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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF TRADE AND INDUSTRY

NO. R. 448

03 APRIL 2020

REGULATIONS ON COMPETITION TRIBUNAL RULES FOR COVID-19 EXCESSIVE PRICING COMPLAINT REFERRALS

I, Ebrahim Patel, Minister of Trade, Industry and Competition in consultation with the Chairperson of the Competition Tribunal; and in terms of section 27(2) of the Competition Act, 1998 (Act No. 89 of 1998) ("the Act"), as amended, hereby make the Regulations relating to the functions of the Competition Tribunal set out in the Schedule hereto.

The purpose of these Regulations is to provide for Competition Tribunal rules regulating complaint referrals for alleged contraventions of section 8(1)(a) of the Act read with Regulation 4 of the *Consumer and Customer Protection Regulations and the National Disaster Management Regulations and Directions*, published in Government Gazette No. 43116, Notice No. R.350, on 19 March 2020, during the period of the declaration of a National State of Disaster in respect of COVID-19 by the Minister of Co-operative Governance and Traditional Affairs, published in Government Gazette No.43096, Notice No. 313, on 15 March 2020.

**MR EBRAHIM PATEL****MINISTER OF TRADE, INDUSTRY AND COMPETITION**

SCHEDULE

1. Short title

These Regulations may be cited as the *Tribunal Rules for Covid-19 Excessive Pricing Complaint Referrals*.

2. Interpretation

2.1. In these Regulations, unless the context indicates otherwise, any word or expression has the meaning assigned to it by the Competition Act, 1998 (Act No. 89 of 1998), as amended or the Regulations issued by the Minister in Government Gazette No. 43116 on 19 March 2020, pursuant to the declaration of a National State of Disaster and—

2.1.1. “**Act**” means the Competition Act No. 89 of 1998, as amended;

2.1.2. “**Commission**” means the Competition Commission, a statutory body established in terms of section 19 of the Act;

2.1.3. “**Complaint referral**” means a referral of an alleged contravention of section 8(1)(a) of the Act read with Regulation 4 of the Consumer Protection Regulations;

2.1.4. “**Complainant**” means any person who has submitted a complaint to the Commission of an alleged contravention of section 8(1)(a) of the Act read with Regulation 4 of the Consumer Protection Regulations;

2.1.5. “**Consumer Protection Regulations**” refers to the *Consumer and Customer Protection and National Disaster Management Regulations and Directions* published by the Minister in Government Gazette No. 43116, Notice No. R.350, on 19 March 2020, pursuant to the declaration of a National State of Disaster;

- 2.1.6. “**COVID-19**” means the 2019 novel coronavirus (SARS-COV 2 / COVID-19);
- 2.1.7. “**File**” when used as a verb, means to deposit with the Registrar;
- 2.1.8. “**Lockdown period**” refers to the *lockdown* as defined in the Regulations issued in terms of Section 27(2) of the Disaster Management Act, 2002 (Act 57 of 2002) published in Government Notice No. R398 of Government Gazette No. 43148 of 25 March 2020, as may be amended;
- 2.1.9. “**Minister**” has the same meaning as defined in the Act;
- 2.1.10. “**National State of Disaster**” means the National State of Disaster relating to the COVID-19 outbreak as declared in Government Gazette No.43096, Notice No. 313, on 15 March 2020;
- 2.1.11. “**Registrar**” means the officer of the Tribunal appointed in terms of Tribunal Rule 5 and includes any acting or assistant registrar;
- 2.1.12. “**Serve**” means to deliver a document to a person other than the Registrar;
- 2.1.13. “**Tribunal**” means the Competition Tribunal, a statutory body established in terms of section 26 of the Act; and
- 2.1.14. “**Tribunal Rules**” means the rules for the conduct of proceedings in the Competition Tribunal published in Government Gazette No. 22025, Vol. 428, on 1 February 2001.

3. Application

- 3.1. These Rules apply to complaint referrals for an alleged contravention of section 8(1)(a) of the Act read with Regulation 4 of the Consumer Protection Regulations.
- 3.2. Subject to sub-rule 3.4, these Rules shall be of no force or effect when the COVID-19 outbreak is declared to no longer be a national disaster.
- 3.3. Unless the Tribunal directs otherwise, these Rules will apply to any complaint referral that has commenced before the COVID-19 outbreak is declared to no longer be a national disaster.

4. Purpose

- 4.1. The purpose of these Regulations is to-
 - 4.1.1. provide for rules regulating complaint referrals for alleged contraventions of section 8(1)(a) of the Act read with Regulation 4 of the Consumer Protection Regulations during the period of declaration of the National State of Disaster and lockdown period; and
 - 4.1.2. prevent an escalation of a National State of Disaster and to alleviate, contain and minimise the effects of the National State of Disaster.

5. Urgent complaint referral procedures

- 5.1. A complaint referral for an alleged contravention of section 8(1)(a) of the Act read with Regulation 4 of the Consumer Protection Regulations may be dealt with by the Tribunal on an urgent basis.
- 5.2. An applicant wishing to bring a complaint referral for an alleged contravention of section 8(1)(a) of the Act read with Regulation 4 of the Consumer Protection

Regulations must apply to the Tribunal by filing a Notice of Motion and include a founding affidavit.

5.3. A complaint referral may be filed by –

5.3.1. the Commission; or

5.3.2. a complainant, as soon as possible after the Commission has issued a Notice of non-referral to that complainant.

5.4. A Notice of Motion in terms of this Rule must-

5.4.1. allege a contravention of section 8(1)(a) of the Act read with Regulation 4 of the Consumer Protection Regulations;

5.4.2. indicate the order sought against the respondent(s); and

5.4.3. state the name and any address (electronic or otherwise) of each respondent in respect of whom the order is sought.

5.5. A Notice of Motion in terms of this Rule may, *inter alia*, specify -

5.5.1. the date and the time on which the applicant requests the matter to be heard by the Tribunal; and

5.6. The founding affidavit in terms of this Rule must set out -

5.6.1. grounds for urgency; and

5.6.2. material facts or points of law and evidence in support of the complaint referral.

5.7. The founding affidavit may include supporting and/or confirmatory affidavits from any factual and expert witnesses.

5.8. The applicant must serve a copy of the Notice of Motion and founding affidavit on each of the respondent(s) named in the Notice of Motion and file a copy of the application with the Tribunal.

- 5.9. A respondent who wishes to oppose the Complaint Referral must serve a copy of their Answering Affidavit on the Complainant within 72 hours of service of the Complaint Referral.
- 5.10. The person who filed the Complaint Referral may serve a copy of their Reply within 24 hours after being served a copy of the Answering Affidavit.
- 5.11. The Tribunal shall determine the date and time for the hearing of the complaint referral.
- 5.12. Subject to sub-rule 5.13 of this Rule, Tribunal Rules 6, 16, 17, 18, 19, 47, 54 and 55, each read with the changes required by context, apply to an application under this Rule.
- 5.13. To the extent that the Tribunal Rules referred to in sub-rule 5.12 of this Rule stipulate timeframes, those timeframes do not apply to an application under this Rule.
- 5.14. The Tribunal may on good cause shown grant condonation for non-compliance with the timelines stipulated in these Rules.
- 5.15. All documents may be filed electronically with the Registrar.

6. Urgent hearing

- 6.1. The Tribunal may direct that urgent complaint referral proceedings in terms of these Rules may be conducted wholly as video or audio proceedings.
- 6.2. If no answering affidavit is filed within the period set out in the Notice of Motion or such extended period as may be determined by the Tribunal, the urgent complaint referral may be heard on an unopposed basis.

- 6.3. Subject to section 55 of the Act, evidence in a complaint referral must be by affidavit.
- 6.4. The Tribunal may determine whether there is a contravention of section 8(1)(a) of the Act read with Regulation 4 of the Consumer Protection Regulations on the evidence contained in the affidavits.
- 6.5. If it is evident from the affidavits that there is a substantial dispute of fact, which cannot be resolved on the affidavits, the Tribunal may determine an expedited procedure for resolving such substantial dispute of fact and this may include the referral of the matter for oral evidence on an expedited basis including the hearing of oral evidence by way of video or audio proceedings.
- 6.6. Subject to section 55 of the Act, the Tribunal may call for further evidence if required.

7. Remedies

- 7.1. The Tribunal may, inter alia, impose a pricing order on a respondent found to have contravened s8(1)(a) of the Act.
- 7.2. A respondent may apply to appeal or review such a pricing order on an urgent basis to the Competition Appeal Court provided that the pricing order will remain in force unless set aside by the court on appeal or review.

8. Consent Order

- 8.1. The Commission may any time before, during or after an investigation, conclude a consent agreement with a firm in respect of a complaint under s8(1)(a) in full and final settlement of the matter, including settlement of any civil proceedings.
- 8.2. The Tribunal may confirm such a consent agreement without hearing any evidence.

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