

GOVERNMENT OF ZAMBIA

STATUTORY INSTRUMENT NO. 37 OF 2012

The Competition and Consumer Protection Act, 2010
(Act No. 24 of 2010)

The Competition and Consumer Protection
(Tribunal) Rules, 2012

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IN EXERCISE of the powers contained in section *seventy-eight* of the Competition and Consumer Protection Act, 2010, the following Rules are hereby made:

PART I
PRELIMINARY

- | | |
|---|----------------|
| <p>1. These Rules may be cited as the Competition and Consumer Protection (Tribunal) Rules, 2012.</p> | Title |
| <p>2. In these Rules, unless the context otherwise requires—</p> <p>“Chairperson” means the person appointed as Chairperson of the Tribunal under section <i>sixty-seven</i> of the Act;</p> <p>“Commission” means the Competition and Consumer Protection Commission established under section <i>four</i> of the Act;</p> <p>“party” means a party to the proceedings;</p> <p>“proceedings” means proceedings before the Tribunal;</p> <p>“Register” means the Register of applications and appeals;</p> <p>“Secretariat” means the Secretariat referred to in section <i>seventy-seven</i> of the Act; and</p> <p>“Tribunal” means the Competition and Consumer Protection Tribunal established under section <i>sixty-seven</i> of the Act.</p> | Interpretation |

PART II
INSTITUTION OF APPEALS AND APPLICATIONS

- | | |
|---|---------------------------------|
| <p>3. (1) An appeal to the Tribunal against an order or direction of the Commission shall be instituted by sending to the Secretariat, seven copies of a written notice of appeal stating—</p> <p style="margin-left: 2em;">(a) the name and address of the appellant and the respondent;</p> <p style="margin-left: 2em;">(b) a copy of the order or direction of the Commission;</p> <p style="margin-left: 2em;">(c) the grounds of appeal;</p> <p style="margin-left: 2em;">(d) the relief sought; and</p> <p style="margin-left: 2em;">(e) the address for service of notices and other documents upon the appellant.</p> <p>(2) A notice of appeal shall be lodged with the Secretariat within thirty days from the date on which the order or direction is made.</p> <p>(3) A notice of appeal shall be in Form I set out in the Schedule.</p> | Institution of appeal |
| <p>4. An application for a mandatory order by the Commission to the Tribunal shall be made in Form II set out in the Schedule.</p> | Application for mandatory order |

Application for confirmation of consent agreement and undertaking

5. An application by the Commission to submit a consent agreement or undertaking for confirmation by the Tribunal shall be made in Form III set out in the Schedule.

Entry and acknowledgment of appeal or application

6. The Secretariat shall, upon receiving a notice of appeal or any other application under this Part —

(a) enter the particulars of the appeal or application in the Register; and

(b) send a copy of the notice or application to the respondent and inform the appellant, applicant or respondent of the reference number of the appeal or application entered in the Register, which shall thereafter constitute the title of the appeal or application.

Power to require further particulars

7. (1) The Secretariat may, subject to any direction by the Chairperson, at any time after receiving the notice of appeal or an application, require the appellant or applicant to furnish a statement, in writing, setting out further and better particulars of the grounds on which the appellant or applicant intends to rely and any relevant facts and contentions.

(2) The appellant or applicant shall send seven copies of the statement referred to in subrule (1) to the Secretariat within such time as the Chairperson may direct, not being more than fourteen days from the date of the requirement under subrule (1).

(3) The Secretariat shall, upon receiving the statement referred to in subrule (2), send a copy of the statement to the respondent.

Notice of hearing

8. (1) The Secretariat shall, at least fourteen days before the hearing of the Tribunal, cause the notice of the date, time and place of hearing of the Tribunal to be served on the appellant, applicant or respondent, in Form IV set out in the Schedule.

(2) A party served with the notice referred to in subrule (1) may apply, in writing, to the Secretariat for the alteration of the date of hearing.

PART III

PROCEEDINGS OF TRIBUNAL

Sittings of Tribunal

9. The Tribunal shall sit at such place and times as the Chairperson may determine, within sixty days of receiving a notice of appeal or an application referred to in Part II.

10. (1) The Tribunal shall hold its proceedings in public. Proceedings of Tribunal
- (2) Notwithstanding subrule (1), the Tribunal may, or upon application by a party to the proceedings, direct that proceedings be held in camera.
- (3) Subject to the other provisions of these Rules and to any direction given by the Chairperson, the Tribunal may regulate its own procedure.
- (4) There shall preside at any proceedings of the Tribunal—
 (a) the Chairperson; or
 (b) in the absence of the Chairperson, the Vice-Chairperson.
11. Three members of the Tribunal shall constitute a quorum. Quorum
12. Where more than one notice of appeal or application is given to the Secretariat by different appellants or applicants in respect of the same matter, the Secretariat may on its own motion or on application, in writing, by a party to the appeal or application, order that the appeals or applications be consolidated. Proceedings to be consolidated
13. (1) If the appellant, applicant, respondent or any other party to the proceedings does not appear at the time and place appointed for the hearing, the Tribunal may— Default of appearance
 (a) dismiss the appeal or application;
 (b) adjourn the hearing on such terms as the Tribunal considers appropriate; or
 (c) hear and determine the appeal or application in the absence of the party or parties and make such order as to costs as it thinks fit.
- (2) Where proceedings are dismissed or determined under this rule in the absence of a party, that party may, on an application, in writing, made by that party within fourteen days of the dismissal or determination, apply to the Tribunal to set aside the dismissal or determination and give the reasons for that party's absence from the hearing.
- (3) Where the Tribunal is satisfied that the reasons given by a party under subrule (2) are sufficient to set aside the dismissal or determination made under subrule (1), the Tribunal may set aside that dismissal or determination.
14. At the hearing— Tribunal hearing
 (a) the appellant or applicant shall present the evidence on which the appeal or application is based, as the case may be;

- (b) the respondent shall adduce evidence to rebut the evidence of the appellant or applicant;
- (c) the appellant or applicant may address the Tribunal by way of reply to the respondent's evidence;
- (d) the appellant or applicant and the respondent may call a witness to adduce evidence; and
- (e) both parties may, at the conclusion of the hearing, present oral or written submissions to the Tribunal.

Evidence

15. (1) The Tribunal may receive, as evidence, any statement, document, information or other matter that may assist it to deal effectively with an appeal, whether or not the evidence would be admissible in a court of law.

(2) The Tribunal may take judicial notice of any fact.

(3) Evidence before the Tribunal may be given orally or, if the parties to the proceedings consent or the Chairperson of the Tribunal so orders, by affidavit.

(4) The Tribunal may, at any stage of the proceedings, make an order requiring the personal attendance of any deponent for examination and cross examination.

Production of document or information

16. A party may, at any time during the hearing, give to the other party notice to produce any document to which the appeal relates which is in possession of that party.

(2) A party to the proceedings shall, on request, produce to the Secretariat, any document or other information which the Tribunal may require and which is in the power of that party to produce, and shall afford to every party to the proceedings an opportunity to inspect those documents or copies of the documents and to make copies of the documents.

(3) A notice to produce any document shall be in Form III set out in the Schedule.

Amendment of documents

17. (1) A party to an appeal or application may, in writing, apply to the Tribunal for an order to authorise that party to amend any document filed with the Tribunal.

(2) The Tribunal shall, where it allows a party to amend a document, allow any other party affected by the amendment to file additional documents, consequential to the amendment, within a time period stipulated by the Tribunal.

18. The Tribunal may, during the hearing, receive such additional information relating to the appeal or application as it may consider necessary to enable it dispose of a matter.

Additional
information

19. (1) Except where these Rules otherwise provide, an application for directions of an interlocutory nature in connection with any proceedings shall, unless otherwise ordered by the Chairperson, be made to the Secretariat.

Interlocutory
applications

(2) An interlocutory application shall be in writing and shall state the title of the proceedings and the grounds upon which the application is made.

(3) Where an interlocutory application is made with the consent of all the parties, the consent shall be in writing and signed by, or on behalf of, the parties.

(4) Where an interlocutory application is not made with the consent of every party, a copy shall, before it is made, be served on every other party and the interlocutory application shall state that this has been done.

(5) A party who objects to an interlocutory application may, within fourteen days after the service of a copy on the party, send written notice of the objection to the Secretariat and a copy to the applicant.

(6) The Secretariat shall, before making an order on an interlocutory application, consider all the objections received in relation to the interlocutory application and, if any party wishes to be heard, the Secretariat shall give the party and every other party an opportunity to be heard.

(7) The Secretariat may, and shall, if required by the applicant or by a party objecting to an interlocutory application under this rule, refer an interlocutory application to the Chairperson for decision.

(8) A party aggrieved with a decision of the Secretariat on an interlocutory application under this rule, may appeal to the Chairperson by giving notice in Form I set out in the Schedule, to the Secretariat and to every other party, within fourteen days after service on the party of the notice of the decision or within such further time as may be allowed by the Secretariat.

(9) An appeal from a decision of the Secretariat shall not act as a stay of proceedings unless so ordered by the Chairperson.

(10) The powers of the Chairperson under this rule may be exercised and discharged in relation to the application by any member of the Tribunal authorised by the Chairperson.

- Intervention** 20. (1) Where a notice of appeal or an application is lodged with the Secretariat, a person who claims to have an interest in the outcome of the appeal or application may apply to the Tribunal, before the final determination of the appeal, or application for leave to intervene in the hearing of the appeal.
- (2) The Tribunal may grant leave to an applicant to intervene in the hearing of the appeal or application where the Tribunal is satisfied that the applicant has an interest in the outcome of the appeal or application.
- (3) An application for leave to intervene shall be made in Form VI set out in the Schedule.
- (4) An applicant may, when making an application under sub rule (3), request the Tribunal to dispose of the application without a hearing.
- (5) The Secretariat shall, upon receiving an application for leave to intervene, send a copy of the application to an appellant, applicant or respondent, as the case may be.
- Response to application for leave to intervene** 21. (1) A party served with an application for leave to intervene shall send to the Secretariat a response to the application, in writing, within fourteen days of the service of the application.
- (2) The Secretariat shall serve the response referred to in subrule (1) on all the parties to the appeal or application.
- (3) A response to an application for leave to intervene shall—
- (a) address the matters raised in the application; and
- (b) state whether the party filing the response considers that a hearing should be held to determine the application.
- Reply** 22. An applicant for leave to intervene shall send a reply to the response referred to in rule 19, in writing, to the Secretariat, within seven days of receiving the response.
- Disposition of application for leave to intervene** 23. (1) The Tribunal shall, where it is of the opinion that a hearing should be held to determine an application for leave to intervene, dispose of the application within fourteen days of receiving the application in such manner as it may determine.
- (2) Where the Tribunal grants leave for intervention —
- (a) the Secretariat shall send to the intervenor, a list of all documents filed in relation to the appeal or application, within seven days of the leave being granted;

- (b) the intervenor may, on request to the Secretariat, obtain copies of the documents on the list referred to in paragraph (a);
- (c) each party to the appeal or application and any other intervenor shall serve on the intervenor any document filed by the parties, after the day on which the Tribunal grants leave to intervene; and
- (d) the Secretariat shall serve any document filed by an intervenor on the appellant, respondent and any other intervenor.

PART IV

PARTIES

24. (1) The Tribunal may combine any number of persons, jointly, jointly and severally, separately or in the alternative, as parties in the same proceedings, if the parties' respective rights to relief depend on the determination of substantially the same question of law or facts.

Parties

(2) Where in any proceedings, the Chairperson determines that a person, who may be entitled to claim an interest or who is likely to be affected by the outcome of the proceedings, is not a party to the proceedings, the Chairperson shall issue a notice to direct that person to become a party.

(3) The person served with the notice in subrule (2) shall, on proof of proper service, become a party to the proceedings and shall be bound by the outcome of the proceedings, whether or not the party makes an appearance.

(4) The Chairperson may, at any stage of the proceedings and on such terms as the Chairperson considers to be just, order the name of any party to be struck out.

(5) Where a party to any proceeding has been incorrectly or defectively cited, the Tribunal may, on application by the party concerned, correct the error or defect.

(6) Where in any proceeding it becomes necessary to substitute a person for an existing party, that person may apply to the Tribunal for an order to substitute that person for an existing party, and the Tribunal may make an order, or give directions as to the further procedure in the hearing.

(7) A nonjoinder, misjoinder or substitution made pursuant to this rule shall not affect any prior steps taken in the proceedings.

(8) An application under this rule shall be made in writing and the Secretariat shall serve any application to all the parties to the appeal.

Withdrawal
of appeal
or
application

25. (1) An appellant or applicant may withdraw the appeal or application, as the case may be—

(a) at anytime before the hearing of the appeal or application;

or

(b) with the consent of the Tribunal at anytime during the hearing of the appeal or application, but before a final determination by the Tribunal.

(2) An appellant or application who intends to withdraw the appeal or application shall send a notice of withdrawal, in writing, to the Secretariat.

(3) The Secretariat shall send a copy of the notice of withdrawal referred to under subrule (2), to the parties to the appeal or application.

(4) The Tribunal may, where the hearing of an appeal or application has commenced, after receiving the notice of withdrawal under subrule (2), allow the appellant or application to withdraw the appeal or application.

Consent
order

26. (1) Where the parties agree upon the terms of an order to be made by the Tribunal, particulars of the terms agreed upon shall be in writing and signed by all the parties, their legal representatives or agents.

(2) The parties shall send the terms agreed upon under subrule (1), to the Secretariat, and the Tribunal may make an order in accordance with terms, in the absence of the parties.

Extension of
time

27. (1) The Tribunal may, on application by a party to the proceedings, extend the time fixed for filing any document, giving any notice or taking any other step in the proceedings.

(2) An application to extend the time, referred to in subrule (1) shall—

(a) be in writing;

(b) state the grounds for the extension; and

(c) be made before the expiration of the time fixed or allowed for extension of time.

Correction
of errors

28. The Tribunal may, on application by a party to the proceedings, correct any error or omission in the record of proceedings, by a notice, in writing, signed by the Chairperson, at any time after a decision is made.

Tribunal to
observe
principles of
natural
justice

29. The Tribunal shall observe the principles of natural justice and shall hear all the evidence tendered and representations made by, or on behalf of, the parties or application.

30. The Chairperson may administer oaths or take affirmations for the purpose of proceedings of the Tribunal. Administration of oaths

PART V

DECISION OF TRIBUNAL

31. (1) A decision of the Tribunal shall be in writing and shall contain the following: Decision of Tribunal

(a) the finding of the Tribunal on each issue of fact or law raised in the proceedings; and

(b) the reason for the Tribunal's findings.

(2) The decision referred to in subrule (1) shall be made by the Tribunal within sixty days after hearing the appeal or application.

32. (1) The Secretariat shall send the decision of the Tribunal to the parties and to the Commission, within seven days of the date of the decision of the Tribunal. Transmission of decision

(2) The Secretariat shall send a copy of the decision of the Tribunal to the Commission for implementation.

PART VI

GENERAL PROVISIONS

33. (1) The Tribunal may, where it makes an order as to costs, direct that the party against whom the order is made shall pay to any other party a lump sum of costs or expenses or such proportion of the costs or expenses as may be just. Costs

(2) The Tribunal shall assess the sum to be paid.

(3) A party aggrieved with the assessment by the Tribunal may apply to the Tribunal to review the decision, within fourteen days of the assessment.

34. A party which changes its address shall, within seven days of the change, by notice in writing, inform the Secretariat and the other parties of the change. Change of address

35. (1) A notice or any other document required by these Rules to be served, may be served by delivering it personally to the person to whom it is addressed or may, where the Chairperson is satisfied that the person cannot be found, or is not in the Republic, be served on or brought to the knowledge of that person in such other manner as the Chairperson may direct. Service of notices, documents, etc.

(2) An application or communication to be made to the Tribunal in respect of any matter before the Tribunal shall be addressed to the Secretariat.

SCHEDULE
(Rules 3; 6,14,18,34, and 35)



Form I
(Rule 3 and 17(8))

REPUBLIC OF ZAMBIA

The Competition and Consumer Protection Act, 2012
(Act No. 24 of 2010)

The Competitin and Consumer Protection (Tribunal) Rules, 2012

NOTICE OF APPEAL

(1) Here insert the full names of the parties

BETWEEN:

(1).....

AND

(2) Here insert the full name of the person filing the appeal

.....

AND

.....

(3) Here insert the part(s) of the decision the appellant is aggrieved with

TAKE NOTICE THAT (2).....

Being dissatisfied with the decision of the *Commission/Secretariat given on the day of, 20...., intends to appeal to the Tribunal/Chairperson against the whole decision or against the part or parts of the decision which decided that

(3).....

TAKE NOTICE that the appellant will rely on the following grounds of appeal:

(4) Signature of the Secretariat

GROUND- see overleaf attached

TAKE NOTICE that the appellant seeks the following reliefs:

RELIEFS – see overleaf attached

Dated thisday of,20.....

(4)

Secretariat

(6) Here insert the physical address where all documents will be served

The appellants address of service (6)

.....

.....

.....

NOTES -*Delete where inapplicable



REPUBLIC OF ZAMBIA

The Competition and Consumer Protection Act, 2010

(Act No. 24 of 2010)

The Competition and Consumer Protection

(Tribunal) Rules, 2012

NOTICE OF APPLICATION FOR A MANDATORY ORDER

(1) Here insert the full names of the parties

BETWEEN: The Competition and Consumer Protection Commission

AND

(2) Here insert the type of mandatory order

(1).....
.....

AND

(3) Here insert the name of the person who is swearing the affidavit

.....
.....

AND

TAKE NOTICE THAT the Competition and Consumer Protection Commission intends to make an application before the Chairperson on the day of 2012 for a mandatory order that

(4) Signature of the Legal Counsel

(2)..... on the grounds contained in the affidavit in support sworn by

(3).....

Dated this day of 2012

Per (4)
Legal Counsel
Competition and Consumer Protection Commission
Fourth Floor Post Office Building
Cairo Road
P.O. Box 34919
LUSAKA

(5) Here insert the physical address of the other party

To: (6)
.....
.....



REPUBLIC OF ZAMBIA

The Competition and Consumer Protection Act, 2010
(Act No. 24 of 2010)

The Competition and Consumer Protection
(Tribunal) Rules, 2012

APPLICATION FOR CONFIRMATION OF CONSENT AGREEMENT
UNDERTAKING*

BETWEEN: The Competition and Consumer Protection

Commission

AND

(1) Here
insert the
full names
of the
parties

(1).....

AND

.....

AND

(2)
Signature of
the Legal
Counsel

.....

TAKE NOTICE THAT the Competition and Consumer Protection
Commission intends to submit the Consent Agreement/Undertaking*
attached to this application, for confirmation.

Dated this day of 2012

Per (2)

Legal Counsel
Competition and Consumer Protection Commission
Fourth Floor Post Office Building
Cairo Road
P.O. Box 34919
LUSAKA

(3) Here
insert the
physical
address of
the other
party

To.....
.....
.....

NOTES - *Delete where inapplicable



REPUBLIC OF ZAMBIA

**The Competition and Consumer Protection Act, 2010
(Act No. 24 of 2010)**

**The Competition and Consumer Protection
(Tribunal) Rules, 2012**

NOTICE OF HEARING

(1)
Here insert
the full
names of the
parties

BETWEEN

(1).....

AND

(2)
Here insert
the name of
town

.....

AND

(3)
Here insert
the date

.....

AND

(4)
Here insert
the month

.....

TAKE NOTICE THAT the above matter will be heard and deter-
mined by the Competition and Consumer Protection Tribunal at

(5)
Here insert
the physical
address of
the venue
where the
hearing will
be held

(2).....

on the (3)day of (4), 20...., at hours
in the noon.

Place of hearing (5).....

(6)Signature
of the
Secretariat

Dated thisday of
20.....

(6)

Secretariat

Form V
(Rule 16 (3))



REPUBLIC OF ZAMBIA

The Competition and Consumer Protection Act, 2010
(Act No. 24 of 2010)

The Competition and Consumer Protection
(Tribunal) Rules, 2012

NOTICE TO PRODUCE DOCUMENTS

(1) Here
insert the
full names
of the
parties

BETWEEN(1).....

AND

.....

AND

.....

AND

.....

TAKE NOTICE THAT at the hearing of this appeal, the appellant intends
to produce the following documents:

Description of document: *Date of document*

(2)Signature
of the
Secretariat

- | | |
|---------|-------|
| 1. | |
| 2. | |
| 3. | |

(for other documents see overleaf)

Dated this..... day of.....,20.....

(2)

Secretariat



Form IV
(Rule 18(3))

REPUBLIC OF ZAMBIA

The Competition and Consumer Protection Act, 2010
(Act No. 24 of 2010)

The Competition and Consumer Protection
(Tribunal) Rules, 2012

APPLICATION FOR LEAVE TO INTERVENE

1) Here insert the full names of the parties

BETWEEN: (1).....

.....

AND

(2) Here insert the full name of the person filing the application

.....

AND

.....

(3) Here insert the name of the party, whose position the applicant intends to support

TAKENOTICETHAT (2).....

intends to intervene in the hearing of this appeal.

TAKE FURTHER NOTICE THAT -

1. The following matters in the appeal affect the applicant:

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

2. The following are the competitive consequences likely to arise from the matters stated in paragraph 1:

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

3. The applicant intends to support the position of (3), who is a party to this appeal.

4. The applicant intends to participate in this appeal by (4)-

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

(4) here describe how the applicant proposes to participate in the hearing of the appeal

5. The applicant *does/does not request the Tribunal to dispose of the application without a hearing.

(5)

5) Here insert the signature of the applicant

(6) Here
insert the
physical
address of
the applicant

Applicant

The applicant's address of service (6)

.....
.....
.....

NOTES - *Delete where inapplicable

LUSAKA
5th June, 2012

E. L. SAKALA,
Chief Justice