

ESWATINI COMPETITION COMMISSION



**Eswatini
Competition Commission**

RULES OF PROCEDURE

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PART 1- PRELIMINARY

1. Introduction

The Eswatini Competition (the “Commission”) is established in terms of Section 6 Competition Act 2007 (the “Act”). The Commission exercises its functions pursuant to Section 11 of the Act through its Board of Commissioners (the “Board”) appointed under Section 8 of the Act. Under Section 14 of the Act, including other parts of the Act and the Competition Regulations of 2010 (the “Principal Regulations”) and Amendment Regulations of 2016 (the “Amended Regulations”), the Commission's rules of procedure are enumerated. It is to be noted that the rules of procedure in the Act and Regulations are binding on both the Commission and members of the public. Additionally, the procedure is regulated from time to time by superior courts. These Rules of Procedure should therefore be read together with -

- The Competition Act, 2007, Principal Regulations, Amended Regulations and the Fair Trading Act, 2001.
- Decisions/interpretations made by the Courts in Eswatini.
- Decisions/interpretations made by the Courts in comparable jurisdictions.
- Decisions/interpretations made by overriding regional and international bodies to which Eswatini is a confirmed or participating member (judicial, quasi-judicial or administrative).
- Any other persuasive case law from jurisdictions with comparable legal provisions, where there is a dispute.

While Section 14(1) of the Act provides that the members of the Commission (referred to as “Board of Commissioners”) may regulate their own procedure, transparency, consistency and predictability of procedure are key for any law enforcement institution. In this context, in the spirit of fairness and transparency, substantive rules of procedure must be enumerated. These Rules of Procedure are supplementary to those already covered in the Act, Regulations, Board or Committee Charters/Terms of Reference. Therefore, to

the extent of any inconsistency, the Act, Principal Regulations, Amended Regulations, Board Charter and Committee Terms of Reference shall prevail.

These Rules of Procedure are equally necessary pursuant to Section 11(2)(l) of the Act, which empowers the Commission to “*do all such acts and things as are necessary, incidental or conducive to the better carrying out of its functions under this Act.*”

2. Citation

- 1) These Rules of Procedure may be cited as the Eswatini Competition Commission Rules of Procedure, 2025 (“Rules of Procedure”).

3. Interpretation

- 1) Where a word or expression is defined or explained in the Act and Principal Regulations, the word or expression shall have the same meaning unless otherwise specified in these Rules of Procedure.

- 2) Words importing –

- a) any one gender includes the other gender; and

- b) the singular includes the plural and *vice versa*.

- c) Effect shall be given to these Rules of Procedure according to their true intent, meaning and spirit.

- 3) In these Rules of Procedure, unless the context provides otherwise;

“Act” means the Competition Act, 2007;

“Amended Regulations” means the Amendment Regulation, 2016;

“anti-competitive trade practices” means trade practices enumerated in sections 30, 31, 32 and 34 of the Act;

“Board”	<p>means</p> <ul style="list-style-type: none"> i. the Board of Commissioners established by Section 8 of the Act; and ii. in some instances, this may mean a Board Committee duly delegated with adjudicative functions;
“Chairperson”	<p>means</p> <ul style="list-style-type: none"> i. the Chairperson of the Board: or ii. in some instances, this may, mean the Chairperson of the Board Committee duly delegated with adjudicative functions;
“Commission”	<p>means the Eswatini Competition Commission established in terms of Section 6 of the Competition Act of 2007;</p>
“complaint”	<p>means</p> <ul style="list-style-type: none"> i. a matter initiated by the Secretariat in terms of the Act; or ii. a matter that has been submitted to the Commission in terms of the Act;
“Court”	<p>means the High Court of the Kingdom of Eswatini, unless otherwise specified;</p>
“deliver”	<p>depending on the context, means to serve, or to file a document;</p>

“Fair Trading Act”	means the Fair Trading Act of 2001;
“interested party”	means a party who has an interest in the matter and has provided evidence to the Board or the Executive Director and includes a complainant;
“<i>lis pendens</i>”	means that a matter or an alleged conduct has a pending lawsuit or claim attached to it in another competent forum;
“main party”	means the party that is the subject of an investigation;
“misjoinder”	means unintentionally adding a party to a suit which has no direct interest in a matter which is before the Board;
“non-joinder”	means not joining a necessary or proper party that has a direct interest in a matter which is before the Commission;
“Principal Regulations”	means the Competition Commission Regulations, 2010;
“Registrar”	means the Secretary of the Board for purposes of adjudicative matters or anyone acting as such in his or her absence;
“<i>res-judicata</i>”	means that a final judgement on the merits of a matter has been issued in the same cause of action;

“Secretariat”	means the Secretariat of the Commission as defined in Section 18 of the Act;
“Technical Committee”	means the duly delegated Board Committee seized with some of the adjudicative functions carried out by the Board;
“<i>ultra vires</i>”	means a decision or action taken beyond the power of the Commission; and
“unfair trade practices”	means any conduct or practices that are deceptive, unethical, unconscionable, fraudulent, or which cause injury, damage to property or loss to a consumer or have the effect of denying the consumer any of the rights protected under these Rules of Procedure. These are conducts based on the provisions of the Fair Trading Act and Section 33 of the Act.

4. Effective Date

- 1) These Rules of Procedure shall come into effect on the date of approval by the Board of Commissioners and publishing on the Commission’s website.

5. Application

- 1) These Rules of Procedure shall apply in relation to unfair trade practices, mergers and acquisitions and anti-competitive trade practices falling under the Act.
- 2) These Rules of Procedure are binding on –
 - a) the Board;

- b) the Secretariat; and
 - c) any person or enterprise who or which is a party, or in any way involved in the Commission's proceedings.
- 3) If at any time the Board encounters a situation that is not provided for in these Rules of Procedure, it shall determine the procedure to be adopted.

PART 2 - COMMISSION'S ROLES

6. Roles and Duties of the Board

- 1) For purposes of its operations, the Commission is composed of the Board, which is headed by the Chairperson..
- 2) The Board is the highest decision-making organ of the institution with the following dual function -
 - a) the adjudicative arm of the Commission and makes decisions on cases investigated by the Secretariat; and
 - b) the seat of all policy formulation and adoption, wherein it plays an oversight governance role over the Secretariat.

7. Roles and Duties of the Secretariat

- 1) The Secretariat shall be headed by the Executive Director, who shall perform his duties and responsibilities as provided by Sections 18 and 19 of the Act.
- 2) The Secretariat shall investigate or cause to be investigated any matter that it has reasonable grounds to believe is an anti-competitive trade practice or unfair trade practice or a merger or acquisition –
 - a) upon receipt of a complaint alleging that a breach of the Act has occurred or is likely to occur; or

- b) upon the Commission's own initiative , where it has come to the knowledge of the Commission that a breach of the Act has occurred or is likely to occur.

8. The Registrar

- 1) The Registrar shall be a fit and proper person who shall serve as the Secretary to the Board for purposes of adjudicative matters.
- 2) The Registrar shall, amongst others –
 - a) ensure implementation and review of the Rules of Procedure;
 - b) ensure compliance with due process, transparency and procedural fairness in the Commission's adjudication processes;
 - c) take all necessary steps for preparing and ensuring the adjudication of all applications and matters brought before the Board;
 - d) compile and distribute notices of hearings, reports and other documents to be considered by the Board;
 - e) in collaboration with the Chairperson of the Board and or Technical Committee, summon the parties to appear before the Board to settle the record for an application for a hearing;
 - f) manage the filing and delivery of pleadings and the necessary documentation required in terms of the Rules of Procedure and ensure proper flow of information to the relevant stakeholders and affected parties;
 - g) receive any correspondence from parties relating to cases under the investigation intended to reach the Board or a member of the Board and disseminate all official correspondence emanating from the Board;
 - h) ascertain the eligibility and availability of the Board to hear cases;

- i) prepare the agenda of adjudicative meetings for the Board and arrange for such meetings;
- j) record and take minutes during adjudicative meetings and hearings, as well as assist in issuing decisions made by the Board;
- k) notify the parties of the final determination of the Board as well as any orders or directions made or given by the Board in relation to any application or any matter connected with such an application;
- l) maintain the Board's case management system;
- m) liaise with lawyers/attorneys and guide the necessary procedures for adjudications before the Board;
- n) manage public access to adjudicative documents; and
- o) carry out other functions as may be necessary and directed by the Board from time to time.

PART 3 - HANDLING OF DOCUMENTS

9. Business Hours and Correspondences

- 1) The office hours of the Board shall be the normal Commission working hours from 0800hrs - 1700hrs Monday to Thursday and 0800hrs to 1630hrs on Friday, excluding public holidays declared and observed by the Eswatini Government.
- 2) In exceptional circumstances, correspondence or documents may be filed at a time or date agreed upon by the parties or directed by the Board.

10. Delivery of Documents

- 1) Notices and documents should be delivered in such a way that the person served is informed of the process being served and the actions required of such person being served.

- 2) Delivery of notice or documents may be done personally, if personal delivery cannot be attained, the following manner may be used -
 - a) delivery at the *domicilium citandi*, by delivering or leaving a copy thereof at the *domicilium* so chosen by the person;
 - b) delivery at the place of business by delivering a copy to the responsible person at its registered office or a responsible employee thereof at its principal place of business within Eswatini, or if no such person is willing to accept service, by affixing a copy to the main door of such office or place of business, or in any manner provided by law;
 - c) in exceptional circumstances, by delivery at the person's residence by leaving a copy thereof or at the place of residence or business of the tutor, curator or the like with the person apparently in charge of the premises at the time of delivery, being a person apparently not less than sixteen years of age;
 - d) by sending the notice or a certified copy of the document by registered post to the person's last-known address; or
 - e) by sending the notice or a copy of the document by electronic mail if the person has an address for receiving electronic mail.
- 3) If the date and time for the delivery of a document is outside of the office hours of the Commission, that document will be deemed to have been delivered on the next business day.

11. Filing or Receipt of Documents

- 1) Any communication to the Board or the Secretariat may be delivered –
 - a) by hand at the Commission offices;
 - b) addressed by registered post to the Commission; or
 - c) transmitted by electronic mail.

- 2) All correspondence directed to the Secretariat of the Commission concerning any matter subject to these Rules of Procedure shall be addressed to the Executive Director.
- 3) All correspondence directed to the Board concerning any matter before the Board should be addressed to the Chairperson of the Board or the Chairperson of the Board Committee.

PART 4 - COMPLAINT PROCEDURES

12. Filing of Complaints

- 1) Any person may lodge a complaint with the Commission alleging a violation of the Act, which may include anti-competitive trade practices, unlawful mergers and acquisitions or unfair trade practices in terms of the Act.
- 2) The complainant may lodge a complaint in terms of Sub-Rule (1) of this Rule of Procedure, by –
 - a) physically coming to report to the Commission offices;
 - b) submitting a written complaint or Form 2 (in respect of anti-competitive trade practices) to the Commission's offices;
 - c) sending an electronic mail to the Commission through the email address available on the Commission's website; or
 - d) sending the notice or certified copy of the complaint through registered post to the Commission.
- 3) If the date and time for the delivery of the complaint are outside of the Commission's office hours, the lodged complaint will be deemed to have been delivered on the next business day.

- 4) The Secretariat shall respect the anonymity of the complainant, at his or her request, or where the Secretariat is of the view that the interests of the complainant would be harmed by the disclosure of his or her name.

13. Process of Dealing with a Complaint

- 1) Once a complaint is lodged with the Secretariat and there are reasonable grounds to believe that there is or likely to be a contravention of any provisions of the Act, the Executive Director may authorise an investigation subject to Regulation 12(4) of the Principal Regulations.
- 2) Where the Secretariat deems that the complaint does not warrant an investigation, it shall notify the complainant in writing within 14(fourteen) days of the reasons for the decision not to investigate the complaint.
- 3) Notwithstanding Sub-Rule (1) of this Rule of Procedure, the Secretariat may not consider a complaint where -
 - a) it does not have jurisdiction over the matter;
 - b) the complaint lodged, in whole or in part, is before a competent Court or the Board;
 - c) subject to Rule 12 of these Rules of Procedure, the complainant fails to cooperate and provide information sought by the Secretariat; or
 - d) any other lawful or justified reason which may not be provided for under these Rules of Procedure.

PART 5 - INVESTIGATIONS

14. Initiation of Investigations

- 1) The Secretariat may conduct an investigation either by acting on a complaint based on anti-competitive trade practice, unfair trade practices, unlawful mergers and acquisitions or on its own initiative.

15. Prioritisation of Investigations

- 1) Where the Secretariat is in receipt of complaints, it may decide to prioritise the investigation as guided by the prioritisation framework and the relevant guidelines.

16. Notice of Investigation

- 1) Subject to Regulation 12 of the Principal Regulations, the Secretariat may issue a notice of investigation to the Respondent, subject to a complaint received or an investigation instituted by the Secretariat.

17. Preliminary Objections to Investigations

- 1) Subject to the matters constitutionally or otherwise reserved for the Court, a Respondent may, within 7 (seven) days after receipt of a notice of investigation from the Secretariat, submit an objection to the Secretariat on the following grounds -
 - a) that the conduct in question is not applicable under the Act or any other legislation that the Commission enforces;
 - b) that the conduct in question had previously been addressed under the Act or through another overriding legislation and resolved;
 - c) that the notice does not disclose a cause of action;
 - d) that the notice does not comply with the requirements under the Act, Regulations and any applicable Rules of Procedure or guidelines;
 - e) that the person upon whom the notice has been served is not the Respondent;
 - f) misjoinder or non-joinder;
 - g) *res judicata*;
 - h) *ultra vires*;

- i) discharge or suspension of action by statute;
 - j) that a demand was necessary before an action and was not made;
 - k) *lis pendens*; or
 - l) the matter is handled by another sector-specific regulator or regional authority.
- 2) The Secretariat shall, within 10 (ten) days after receipt of the preliminary objection, provide a response to the Respondent, failing which, the objection will be assumed to have been authorised.
 - 3) The Board shall issue the necessary directives regarding the matter and shall determine it within a reasonable time after consideration of the submissions from all parties concerned.
 - 4) The investigation period shall stand suspended from the time an objection to the investigation is raised until the time the Board determines the preliminary issue.

18. Admissions and Denials

- 1) Within 7 (seven) days of being served the notice of investigation, the Respondent may admit to the allegations as contained therein, which admission shall be signed by the Respondent or their attorney of record.
- 2) Where there is an admission, the Respondent shall furnish the Secretariat with the relevant information required to analyse and finalise the case for purposes of leniency, settlement or other outcomes under the Act.
- 3) Where there is a denial, the Respondent shall, upon receipt of the notice of investigation, furnish the Secretariat with the requested information within the timelines set in the notice of investigation.

19. Report on Interim Measures

- 1) The Secretariat has the authority to issue a draft report for interim measures on any matter that is the subject of an investigation or a merger and acquisition matter where -
 - a) a risk of serious or irreparable damage may occur to society, economy, environment or where there is a serious threat to life or property; or
 - b) a certain enterprise is prevented from taking pre-emptive action.

- 2) In the report, the Secretariat must assess what constitutes serious damage based on factual evidence. Factors to be considered may include -
 - a) competitive disadvantage - whether a person or group may suffer a significant competitive disadvantage with lasting effects;
 - b) financial loss - the potential financial loss to an individual, considering their business size and resources;
 - c) goodwill or reputation damage - significant harm to a person's goodwill or reputation;
 - d) insolvency; or
 - e) any other form of damage that cannot be remedied.

- 3) Upon conclusion and endorsement of the draft report on interim measures by the Executive Director, the report shall be transmitted to all the parties subject to the investigation. The transmission shall be accompanied by an invitation letter to the parties to submit responses, objections and/or recommendations regarding the findings of the draft report on interim measures.

- 4) The Secretariat shall specify in the invitation letter that –
 - a) parties must file their responses, objections and/or recommendations and any further information requested by the invitation letter; and

- b) parties are required to respond accordingly to the draft report on interim measures within 10 (days) of receipt.
- 5) The invitation letter shall adhere to the procedures outlined in Rule 21 (4) of these Rules of Procedure, save that the parties must provide their responses, objections and/or recommendations within 10 (ten) days from the date of receipt of the letter stating why the recommendations should not be made final.
- 6) Subject to Sub-Rule (4) of this Rule of Procedure, where the parties need an extension on the period stated in the invite, they shall comply with the requirements provided in Rule 21 (3) of these Rules of Procedures, save that the extension shall be for a single period not exceeding 10 (ten) days.
- 7) Upon receipt of the comments, objections and/or recommendations, the Secretariat shall comply with the requirements provided for in Rule 21 (7) of these Rules of Procedure.
- 8) Upon completion of the report on the interim measures, the Secretariat shall submit a final report on interim measures together with the parties' submissions to the Board.
- 9) Subject to this Rule of Procedure, the provisions contained in Rules 21, 22, and 23 of these Rules of Procedure shall apply *mutatis mutandis*, insofar as they pertain to the finalisation of the final report on interim measures.

20. Adjournment of Investigations

- 1) Subject to Section 13 (1) (e) of the Act, the Board may, where it deems fit, decide to adjourn or suspend an investigation from time to time when -
 - a) the Board considers the delays occasioned by parties in providing the necessary information to the Secretariat within the stipulated time;
 - b) the Secretariat is awaiting critical information which was requested from Government Ministries, Regulators or any other critical stakeholder whose submission is critical for the investigation report;

- c) the parties may suffer irreparable harm or prejudice;
 - d) there is an emergency or natural disaster; or
 - e) there are unforeseen circumstances beyond the control of the Secretariat.
- 2) The Secretariat may, in writing and in accordance with Sub-Rule (1) of this Rule of Procedure, request an adjournment from the Board by giving valid reasons for the circumstances which warrant an adjournment.
 - 3) The request for adjournment should be served to the other affected parties who must respond to the request within five days.
 - 4) The Secretariat shall in turn, reply to the response from the parties within 5 (five) days from the date of receipt.

21. Draft Report on Anti-Competitive Trade Practices, Mergers and Acquisitions and Unfair Trade Practices Cases

- 1) Once a case has been completed and endorsed by the Executive Director, the non-confidential report shall be submitted to all the parties who are the subject of the investigation. The non-confidential report shall be accompanied by a letter signed by the Executive Director, inviting the parties to provide responses and/ or objections to the findings and recommendations of the draft report.

Exception:

- a) unfair trade practice matters which are dealt with in accordance with the Alternative Dispute Resolution process (ADR), shall not be submitted to the Board unless the Respondent party refuses an amicable resolution.
- b) mergers and acquisitions which do not raise competition concerns and therefore are recommended for approval without conditions. These mergers will be dealt with in the normal procedure.

- 2) The Secretariat shall invite the parties to submit their responses, and comments, including objections, they may have to the draft report and may provide further information thereto. The parties shall be given at least 14 (fourteen) days to respond to the draft report.
- 3) Where the parties need an extension of the period stated in the invite, they shall –
 - a) in writing request for an extension of the period from the Secretariat, giving reasons for the extension; and
 - b) if the Secretariat is of the opinion that the circumstances stated in the request warrant an extension, it may, before the expiry of that period, in writing to the parties, and in exceptional circumstances extend the relevant period, for a further single period, not exceeding 14 (fourteen) days.
- 4) The invitation letter shall –
 - a) describe the Secretariat's findings in clear terms and provide an explanation for its recommendations;
 - b) invite the parties, within a period of not less than 14 (fourteen) days as may be specified in the letter, to provide the Secretariat with reasons in writing as to why such findings or recommendations should not become final; and
 - c) not contain any information that the Secretariat considers should be excluded from the letter, having regard to any confidentiality provisions under any enactment or any commercially sensitive information.
- 5) Any comment, response or objection to the draft report shall be made in writing to the Executive Director, or else delegated to a duly authorised officer, to hold additional meetings or carry out further investigation as required into any new information received.
- 6) Where any party provides written comments after the date specified in the letter, the Executive Director or duly delegated officer 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.

- 7) Upon receipt of comments, responses, or objections from the parties to the investigation, the Secretariat may-
 - a) revise the draft report taking into consideration the submissions from the parties;
 - b) invite the parties to make their submissions in respect of the draft report. All responses and submissions made at this stage of the investigation shall be included in the final report to the Board;
 - c) maintain the Secretariat's report but attach the objections as received for the attention of the Board; or
 - d) reply to the responses made by the parties.

22. Final Findings and Report

- 1) Once the Secretariat has had due regard to any reasons in writing or oral evidence submitted following the letter of a provisional finding, it shall proceed to make the report final and submit it to the Board and the parties with recommendations.
- 2) The final report shall focus on the key issues and deal with the relevant portions of the Act, Fair Trading or other legislations that the Secretariat might have relied upon. The final report shall be compliant with the relevant Guidelines approved by the Commission.
- 3) The Secretariat may, for the purpose of preparing its final report, send any material which has been produced back to any person so that its accuracy can be verified.
- 4) Any party to whom material has been sent back pursuant to Sub-Rule (3) of this Rule of Procedure may request the Secretariat to exclude the returned material from its final report to the Board.

- 5) The Secretariat may exclude any matter from the final report where it has taken into consideration that publication of the matter would be inappropriate, and in deciding what is inappropriate for this purpose, it shall have regard to confidentiality.
- 6) Any such inclusion shall not prejudice parties in relation to obtaining any information it requires to meet the case which has been put against it.
- 7) Before the Secretariat submits a final report, it has to ensure that it –
 - a) has referred to all the particulars of the complaint;
 - b) adds particulars received or evidence to the complaint; or
 - c) has notified the Board of any agreement of confidentiality which has been reached between the Complainant, the Respondent and third parties.
- 8) The final report shall include all the responses and submissions made by the parties during the investigation.
- 9) The final report by the Secretariat shall, to the extent possible, but with such reasonable modifications as may be made, be structured as follows -
 - a) the facts (i.e., introduction, background, etc.);
 - b) the law and elements requiring attention for purposes of the allegations;
 - c) theories of harm;
 - d) the investigations that were conducted;
 - e) analysis of the competition assessment, including market definition
 - f) the evidence collected and its analysis;
 - g) the conclusion/findings; and

- h) the recommendations and appropriate remedies.

23. Final Report Procedure for Parties

- 1) Upon receipt of the final report, the Secretariat shall serve it to the parties with direct interest and those joined in the proceedings.
- 2) Following the filing of responses, parties or third parties who are interested in a matter by virtue of information produced to the Board in relation to the matter may request an oral hearing once the Secretariat has submitted the final report to the Board, but before the Board may take its decision in relation to the matter. A party requesting an oral hearing shall do so in writing setting out -
 - a) the issues to be dealt with during the oral hearing;
 - b) the reasons why written submissions will be insufficient to deal with the issues in its written request; and
 - c) the reasons why an oral hearing with the investigation team was not requested before the conclusion of the investigation.

24. Representations to the Board

- 1) The final report shall be presented by the Secretariat or its duly instructed attorney or any person acting in such a position as directed by the Executive Director.
- 2) Parties or persons interested in a matter may choose to represent themselves before the Board or duly instruct an attorney to present their case before the Board.
- 3) In accordance with the Legal Practitioners Act of 1964, the Commission will engage only with attorneys who are admitted to practice within the country.

PART 6- APPLICATIONS TO THE BOARD

25. Procedures for Aggrieved Parties to Petition the Board

- 1) A matter may be brought to the Board by any person or duly appointed attorney who may be aggrieved by a decision of the Secretariat. The person or party to a matter shall –
 - a) show how he or she is aggrieved by the decision of the Secretariat;
 - b) sufficiently prove that the matter was thoroughly considered and concluded by the Secretariat;
 - c) prove the extent of prejudice that the person or party stands to suffer should the matter not be considered and determined by the Board; and
 - d) specify the remedy and decision that is sought from the Board.
- 2) Such an application should also be served on the Secretariat and affected parties who will have an opportunity to respond.
- 3) Upon receipt of such an application, the Board shall issue the necessary directives or decision.

26. Procedure for Other Matters

- 1) The Secretariat shall follow the same procedure as set out in Part 5 of these Rules of Procedure for all matters brought to the Board for a decision, including investigations, mergers and acquisitions, where necessary and to the extent possible.

27. Premature Applications

- 1) An application or matter which has been brought before the Board prior to conclusion by the Secretariat shall be deemed to have been brought before the Board prematurely.

- 2) A matter shall not be referred to the Court without exhausting all the remedial structures within the Commission.

PART 7 –PROCEEDINGS BEFORE THE BOARD

28. Post Final Report Board Procedure

- 1) Upon receiving the final investigation report or a report on any other matter, the Board may issue the necessary directives which will assist the Board in determining the matter. The directives may include the following-
 - a) directing how the matter shall be handled and a decision on whether the determination will be based on written submissions or whether it will conduct an oral hearing; and
 - b) where the parties have requested an oral hearing in line with Rule 29 (1) of these Rules of Procedure, the Board will then inform the parties whether their request for a hearing is granted.

29. Determination Based on Written Submissions

- 1) Upon receipt of the final report, the parties may request a hearing before the Board. The Board may then issue a determination on whether to grant the parties' request.
- 2) Where the Board does not grant an oral hearing and decides to hear a matter based on written submissions, it may give the following directives -
 - a) direct the parties in the matter to respond to the final report;
 - b) direct the Secretariat to reply to the responses made by the parties;
 - c) direct that heads of arguments be filed by all concerned parties, including the Secretariat;
 - d) direct that a book of pleadings be compiled and filed accordingly by the Secretariat or as may be agreed upon between the parties; or

- e) any other directives it may deem fit.
- 3) The Board may then determine the matter based on the written submissions whilst adhering to the rules of natural justice.
- 4) Subject to Sub-Rule (3) of this Rule of Procedure, the Board shall issue a determination or decision within a reasonable period.

30. Decisions for an Oral Hearing

- 1) Where the Board considers it appropriate, it may direct that an oral hearing be held after –
 - a) a final report, merger report, enforcement matter or any other matter that has been presented to it for adjudication;
 - b) a party has submitted a written request to be heard by the Board and, in the request, notwithstanding Rule 23(2) of these Rules of Procedure, they have demonstrated -
 - i. why they are an interested party likely to be affected by the results of the investigation;
 - ii. issues to be dealt with during the oral hearing;
 - iii. the reason why written submissions will be insufficient to deal with issues in its written request; and
 - iv. why an oral hearing with the investigation team was not requested before the conclusion of the investigation.
- 2) If the Board determines that an oral hearing should be held, it shall do so after the receipt of the final report and by giving reasonable notice to the parties involved and –
 - a) convening the oral hearing;

- b) specifying the date, time, and place for the holding of the hearing; and
 - c) stipulating the matters to be considered at the hearing.
- 3) Where the Board decides that an oral hearing be held, it may give the following directives -
- a) directing the parties in the matter to respond to the final report;
 - b) issue a directive to the Secretariat to reply to the responses made by the parties;
 - c) issue a directive that heads of arguments be filed by all the parties concerned and the Secretariat;
 - d) direct that a book of pleadings be compiled and filed accordingly by the Secretariat or as may be agreed upon between the parties; or
 - e) any other directives it may deem fit.

31. Oral Hearing

- 1) Recognising the need to contribute to efficient business growth and development in the country, the Board shall undertake hearings timeously wherewith the dates for the hearings shall be held within a reasonable time, during which time the hearings will have to be concluded and not unduly adjourned unless compelling circumstances require an adjournment.
- 2) Should the Board decide to conduct oral hearings in public or camera, it shall do so –
 - a) in an inquisitorial manner;
 - b) as expeditiously as possible; and
 - c) in accordance with the principles of fairness and natural justice.

- 3) Once the Board finds it appropriate or is satisfied that there is sufficient documentation to call for a Board hearing or upon request by the parties, the Chairperson of the Board or the Chairperson of the Board Committee shall liaise with the Registrar on a suitable date for a hearing.
- 4) The Chairperson, in consultation with the members of the Board, may determine the procedure for the oral hearing, following the communication of the date of hearing to the parties.
- 5) The Board shall communicate the procedures and directives for the oral hearing to the parties.
- 6) The Board may direct the Registrar to schedule the hearing dates in consultation with the parties.
- 7) The urgency of hearings shall not infringe on the rules of natural justice and constitutional rights of any affected party.
- 8) The Board may allow oral evidence to be presented, and witness statements may be presented as evidence during the hearing.
- 9) The Board may require that any party to the proceedings give evidence in writing or orally.
- 10) Where the Board 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.
- 11) Following Sub-Rule (9) of this Rule of Procedure, a party to a matter shall not be entitled to produce to the Board additional evidence, either oral or documentary, which was in his possession or knowledge but was not presented to the Secretariat during the investigation, except where –
 - a) it is proved to the satisfaction of the Board that the party was not given sufficient opportunity by the Secretariat to adduce such evidence at the investigations stage;

- b) it is proved to the satisfaction of the Board that the Secretariat deliberately or negligently omitted to consider such evidence at the investigation stage; or
 - c) it would be in the interests of natural justice to consider such evidence.
- 12) The Board may, to the extent possible, grant a virtual hearing or virtual participation should any party involved –
- a) request for one; or
 - b) in case a party cannot travel to attend the hearing.
- 13) Subject to Sub–Rule (11) of this Rule of Procedure, such parties may be provided with a link while other parties appear physically.
- 14) The Board may proceed with a hearing where a party, who was given due notice of the hearing, is absent from the hearing.
- 15) The Board shall fix or limit the time period when oral submissions or written arguments shall be made or filed by the parties or their authorised representatives before it. The Board may proceed to decide a matter in the absence of the party which does not abide by such timings.

32. Permitting Other Persons to Take Part in Proceedings

- 1) While considering a matter in a hearing, the Board 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 Chairperson of the Board.

33. Board Hearings

- 1) The Board shall convene at a time and place that may be determined by the Chairperson of the Board for the purpose of discharging their duties and responsibilities specified by the Act.
- 2) The Registrar, the Secretariat, the parties and any person whose presence is required and to whom due notice has been given shall attend the hearing scheduled by the Board.
- 3) The duration of the hearing shall be as directed by the Board and every party to the proceedings shall be heard on its case as considered appropriate by the Board. Except where –
 - a) the anticipated hearing is not reasonably practicable;
 - b) the statute itself excludes it; or
 - c) a legislative function is involved.
- 4) The Board may direct any party to submit written submissions after the hearing, which shall be considered in the Board's final determination. The Board shall issue appropriate directives regarding the written submissions.

34. Burden of Proof

- 1) In the Board proceedings, the burden of proof shall rest on the party bringing the matter/ application before the Board.

35. Invitation to Participate in the Board's Deliberations

- 1) The Board may, in terms of Section 13 (1) (a) of the Act, call upon witnesses to make submissions/testify.

- 2) The Board may use assessors or experts in any relevant field to assist it before making a final ruling on a matter pursuant to Section 14(9) of the Act, read together with Regulation 29 of the Principal Regulations.
- 3) The Board may, at its discretion, at any time and for any period, invite any person to attend any meeting of the Board and take part in the deliberations of the meeting, but such person or officer shall not be entitled to vote at the meeting.
- 4) An invitation to participate in the deliberations of the Board shall be issued by the Chairperson in writing, in accordance with Section 14 of the Act read together with Regulation 29 of the Principal Regulations.
- 5) The Minister of Commerce, Trade and Industry may, in a manner provided in Sub-Rule (4) of this Rule of this Procedure, nominate an officer in the public service, and such officer shall not be entitled to vote at the Board meeting.
- 6) Subject to Sub-Rule (5) of this Rule of Procedure, the Minister shall, in writing and accordance with Section 14 of the Act as read together with Regulation 29 of the Principal Regulations, issue an invitation to participate to the nominated officer.

36. Record of Hearing

- 1) The Board shall compile a record of proceedings in which a hearing has been held, including –
 - a) the chronology of events;
 - b) documents in the possession of the Board;
 - c) the initiating documents;
 - d) the notice of the hearing;
 - e) the Secretariat's final report;

- f) all submissions filed with the Board;
- g) any interim orders, interlocutory orders made by the Board;
- h) all documentary evidence filed with the Board;
- i) the transcript of the oral arguments/evidence given at the hearing;
- j) the final decision of the Board and the reasons;
- k) any notice of appeal; and
- l) any review of any order or remedy.

PART 8- BOARD DIRECTIVES AND DECISIONS

37. Interim Directives

- 1) The Board may, following the Secretariat's final report on interim measures, give such directions on interim measures or orders if it considers appropriate and require the parties concerned to –
 - a) terminate an agreement;
 - b) cease the conduct in question;
 - c) prevent irreversible integration of two businesses in case of a merger and acquisition;
 - d) modify the agreement; or
 - e) issue orders or directives it may deem fit to ensure compliance with the Act or its decisions.
- 2) Where the Board intends to give a matter or a direction on interim measures, it shall inform the parties and the Registrar of –

- a) the intention to give the directive;
- b) the nature and type of the directive decision; and
- c) the reasons for giving the directives or decision.

38. Duration of Interim Measures

- 1) A decision on interim measures shall have effect until –
 - a) the expiry of the period requested by the Secretariat;
 - b) the Secretariat ceases to investigate the matter;
 - c) the Secretariat has completed its investigation and recommends the termination of the interim measures, and the Board is satisfied by the recommendations of the Secretariat; or
 - d) the Secretariat considers that the interim measure is no longer necessary.
- 2) Upon the conclusion of an investigation, if the Board finds that a contravention of the Act has occurred, it may –
 - a) make permanent the interim measures previously applied; or
 - b) issue any other appropriate determination.

39. Directives on Adjournment

- 1) Upon receipt of the request for adjournment, the Board may give directions on the way forward.
- 2) In determining the adjournment application, the Board may –
 - a) grant the adjournment without any conditions;

- b) grant the adjournment with conditions;
- c) decline to grant the adjournment; or
- d) make any other orders it deems fit.

40. Merger Adjudication

- 1) Where a merger raises competition or public interest concerns, the Board may –
 - a) prescribe structural or behavioural remedies to address any detriment posed by a merger which is likely to substantially lessen competition or raise public interest concerns in the post-merger market in Eswatini; or
 - b) engage in discussions with a firm which is party to a merger or any other relevant party or experts to identify structural or behavioural measures which would ameliorate any effects of the merger on public interest or competition in Eswatini.
- 2) In the event that a merger is approved with conditions, the merged entity may be required to submit a compliance report on the implementation of conditions at intervals to be determined by the Board.

41. Directives, Decisions or Orders by the Board

- 1) The Board shall issue a written, reasoned directive, decision or determination based on facts and the law regarding the matters before it as soon as practicable.
- 2) The Board may, as a result of the proceedings before it, grant-
 - a) a determination in favour of the Applicant or Complainant in respect of his or her claim in so far as he has proved the same;
 - b) a determination in favour of the Respondent in respect of his defence in so far as he has proved the same;

- c) absolution from the instance, if it appears to the Board that the evidence does not justify the Board in giving a determination for either party;
- d) an unfair trade practice administrative penalty as remedial action or order as redress to the aggrieved consumers;
- e) approve settlement agreements and consent orders;
- f) order compliance programmes and undertakings in terms of Regulation 33 of the Principal Regulations;
- g) impose administrative penalties;
- h) order compliance with its decisions and directives as may be just;
- i) order that a matter or party be referred for criminal prosecution as provided for in the Act;
- j) such determination as to costs and other reliefs as may be just; or
- k) such a determination where necessary, incidental or conducive to the better carrying of its functions under the Act.

42. Administrative Penalties and Remedies

- 1) The Board shall, following the determination of a contravention, consider remedies and penalties in line with Regulation 28A of the Amended Regulations, offences and penalties, and follow the *ESCC Guidelines for the Issuance of Administrative Penalties, 2020*.
- 2) In imposing the administrative penalty, the Board may issue appropriate orders regarding the payment terms.

43. Availing of the Board Decision

- 1) Parties to a matter before the Board shall be furnished with copies of the Board decision at the conclusion of the matter within a reasonable time.

44. Clarification of the Board's Decision

- 1) Any party or the party's legal representative may, in writing, to the Chairperson of the Board, request clarification on any point of the Board's decision.
- 2) The clarification should be sought within 10 (ten) days of receipt of the decisions.

45. Publication of Decisions by the Board

- 1) In line with Regulation 31 of the Principal Regulations, the Commission shall publish on its website, if any, a summary of its decisions by the Board after the completion of every matter, on the first day of every quarter, or, if the first day rests on a weekend or holiday, it shall be published on the next business day, containing the following information -
 - a) the names of the parties;
 - b) the industries in which they are involved;
 - c) the issues that were brought before the Board for determination;
 - d) the Board's decisions; and
 - e) the reasons, in summary form, of the Board's decisions.

46. Rescission or Variation of the Board's Directives, Decisions or Determinations

- 1) Subject to Section 41 of the Act, the Board may, on application from a party, rescind or vary such directive, decision or determination that is not a subject of appeal, in the following circumstances -
 - a) where any directive, decision or determination granted by the Board was void *ab initio* or was obtained by fraud or by mistake common to the parties;
 - b) to correct patent errors in any directive, decision or determination; or
 - c) where evidence that is relevant but was not reasonably available at the time of the investigation has been found, and such evidence is material to the case.
- 2) Any rescission or variation of any directive, decision or determination shall only be considered by the Board within 30 days after the Board has issued its written decision.
- 3) Every such application shall be accompanied by an affidavit, which shall set forth the reasons thereto as well as the prejudice to be suffered if the application were not granted.
- 4) The institution of rescission or variation proceedings shall not, in and of itself, operate as a stay of execution of the judgment or decision of the Board. Any stay of execution shall be subject to a separate application to the Board, which may grant or refuse such stay upon such terms as it deems just and equitable in the circumstances.

47. Compliance with Board Directives, Orders and Decisions

- 1) To ensure that parties comply with its decisions, the Board may issue appropriate orders, directives, or make decisions in accordance with the Act, the Principal Regulations, and these Rules of Procedure.
- 2) If any provision of these Rules of Procedure or any request made in pursuance of any such provision has not been fully complied with, the Board may, on application, order compliance therewith within the stated time.

- 3) If any order so made is not fully complied with within the time so stated, the Board may on application forthwith enter a ruling in the action against the party so in default or may adjourn the application and grant an extension of time for compliance with the order on such terms as to costs and otherwise as may be just.

48. Execution

- 1) A directive, decision or determination of the Board shall be executed within 30 days after a written reasoning thereto has been delivered to the parties, except where there is a settlement agreed upon by the parties.
- 2) The Board may do whatever is necessary to ensure compliance with its decisions, directives and determinations, including approaching the Court to assist in executing them.
- 3) Failure to comply with a direction, directive or determination of the Board may result in the Board and the Commission approaching the Court for purposes of obtaining an order compelling compliance from the parties, with a decision, directives or determination of the Board.

PART 9 – APPEALS OF BOARD DECISIONS, DIRECTIVES AND ORDERS

49. Appeals by the Aggrieved Person(s)

- 1) Subject 40 of the Act, any person who is aggrieved by the decision, order or directive of the Board may, within thirty (30) days of which the decision/ order or directive was served on the other party, appeal to the High Court.
- 2) An aggrieved person shall not appeal or refer a matter to the Court without exhausting all remedies availed by the Commission.

PART 10- DISCLOSURE OF INFORMATION AND CONFIDENTIALITY

50. Disclosure of Information

- 1) The Board and the Secretariat shall keep confidential any information relating to any business or affairs of any person, obtained by virtue of the Act or these Rules of Procedure.

- 2) Subject to Sub-Rule (1) of this Rule of Procedure, the Board and the Secretariat may disclose information relating to any matter in any of the following circumstances where -
 - a) the consent of the person to whom the information relates has been obtained;

 - b) the disclosure is required for the purpose of giving a party under investigation adequate information to prepare his defence or submissions before the Board;

 - c) it is needed in connection with any enquiry or matter where such information would be relevant;

 - d) a request for the production of information has been made by a foreign or multinational competition authority to which the Commission is a party to an international agreement or memorandum of understanding providing for the production or exchange of information;

 - e) the information is required under any other enactment; or

 - f) for the purposes of:
 - i. an order under the Act, Principal Regulations or from the Court;

 - ii. proceedings under these Rules of Procedure;

 - iii. enabling the Commission to give effect to any provision of these Regulations; or

 - iv. enabling the Secretariat to investigate a suspected violation under the Act or Principal Regulations or to enforce a provision thereof.

- 3) Subject to Sub-Rule (1) and (2) of this Rule of Procedure, in considering whether to disclose any information, the Board and the Secretariat shall have regard to-
 - a) the confidentiality claims made by the parties;
 - b) the necessity of excluding, as far as practicable, information whose disclosure, in the Board's opinion, would be contrary to the public interest;
 - c) the need for excluding, so far as is practicable:
 - i. commercial information the disclosure of which would, or might, in its opinion, significantly harm or prejudice the legitimate business interests of the enterprise to which it relates;
 - ii. information relating to the private affairs of an individual, the disclosure of which would, or might, in its opinion, significantly harm or prejudice his/her interest; or
 - iii. information the disclosure of which may, in its opinion, be prejudicial to the parties and economically affect the parties if disclosed to other persons.
- 4) When disclosing a document to a party, the Secretariat and the Board may edit the document to remove confidential information or may disclose figures in aggregates.

51. Confidentiality

- 1) The Board and the Secretariat shall maintain the confidentiality of information or any document in their possession upon request.
- 2) Subject to Sub-Rule (1) of this Rule of Procedure, any party to a matter may submit a request for confidentiality in writing to the Secretariat or the Board depending on who is seized with the matter at that time. In the case of oral evidence, the claim may be made orally at the time of giving the evidence, specifying the information and stating the reason for the claim.

- 3) A request under Sub–Rule (2) of this Rule of Procedure 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.
- 4) Where confidentiality is requested relating to a document, or any information received, whether in part or parts thereof, which forms part of a party's written submissions, that 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 of each page together with a public version, which shall not contain such document or part or parts thereof.
- 5) The public version of such document shall be an exact copy of the confidential version with the omissions of the confidential information being indicated conspicuously, as stipulated in Sub–Rule (4) of this Rule of Procedure.
- 6) The public version of such written submissions shall be served on the other parties.
- 8) The Board or the Secretariat may consider the following when 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.
- (9) Any document, or a part or parts thereof, that have been granted confidential treatment under this Rule of Procedure 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" and the date on which confidential treatment expires.

- (10) Where the Board or the Secretariat includes in any order or direction information that has been granted confidential treatment under this Rule, 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 "Non-Confidential Version" 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.

52. Decision on Request for Confidentiality

- 1) The Secretariat, if seized with the matter, shall give notice in writing to a person claiming confidentiality of the decision to grant or not grant confidentiality.
- 2) The Board, if seized with the matter or if the Secretariat or the parties have brought the request before the Board for determination, shall give notice in writing to a person claiming confidentiality of the decision to grant or not grant confidentiality.
- 3) The Secretariat or the Board shall, subject to Rule 51 (2) of these Rules of Procedure, upon careful consideration of the request for confidential treatment, decide to –
 - a) grant full confidential treatment of the document or information;
 - b) grant partial confidential treatment of the document or information;
 - c) grant conditional confidential treatment of the document or information; or
 - d) issue a directive or order it may deem fit.
- 4) Where the Secretariat or the Board rejects the confidential treatment of a document, such rejection shall be done in writing, citing the reasons for rejection.

53. Request for Procedures for Accessing Confidential Documents or Information

- 1) Subject to Rule 51 (1) of these Rules of Procedure, any party to a matter may submit a request to access confidential documents or information in writing to the Board or the Secretariat.
- 2) A request made pursuant to Sub-Rule (1) of this Rule of Procedure shall be accompanied by a statement outlining the reasons for accessing a document or information deemed confidential by the Board or the Secretariat.
- 3) The Board or Secretariat shall, in consideration of the request, ensure that the document or information requested complies with the requirements stated in Rule 50 (3) of these Rules of Procedure, which shall apply *mutatis mutandis* insofar as accessing confidential documents is concerned.
- 4) The Board and the Secretariat may consider the following before deciding on whether to grant access to confidential documents or information –
 - a) whether the document or information requested is known to the public and the extent thereof;
 - b) the extent to which the document or information requested is known to employees, suppliers, distributors, and others involved in a party's or competitor's business;
 - c) the extent to which the documents requested would be duplicated by others;
 - d) the measures taken by a party or competitor to guard the secrecy of the document or information; and
 - e) any other critical consideration.

54. Decision-Making Process for Access to Confidential Documents or Information

- 1) The Secretariat or the Board shall make an appropriate decision following a request to access confidential documents or information.
- 2) In making the decisions, the Board or the Secretariat may decide to-
 - a) grant full access to the confidential document or information;
 - b) grant partial access to the confidential document or information;
 - c) grant conditional access to the confidential document or information; or
 - d) issue a directive or order it may deem fit.

PART 11 - MISCELLANEOUS BOARD ACTIVITIES

55. Committees within the Commission

- 1) The Commission may, in terms of Section 15 of the Act, for the purpose of performing its functions, establish committees and delegate to any such committee such of its functions as it considers necessary.
- 2) The Commission may appoint, as members of a committee established in terms of Section 15(1) of the Act, persons who are or are not members of the Board and such persons shall hold office for such period as the Board may determine.
- 3) Subject to any specific or general direction of the Commission, a committee established under Section 15(1) of the Act may regulate its own procedure.

56. Lacunas or Contradictions

- 1) Where in these Rules of Procedure there is a lacuna or a contradiction, the Board shall provide guidance to the extent that the proceedings shall not result in a material injustice to any party.
- 2) To address any material injustice, the Board may be guided by the Court Rules of the Kingdom of Eswatini as well as the applicable laws.

57. Review of the Guidelines

- 1) These Rules of Procedure may be reviewed from time to time to reflect market-changing circumstances and the law governing their implementation.

DATE OF COMMISSION APPROVAL: