possession or knowledge but was not produced before the Executive Director during an investigation, except where –
  - (i) it is proved to the satisfaction of the Commission that the party was not given sufficient opportunity by the Executive

Director to adduce such evidence at the investigation stage;

- (ii) It is proved to the satisfaction of the Commission that the Executive Director, deliberately or negligently omitted to consider such evidence at the investigation stage; or
  - (iii) It would be in the interests of natural justice or otherwise to so provide in the view of the Commission.
- (4) Any party or witness in a hearing before the Commission may be represented by counsel or attorney or other representative duly authorized by him who shall be allowed reasonable opportunity to present his case and in particular to inspect documents which the Commission proposes to consider in determining the case.
  - (5) The Commission may require any party to the proceeding to give evidence in writing or orally.
  - (6) Where the Commission requires any evidence to be given orally, it shall, if it considers it necessary or expedient, grant an opportunity to the other party or parties, as the case may be, to cross examine the person giving the evidence.
  - (7) Nothing in this rule shall prevent the Executive Director from pursuing any avenue or making any appropriate criminal complaint for any offence being committed under the Act.

**24. Public access to hearing**

- (1) Except where the Commission otherwise directs, for

reasons to be recorded, a hearing before the Commission shall be open to public.

- (2) In taking a decision not to open the proceedings to the public, or once opened, to hold the proceedings in camera, the Commission may take into account the following matters –
  - (a) whether disclosure to the public would cause significant harm to a party;
  - (b) the degree of inhibition or encouragement in providing information in public; and
  - (c) the efficient and proper conduct of proceedings.

## **25. Permitting other persons to take part in proceedings**

- (1) While considering a matter in a hearing, the Commission may permit a person to take part in the proceedings and make any representation:
  - (a) if satisfied that a person has a substantial interest in the outcome of the proceedings; and
  - (b) that it is necessary in the public interest to allow that person to present his opinion on that matter.
- (2) An application to make representation at a hearing shall be made in writing to the Secretary.

## **26. Submissions or arguments before the Commission**

- (1) Any party to proceedings or his authorized representative shall declare to the Commission at the earliest opportunity whether it intends to make oral or written representations during the course of a hearing.
- (2) Where a party to the proceedings or his authorized representative has chosen to file written representations

it shall arrange to forward copies thereof to all parties to the proceedings sufficiently in advance and submit proof of the receipt by all parties to the Secretary before the date fixed for consideration of the matter by the Commission.

- (3) The Commission may fix or limit the time during which the oral submissions or written arguments shall be addressed or filed by the parties or their authorized representatives before it and may proceed to decide a matter in the absence of the party which does not abide by such timings.

## **27. Proceedings in absence of party**

- (1) Where on the day fixed for any particular matter including the day of the meeting re-fixed on adjournment, any party to the proceeding does not appear after service of notice, the Commission may decide to continue proceedings in the absence of party and pass appropriate notices as it considers necessary.
- (2) Where any party refuses access to or otherwise does not provide necessary information within the stipulated time or significantly impedes a hearing, the Commission may make such order or issue such direction as it considers appropriate on the basis of available facts.
- (3) Where an order or a direction has been made or issued by the Commission under paragraph (1) or (2) and a party shows that it was prevented from participating in the proceeding before the Commission or furnishing the information required for reasons beyond its control, the Commission, on being satisfied, may recall the notice or direction.

**28. Undertakings**

- (1) An enterprise may, at any time before the start of or during an investigation give an undertaking to the Commission in writing to address any concern that may have arisen or is likely to arise during the investigation, which shall be signed by at least two directors of the enterprise or any other authorized person and shall contain –
  - (a) statement of facts;
  - (b) details of the alleged concern together with a list of documents or evidence, in support of each alleged concern;
  - (c) the measures that the enterprise proposes to take as an undertaking to address the concerns to the Commission.
- (2) Where the undertaking satisfactorily addresses all the concerns of the Commission about prevention, restriction, distortion or substantial lessening of competition, or not to proceed with a merger, the Commission shall after having taken cognizance of the report of the Executive Director on the matter, determine the case on the basis of that undertaking.
- (3) Where the Commission accepts the undertaking of an enterprise, it shall be published in the form of a decision of the Commission and shall have the effect of a direction of the Commission under section 60 of the Act.
- (4) The Executive Director shall cause the direction to be published on the Commission's website or any other media, excluding any matter which the Commission may consider commercially sensitive.

- (5) Any direction given by the Commission shall set out its reasons for giving the direction.

**29. Final direction**

- (1) Every direction of the Commission shall be signed and dated by the Commissioners who were present and heard the matter.
- (2) Every direction of the Commission shall, as far as practicable be made or issued within 21 days from the date of the conclusion of the final arguments.
- (3) A copy of the direction shall be served on the parties to the proceedings within four weeks of the date of the direction.
- (4) A copy of the direction shall be published in the Gazette and on the website of the Commission.

**PART V: DISCLOSURE AND CONFIDENTIALITY**

**30. Disclosure of information**

- (1) Subject to paragraph (2), the Commissioners, the Executive Director or any officer of the Commission shall keep confidential any information relating to any particular business or affairs of any person, obtained by virtue of the Act or these Rules.
- (2) Information obtained may be disclosed where –
  - (a) the person to whom the information relates gives his consent to the disclosure;
  - (b) the disclosure is required for the purpose of giving a party under investigation adequate information to prepare his defence or submissions before the Commission;

- (c) the disclosure is required for the purpose of administering or enforcing the Act;
  - (d) it is needed in connection with any enquiry into a criminal offence;
  - (e) a request for the production of information has been made by a foreign or multinational competition authority where Mauritius is a party to an international agreement providing for the production or exchange of information;
  - (f) the information is required by a Court; or
  - (g) the information is required under any other enactment.
- (3) When disclosing a document to a party, the Executive Director may edit the document to remove information, or may disclose figures in aggregate.

### **31. Confidentiality**

- (1) The Executive Director shall maintain the confidentiality of the identity of a complainant on a request made to him in writing.
- (2) Any party may submit a request in writing to the Executive Director that a document be treated as confidential.
- (3) A request under paragraph (2) shall only be considered if the document, or a part or parts thereof, is made public and this will result in disclosure of trade secrets or destruction or appreciable diminution of the commercial value of any information or can be reasonably expected to cause serious injury.
- (4) A request under paragraph (2) shall be accompanied by a statement setting out cogent reasons for such treatment

and to the extent possible the date on which such confidential treatment shall expire.

- (5) Where such a document, or a part or parts thereof, forms part of the party's written submissions, a party shall file a complete version with the words "restriction of publication claimed" on top of the first page and the word 'confidential' clearly and legibly marked near the top on each page together with a public version, which shall not contain such document or part or parts thereof.
- (6) The public version of such written submissions shall be an exact copy of the confidential version with the omissions of the confidential information being indicated in a conspicuous manner, as stipulated in paragraph (5).
- (7) The public version of such written submissions alone shall be served on the other parties.
- (8) On receipt of a request under paragraph (2), the Executive Director, if satisfied, shall direct that the document, or a part or parts thereof, shall be kept confidential for the time period to be specified.
- (9) The Commission or the Executive Director may also consider the following while arriving at a decision regarding confidentiality –
  - (a) the extent to which the information is known to the public;
  - (b) the extent to which the information is known to the employees, suppliers, distributors and others involved in the party's business;
  - (c) the measures taken by the party to guard the secrecy of the information; and
  - (d) the ease or difficulty with which the information could be acquired or duplicated by others.

- (10) Any document, or a part or parts thereof, that have been granted confidential treatment under this section shall be kept separate from the public record and secured in a sealed envelope or any other appropriate container, bearing the title, the file number of the proceeding, the notation “confidential record under section 30” and the date on which confidential treatment expires.
- (11) Where the Commission includes in any order or direction information that has been granted confidential treatment under this section, it shall file two versions of the order or direction, namely –
  - (a) the public version which shall omit the confidential information that appears in the complete version, be marked “subject to confidentiality requirements under section 30” on the first page, shall be served upon the parties, and shall be included in the public record of the proceedings; and
  - (b) the complete version which shall be placed in the confidential record of the proceedings.

## **PART VI: APPEALS**

### **32. Notice of appeal**

Any party who wishes to exercise his right of appeal under section 67 of the Act shall file with the Executive Director a copy of his notice of appeal which shall set out the grounds of appeal.

### **33. Decision on appeal**

Where the Commission is notified by the Registry of the Supreme Court of the contents of the Court’s decision on appeal, it shall, as appropriate, amend the record of its decision or conduct a fresh hearing in the matter.