

(Legislative Supplement No. 51)

LEGAL NOTICE NO. 108

THE COMPETITION ACT

(No. 12 of 2010)

THE COMPETITION TRIBUNAL (PROCEDURE) RULES 2017

ARRANGEMENT OF REGULATIONS

PART I—PRELIMINARY

- 1—Citation.
- 2—Interpretation.
- 3—Language of the Tribunal.
- 4—Office hours.
- 5—Sittings of the Tribunal.
- 6—Filing of documents.

PART II—GOVERNING PRINCIPLES

- 7—Governing principles.
- 8—Case Management

PART III—JURISDICTION

- 9—Jurisdiction of the Tribunal.
- 10—Decisions and orders.

PART IV—PARTIES

- 11—Parties before the Tribunal.
- 12—Representation.

PART V—PROCEEDINGS

- 13—Review under section 48 of the Act.
- 14—Applications generally.
- 15—Appeal process for all other appeals.
- 16—Memorandum of Appeal.
- 17—Joinder of parties.
- 18—Close of pleadings.
- 19—Amendments.
- 20—Extension of time.

PART VI—SERVICE

- 21—Service.

PART VII—HEARING PROCESS

- 22—Quorum of the Tribunal.
- 23—Case management conference.
- 24—Fast-track procedure.
- 25—Disclosure.
- 26—Matters under certificate of urgency.
- 27—Power to strike out.
- 28—Summoning or citing of witnesses.
- 29—Failure to comply with directions.
- 30—Withdrawal of appeal or application.
- 31—Security for costs.
- 32—Conduct of hearings.
- 32—Adjournment of hearings.
- 34—Ex-parte hearings.
- 35—Right to begin.
- 36—Expert evidence.
- 37—Confidentiality.
- 38—Submissions at close of the hearing.
- 39—Practice and procedure.
- 40—Costs

PART VIII—CONSERVATORY ORDERS

- 41—Injunctions generally.
- 42—Conservatory Order.

PART IX—GENERAL

- 43—Registry as Secretariat.
- 44—Perusal of documents.
- 45—Order of judgment of Tribunal.
- 46—Rectification of errors.
- 47—Indemnity for members.
- 48—Fees

SCHEDULES

FIRST SCHEDULE—FORMS

SECOND SCHEDULE—FEES

THE COMPETITION ACT

(No. 12 of 2010)

IN EXERCISE of the powers conferred by section 71 (6) of the Competition Act 2010, the Cabinet Secretary for the National Treasury in consultation with the Competition Tribunal makes the following Rules—

THE COMPETITION TRIBUNAL (PROCEDURE) RULES, 2017

PART I—PRELIMINARY

1. These Rules shall be cited as the Competition Tribunal (Procedure) Rules, 2017. Citation.
2. In these Rules, unless the context otherwise requires— Interpretation.
 - “Act” means the Competition Act;
 - “appellant” means a person who has filed an appeal under the Act; No. 12 of 2010.
 - “authorized representative” means an advocate, or an agent as defined under the Civil Procedure Act;
 - “Authority” means the Competition Authority of Kenya established under section 7 of the Act; Cap 21.
 - “Chairperson” means the Chairperson of the Tribunal appointed under section 71(2)(a) of the Act;
 - “confidentiality ring” means an arrangement set up in accordance with a direction by the Tribunal under which documents are treated as confidential and disclosed only on such terms as the Tribunal deems fit;
 - “electronic” includes a compact disc, memory stick, digital versatile disk, email or any other unalterable electronic media;
 - “pleading” includes a petition or summons, a statement in writing of the claim or demand of any appellant and of the response of any respondent thereto and of the reply of the appellant to any response or counter claim of a respondent;
 - “Registry” means the registry of the Competition Tribunal;
 - “Respondent” means the Authority and any other party required to file a response to an appeal, or any application before the Tribunal;
 - “Secretary” means a person appointed to head the Secretariat of the Tribunal; and
 - “Tribunal” means the Competition Tribunal established under section 71(1) of the Act.
3. (1) The proceedings of the Tribunal shall be conducted in English or Kiswahili. Language of the Tribunal.
- (2) No appeal, application, document or other papers contained in any other language other than English shall be accepted by the Tribunal unless the same is accompanied by a translation thereof in English attested by a translator and counter signed by the party concerned.

- | | |
|--|---------------------------|
| 4. The official working hours of the Tribunal shall be Monday to Friday from 8.00 am to 5.00 p.m. excluding public holidays, but the Tribunal may sit on such other times as it may determine. | Office hours. |
| 5. The seat of the Tribunal shall be at its headquarters in Nairobi but the Tribunal may sit at such places as the Tribunal may, by special order direct. | Sittings of the Tribunal. |
| 6. Parties shall file with the Tribunal all documents both in print and electronic form. | Filing of documents. |

PART II—GOVERNING PRINCIPLES

- | | |
|--|-----------------------|
| 7. The Tribunal shall be guided by the principles set out in Article 159(2) of the Constitution. | Governing principles. |
| 8. The Tribunal shall manage cases by, among others – | Case Management. |
| (a) encouraging the parties to co-operate with each other in the conduct of the proceedings; | |
| (b) identifying and concentrating on the main issues as early as possible; | |
| (c) employing suitable and appropriate technology in the conduct of the business of the Tribunal; | |
| (d) adopting procedures that are most effective and appropriate for the case; | |
| (e) ensuring that hearing is conducted within defined time-limits and without undue delay; and | |
| (f) encouraging and facilitating the use of alternative dispute resolution mechanisms if the Tribunal considers it appropriate. | |
| (3) The Tribunal shall manage its operations in a manner that promotes good governance, transparency and accountability to ensure access to justice for all. | |

PART III—JURISDICTION

- | | |
|--|-------------------------------|
| 9. The Tribunal shall have jurisdiction to hear and determine the following matters – | Jurisdiction of the Tribunal. |
| (a) matters referred to it for review of the Authority's decision under section 48(1) of the Act; | |
| (b) to hear Appeals from the decisions of the Authority; | |
| (c) any other matter arising under the Act; and | |
| (d) any other matter referred to it by a competent court of law. | |
| 10. (1) In determining the matters set out in rule 9 , the Tribunal shall have the power to— | Decisions and orders. |
| (a) confirm the decision of the Authority; | |
| (b) modify the decision of the Authority by ordering restrictions or including conditions in whole or in part; | |

- (c) set aside, reverse or vacate in whole or in part, the decision or the effect of any decision which is the subject matter of proceedings before it;
 - (d) refer the matter back to the Authority for reconsideration on specified terms in accordance with section 75 of the Act;
 - (e) make an appropriate order as to costs; or
 - (f) grant any other appropriate relief which the Tribunal would have the power to grant under the Act.
- (2) The Tribunal shall exercise its power under this rule taking into account all the relevant circumstances, including—
- (a) the urgency of the matter;
 - (b) the effect on the party making the request if the relief sought is not granted;
 - (c) the effect on competition if the relief is granted; and
 - (d) the furnishing and adequacy of any offer of any undertaking as to damages.
- (3) A matter referred back to the Authority by the Tribunal may be subject to the Tribunal's further order, direction or final decision.
- (4) Subject to sub rules (1) and (3), an order or direction for interim relief may be made against a person who is not a party to the proceedings, provided that no such order may be made unless that person has been given an opportunity to be heard.
- (5) If the urgency of the case so requires, the Tribunal may grant the request for interim relief for such period as the Chairperson may deem fit before the parties make their submissions or the person referred to in sub rule (4) has been heard.

PART IV—PARTIES

11. Parties to the Tribunal shall include any—
- (a) person or persons aggrieved by a decision of the Authority;
 - (b) interested party joined under the provisions of section 48 of the Act;
 - (c) party joined by the Tribunal; or
 - (d) other person or persons affected by a decision of the Authority who may apply to be enjoined.
12. A party may appear before the Tribunal in person or through an authorized representative.

Parties before the Tribunal.

Representation.

PART V—PROCEEDINGS

13. (1) An application under section 48 of the Act for review of the decision of the Authority shall be in Form CT3 as prescribed in the First Schedule accompanied by an affidavit.

Review under section 48 of the Act.

(2) Within thirty days upon receipt of the application under sub rule (1) the Tribunal shall give notice in the Gazette of the application of a review and invite interested parties to make submission to the Tribunal in regard to any matter to be reviewed within the time and manner stipulated in the notice

14. All applications made before the Tribunal shall be made in Form CT3 as prescribed in the First Schedule accompanied by an affidavit.

Applications generally.

15. (1) Any person aggrieved by the decision of the Authority as envisaged under this Rule, shall file a Notice of Appeal and Memorandum of Appeal in Form CT4 and Form CT5 respectively as prescribed in the First Schedule setting out concisely the grounds upon which the person is appealing against within thirty days from the date of receipt or notification of the decision of the Authority.

Appeal process for all other appeals.

(2) Pursuant to sub rule (1), the appellant shall file the Notice of Appeal within fourteen days upon receipt or notification of the decision of the Authority.

(3) The concise statement of the facts shall contain –

- (a) details of the decision to which the proceedings relate;
- (b) a summary of the grounds for contesting the decision, identifying in particular –
 - (i) to what extent (if any) the appellant contends that the disputed decision was based on an error of fact or was wrong in law;
 - (ii) to what extent (if any) the appellant is appealing against the Authority's exercise of its discretion in making the disputed decision;
 - (iii) a succinct presentation of the arguments supporting each of the grounds of appeal;
 - (iv) the relief sought by the Appellant, and any directions sought in accordance with Rule 29;
 - (v) a schedule listing all the documents; and
 - (vi) a statement identifying the evidence (whether witness statements or other documents annexed to the affidavit) the substance of which, so far as the appellant is aware, was not before the Authority.

16. (1) The Memorandum of Appeal shall be accompanied by the following documents –

Memorandum of Appeal.

- (a) an affidavit;
- (b) a copy of the decision appealed against;
- (c) a list and copies of documents in support of the appeal; and
- (d) proceedings, if any, or any materials, reports or documents upon which the Authority based its decision.

(2) Upon filing the Memorandum of Appeal and all accompanying documents, the appellant shall serve the Respondents within fourteen days.

(3) Any party served with the Memorandum of Appeal shall respond by filing a replying affidavit within fourteen days of service.

(4) Any party served with the Memorandum of Appeal or notification of the decision, may file a Cross-Appeal in Form CT6 as prescribed in the First Schedule within fourteen days from the date of service.

(5) The Cross-Appeal shall be accompanied by the documents as set out in sub-rule (1).

(6) A Memorandum of Appeal or applications, counters, rejoinders, supplementary pleadings or other documents, as the case may be, shall be filed in seven bound copies and an additional electronic copy.

17. (1) Any person enjoined in the proceedings may, with the leave of the Tribunal, file an appropriate affidavit.

Joinder of parties.

(2) The affidavit shall set out—

- (a) a concise statement of the matters in issue in the proceedings which affect the party;
- (b) a succinct presentation of the facts and arguments supporting the claim;
- (c) the relief sought by the party;
- (d) a schedule listing all the documents annexed to the affidavit;
- (e) a statement identifying the evidence (whether witness statements or other documents annexed to the affidavit) the substance of which, so far as the party is aware, was not before the Authority at the time of making the decision; and
- (f) as far as practicable, a copy of every document (or part of a document) on which the enjoined party relies on, including the written statements of witnesses of fact and expert witnesses, if any.

18. Fourteen days after the filing of the replying affidavit by the Respondent or the affidavit by the enjoined party, no further pleadings shall be filed without leave of the Tribunal upon such terms as it deems fit.

Close of Pleadings.

19. (1) All amendments of pleadings shall only be filed with the leave of the Tribunal.

Amendments.

(2) Where the Tribunal grants leave under sub rule (1) it may do so on such terms as it deems fit, and may give any further or consequential directions it considers necessary.

(3) In deciding whether to grant leave under sub rule (1), the Tribunal shall take into account all the circumstances including whether the proposed amendment—

- (a) involves a substantial change or addition to the Appellant's case;
- (b) is based on matters of law or fact which have come to the knowledge of the parties since the appeal or application was made; or
- (c) for any other reason could not practicably have been included in the Memorandum of Appeal.

20. The Tribunal may extend the time limit set out under these Rules if it is satisfied that the circumstances are exceptional. Extension of time.

PART VI—SERVICE

21. (1) When a Memorandum of Appeal has been filed, a notice of appearance shall be issued to the Respondent ordering the Respondent to appear within the time specified. Service.

(2) The notice of appearance to be issued shall be in Form CT1 as prescribed in the First Schedule and shall specify the time limit thereto within fourteen days, within which the Respondent shall file a reply.

(3) The notice of appearance, except where the Tribunal is to effect service, shall be collected for service within three days of the filing of the Memorandum of the Appeal.

(4) The Appellant shall serve a copy of the notice of appearance together with the Memorandum of Appeal on the Respondent within fourteen days of collection.

(5) Service of the notice of appearance and the Memorandum of Appeal shall, unless being effected by electronic means, be delivered to the Respondent in person or on the Respondent's Authorized Representative, or the Respondent's last known address indicated in the proceedings before the Authority.

(6) Where in any appeal, after reasonable attempts have been made to serve the Respondent and the Respondent cannot be found, service may be made to the person empowered to accept service or any adult member of the family of the Respondent who is residing with the Respondent.

(7) Where a duplicate of the notice of appearance and Memorandum of Appeal is duly delivered or tendered to the Respondent physically, or on any another person on his behalf, the Respondent or such agent or the person shall be required to endorse an acknowledgment of service on original notice of appearance and Memorandum:

Provided that, if the Tribunal is satisfied that the Respondent or such agent or other persons has refused so to endorse, the Tribunal may declare the summons to have been duly served.

(8) Where the Appellant or Applicant after using all due and reasonable diligence, cannot find the Respondent, or any person upon whom service can be made, the Appellant or Applicant shall affix a

copy of the notice on the outer door or some other conspicuous part of the house in which the Respondent ordinarily resides or carries on business or personally works for gain, and shall then return the original to the Tribunal with an affidavit of service detailing the mode of service employed.

(9) Where the Respondent is a corporation, service shall be effected on the secretary, director or other principal officer of the corporation.

(10) Where the appellant or Applicant is unable to find any officers of the corporation mentioned in sub rule (9), the Appellant or Applicant shall effect service by –

- (a) leaving the notice of appearance and the Memorandum of the Appeal at the registered office of the corporation; or
- (b) sending the notice of appearance and the Memorandum of Appeal by prepaid registered post or by a licensed courier service provider approved by the Tribunal to the registered postal address of the corporation; or
- (c) if there is no registered office and no registered postal address of the corporation, by leaving it at the place where the corporation carries on business; or
- (d) by sending it by registered post to the last known postal address of the corporation.

(11) Every notice shall be signed by the Secretary and in the absence of the Secretary, by any other person duly authorized by the Tribunal, and sealed with the seal of the Tribunal.

(12) Save as otherwise as may be prescribed by the Tribunal, where there are more than one Respondents, service of the notice of appearance shall be made on each Respondent.

(13) Where the Tribunal is satisfied that for any reason the notice of appearance and the Memorandum of Appeal cannot be served in accordance with any of the preceding rules, it may on application, order substituted service which may include service by electronic means.

(14) Where upon an application the Tribunal determines that service outside the country is necessary, it shall give an order to such effect and give directions on how such service shall be effected.

(15) The Appellant shall file an affidavit of service within seven days of effective service.

(16) A Respondent who has been duly served shall within seven days of such service file a notice of Address of service.

(17) The notice of address of service shall be in Form CT2 as prescribed in the First Schedule and shall be served upon all the parties within seven days of filing.

(18) The Respondent may within fourteen days of being served with the notice of appearance file a reply to the Memorandum of Appeal.

(19) A Respondent shall serve its reply upon all parties within fourteen days of filing.

(20) The Appellant shall serve its reply, if any to the Respondents reply, within seven days of the date of service on the appellant of the respondents reply.

(21) Parties may with the leave of the Tribunal, file additional documents.

(22) The Rules relating to service of notice of appearance and to the Memorandum of Appeal shall with necessary modifications apply to service of the reply.

(23) Every notice or other document, required to be served on or delivered to any person, may be sent by the Secretary by speed post or by courier or by email to the person or his Authorized Representative to accept service.

PART VII—THE HEARING PROCESS

22. The quorum of the Tribunal shall be as stipulated under section 71 (4) of the Act.

Quorum of the Tribunal.

23. (1) Where the pleadings are closed –

Case management conference.

- (a) the Tribunal shall set down the Appeal for pre-trial conference and directions; and
 - (b) all parties shall be notified of the time and place for the taking of the directions as to the hearing of the appeals.
- (2) The Tribunal may make directions *inter alia*-
- (a) to determine the parties involved;
 - (b) whether there is need to publish the Appeal or Application for review;
 - (c) to identify the contested and non-contested issues;
 - (d) to make an order for security for costs;
 - (e) whether to proceed by affidavit or *viva voce*;
 - (f) to create a schedule of events and a timetable for the proceedings;
 - (g) to consider consolidation;
 - (h) to make a referral order for Alternative Dispute Resolution;
 - (i) to set the Appeal or Application down for hearing;
 - (j) that the parties file a rejoinder or other additional pleadings or particulars;
 - (k) requiring clarification of any matter in dispute or additional information in relation to any such matter;
 - (l) for the appointment and instruction of experts, whether by the Tribunal or by the parties;
 - (m) for the production of bundles for the hearing;

- (n) for the creation of a confidentiality ring;
 - (o) for the disclosure and the production by a party or third party of documents or classes of documents;
 - (p) for hearing a person who is not a party where, in any proceedings, it is proposed to make an order or give a direction in relation to that person; or
 - (q) whether a matter will be heard under fast-track procedure.
- (3) In addition to any other general power, the Tribunal may make any other directions that it may deem necessary and expedient.
24. (1) The Tribunal may, at any time, either of its own initiative or on the application of a party, make an order that particular proceedings be, or cease to be, subject to the fast-track procedure. Fast-track procedure.
- (2) Where the Tribunal has ordered that particular proceedings be subject to the fast-track procedure –
- (a) the main substantive hearing is to be fixed to commence as soon as practicable and in any event within six months of an order of the Tribunal stating that the particular proceedings are to be subject to the fast-track procedure; and
 - (b) the amount of recoverable costs is to be capped at a level to be determined by the Tribunal.
- (3) In deciding whether to make particular proceedings subject to the fast track procedure the Tribunal shall take into account all matters it deems necessary, including –
- (a) the time estimate for the main substantive hearing;
 - (b) the complexity and novelty of the issues involved;
 - (c) whether any additional claims have been or will be made;
 - (d) the number of witnesses involved (including expert witnesses, if any);
 - (e) the scale and nature of the documentary evidence involved;
 - (f) whether any disclosure is required and, if so, the likely extent of such disclosure; and
 - (g) the nature of the remedy being sought and, in respect of any claim for damages, the amount of any damages claimed;
 - (h) that the parties file a rejoinder or other additional pleadings or particulars;
 - (i) requiring clarification of any matter in dispute or additional information in relation to any such matter;
 - (j) for the appointment and instruction of experts, whether by the Tribunal or by the parties;
 - (k) for the production of bundles of documents for the hearing;

- (l) for the creation of a confidentiality ring;
- (m) for the disclosure and the production by a party or third party of documents or classes of documents; and
- (n) Where the matter is of great public interest.

25. (1) A party discloses a document by stating that the document exists or has existed. Disclosure.

- (2) A disclosure report shall contain—
 - (a) a brief description of what documents exist or may have existed, that are or may be relevant to the matters in issue in the case;
 - (b) a description of where and with whom those documents are or may be located;
 - (c) in the case of electronic documents, a description of how those documents are stored; and
 - (d) directions which are to be sought regarding disclosure.

(3) At a subsequent case management conference, the Tribunal shall decide, having regard to the governing principles, the need to limit disclosure and what is necessary to deal with the case justly.

(4) The Tribunal may at any point give directions as to how disclosure is to be made.

(5) A party's duty to disclose documents is limited to documents which are or have been in its control.

(6) For the purpose of sub rule (5), a party has or has had a document in its control if –

- (a) the document is or was in its physical possession;
- (b) it has or has had a right to possession of the document; or
- (c) it has or has had a right to inspect or take copies of the document.

26. Where a Memorandum of Appeal is accompanied by a Notice of Motion under a certificate of urgency, the Chairperson or a member of the Tribunal shall convene a meeting as soon as is reasonably practicable to give directions as to the hearing of the application. Matters under certificate of urgency.

27. (1) The Tribunal may, after giving the parties an opportunity to be heard, strike out an appeal or an application in whole or in part at any stage in the proceedings if it – Power to strike out.

- (a) considers that it has no jurisdiction to hear or determine the appeal or an application;
- (b) considers that the Memorandum of Appeal or application, or part of it, discloses no valid ground;
- (c) considers that the appellant or applicant does not have (or represent those who have) a sufficient interest in the decision in respect of which the appeal or application is made;

- (d) is satisfied that the appellant or applicant has habitually and persistently and without any reasonable ground –
- (i) instituted vexatious proceedings, whether against the same person or different persons; or
 - (ii) made vexatious applications in any proceedings; or
 - (iii) failed to comply with any rule, practice direction, or order or direction of the Tribunal.
- (2) When the Tribunal strikes out an appeal or an application it may make any consequential order it considers appropriate.
28. (1) The Tribunal may, at any time, either of its own motion or at the request of any party, issue a summons in Form CT7 as prescribed in the First Schedule requiring any person wherever that person may be to –
- (a) attend as a witness before the Tribunal, at the time and place set out in the summons or citation; and
 - (b) answer any questions or produce any documents or other material in the possession or under the control of that person which relate to any matter in question in the proceedings.
- (2) A request by a party for the issue of a summons or citation under this Rule shall state with reasons—
- (a) upon which facts the witness is to be questioned;
 - (b) the documents or material required to be produced.
- (3) A person shall only be required to attend in compliance with a summons or citation under this Rule if—
- (a) that person has been given at least seven days' notice of the hearing or such time as the Tribunal may direct ; and
 - (b) recoverable expenses are provided for, in respect of attendance of the witness in proceedings before the Tribunal.
- (4) Where a party applies to the Tribunal under Rule 28 (1), the costs of appearance shall be borne by the requesting party.
- (5) The Tribunal may direct a party to serve on its behalf a summons issued under this Rule.
29. (1) If any party fails to comply with any direction given in accordance with these Rules, the Tribunal may, if it considers that the justice of the case so requires, order that –
- (a) the requirements of the direction be waived;
 - (b) the failure be remedied;
 - (c) the party be debarred from taking part in the proceedings unless the party is granted leave by the Tribunal;
 - (d) the party or the authorized representative be subject to an order for any costs the Tribunal deems fit.

Summoning or
citing of
witnesses.

Failure to comply
with directions.

(2) Before making an order under sub rule (1) (c) or (d), the Tribunal shall give the party (or the authorized representative) the opportunity to make submissions as to why the order should not be made.

30. (1) The appellant may withdraw its appeal or application only with the leave of the Tribunal.

Withdrawal of the appeal or application.

(2) A party who wishes to withdraw an appeal or application under sub rule (1) shall serve a notice to withdraw to the respondent and other interested parties.

(3) Where leave is granted under sub rule (1), the Tribunal may—

- (a) do so on such terms as it deems fit;
- (b) publish notice of the withdrawal on the Kenya gazette or a newspaper of national circulation.

(4) Where an appeal is withdrawn—

- (a) any interim order of the Tribunal, other than an order made in respect of costs, immediately ceases to have effect; and
- (b) no fresh appeal may be brought by the appellant in relation to the decision which was the subject of the appeal without the leave of the Tribunal.

31. (1) A Respondent may seek security for its costs of the proceedings.

Security for costs.

(2) A request for security for costs shall be supported by affidavit evidence.

(3) Where the Tribunal makes an order for security for costs, it shall –

- (a) determine the amount of security; and
- (b) direct the manner in which, and the time within which, the security must be given.

(4) The Tribunal may make an order for security for costs under this rule if it is satisfied that –

- (a) the appellant or applicant—
 - (i) is resident out of the jurisdiction;
 - (ii) is a company or other body (whether incorporated in or outside Kenya) and there is reason to believe that it will be unable to pay the respondent costs if ordered to do so;
 - (iii) has changed its address since the commencement of proceedings, with a view to evading the consequences of the litigation;
 - (iv) failed to give its address or gave an incorrect address;
- or

- (v) has been authorized to act as the class representative in collective proceedings and there is reason to believe that the appellant or applicant will be unable to pay the respondents costs if ordered to do so.
- (b) any other written law permits the Tribunal to require security for costs.
32. (1) The hearings before the Tribunal shall be conducted in the manner prescribed under the Act and these Rules. Conduct of hearings.
- (2) Notice of the day fixed for hearing of the appeal or application shall be served on the Respondent or on the authorized representative in Form CT8 as prescribed in the First Schedule.
33. The Tribunal may, if sufficient cause is shown at any stage of the proceedings, adjourn the hearing for such time or date as it may consider appropriate provided that in any case, the Tribunal may grant adjournment on such reasonable terms. Adjournment of hearings.
34. If a party to the proceedings does not appear on the day fixed for hearing, the Tribunal, upon proof of service, may continue with the proceedings in the absence of the party. Ex-parte hearings.
35. During the hearing, except as otherwise directed by the Tribunal, the appellant or applicant shall have the right to begin. Right to begin.
36. If a party in the proceedings wishes to rely upon expert evidence it shall serve with its application before the Tribunal that evidence, attaching either the statement of expert evidence on which it wishes to rely upon or a detailed explanation of the nature of the expert evidence that it wishes to adduce. Expert evidence.
37. (1) A request for the confidential treatment of any document or part of a document provided in the course of proceedings before the Tribunal shall— Confidentiality.
- (a) be made in Form CT9 as prescribed in the First Schedule indicating the relevant words, figures or passages for which confidentiality is claimed; and
- (b) be supported in each case by specific reasons, and, if so directed by the Tribunal, the person making the request shall supply a non-confidential version of the relevant document.
- (2) In the event of a dispute as to whether confidential treatment should be accorded, the Tribunal shall decide the matter after hearing the parties and having regard to the need to exclude the information.
- (3) The Tribunal may direct that documents or parts of a document, containing confidential information are disclosed within a confidentiality ring.
38. At the conclusion of the hearing, the parties may make submissions as the Tribunal may direct. Submissions at close of the hearing.
39. Notwithstanding the provisions of these Rules, the Tribunal has powers to grant any relief or give directions on how matters may proceed before it. Practice and procedure.

40. (1) The Tribunal may, at any stage of the proceedings, make any order it may deem fit in relation to the payment of costs by one party to another in respect of the whole or part of the proceedings including an order for security for costs. Costs.

(2) The Tribunal may direct any party against whom an order for costs is made to pay such costs to any other party in a lump sum or such proportion of the costs as may be just.

(3) Where the Tribunal makes an order for costs under this rule, the Tribunal may—

- (a) assess the costs at the time of making the order; or
- (b) direct that the costs be assessed on conclusion of the matter.

(4) Any costs required by an order under this rule to be assessed must be assessed by the Secretary.

(5) The Tribunal may direct that witness expenses be paid to any witness or expert.

PART VIII—CONSERVATORY ORDERS

41. (1) The Tribunal may by order, whether interim or final, grant an injunction in all cases in which it appears to be just and convenient to do so. Injunctions generally.

(2) Any such order may be made either unconditionally or on such terms and conditions as the Tribunal deems just.

42. (1) A conservatory order may be made at any time, before proceedings are commenced. Conservatory Order

(2) The Tribunal may grant a conservatory order before proceedings are commenced only if—

- (a) the matter is urgent; or
- (b) it is otherwise necessary to do so in the interests of justice.

(3) Where it grants a conservatory order before proceedings are commenced, the Tribunal may give directions on the hearing of the appeal or application.

PART IX—GENERAL

43. The Registry shall act in accordance with the instructions of the Secretary who will be responsible for— Registry as Secretariat.

- (a) the establishment and maintenance of a register in which all pleadings and supporting documents and all orders and decisions of the Tribunal are to be registered;
- (b) the acceptance, transmission and custody of documents in accordance with these Rules;
- (c) the enforcement of decisions and orders of the Tribunal, as the case may be, certifying that any order, direction or decision is of the Tribunal;

- (d) receiving and registering appeals, applications, interlocutory and all other miscellaneous appeals or applications, as the case may be;
- (e) maintaining all records of the Tribunal; and
- (f) performing any other functions as the Chairperson may from time to time direct.

44. A party to any proceedings before the Tribunal may, on an application made by it or on its behalf, addressed to the Secretary, be allowed to inspect or obtain copies of pleadings and other documents or records in the proceedings on payment of fees specified in the Rules provided the documents have not been declared confidential.

Perusal of documents.

45. (1) Every judgment of the Tribunal shall be signed and dated by the Chairperson and Members who formed the quorum:

Order or judgment of Tribunal.

Provided that the Chairperson or a member who dissents with the final decision, shall record the reasons and duly sign and date the judgement.

(2) Orders shall be signed and sealed by the Secretary.

46. Clerical or arithmetical mistakes in judgments, orders or errors arising therein from any accidental slip or omission, may, at any time, be corrected by the Tribunal, either on its own motion or on the application of any of the parties.

Rectification of errors.

47. The members of the Tribunal shall not be personally liable to any action or other proceedings, for or in respect of any act done or omitted to be done without negligence and in good faith in the exercise or purported exercise of any of the functions conferred by or under the Act and these Rules.

Indemnity for members.

48. (1) There must be paid to the Tribunal such filing and other fees, including fees for service by the Tribunal of any notice or process, as prescribed in the Second Schedule.

Fees.

(2) The Tribunal may, if it considers it to be in the interest of justice, and for reasons to be recorded, waive or postpone all or any of the fees payable to the Tribunal.

FIRST SCHEDULE

FORMS

FORM CT1

(r. 21(2))

REPUBLIC OF KENYA
IN THE COMPETITION TRIBUNAL
AT NAIROBI

CASE NO.....OF.....20.....

BETWEEN

.....
.....

APPELLANT/

APPLICANT

AND

.....
.....

RESPONDENT

NOTICE OF APPEARANCE

TO: (name).....
.....

OF:

Physical address.....

Postal address.....

Tel. No.....

Cell Phone No.....

Email.....

TAKE NOTICE that an Appeal/Application has been filed in the Tribunal at
..... in Tribunal Case No.....of 20.....
in which you are named as Respondent.

A copy of the Appeal or the Application may be obtained from the Tribunal at (*insert physical address of the registry*).

Unless you enter an appearance and file a reply thereto within 14 days, the case will be heard in your absence.

Issued by the Secretary Competition Tribunal on theday of
.....20.....

Signed:.....

Secretary:.....

DRAWN AND FILED BY

TO BE SERVED UPON

FORM CT2

(r.21(17))

REPUBLIC OF KENYA
IN THE COMPETITION TRIBUNAL
AT NAIROBI

CASE NO.....OF.....20.....

BETWEEN

.....

APPELLANT/
APPLICANT

AND

.....

RESPONDENT

NOTICE OF ADDRESS FOR SERVICE

TAKE NOTICE that the address for service of the Respondent served with the notice of appeal, is:.....

.....

Dated thisday of,20

.....
Signed.....

Respondent

Advocate for the

Respondent

DRAWN AND FILED BY (Kindly indicate email address)

TO BE SERVED UPON

FORM CT3

(r.13(1) & r. 14)

REPUBLIC OF KENYA
IN THE COMPETITION TRIBUNAL
AT NAIROBI
CASE NO.....OF.....20...
BETWEEN

..... APPELLANT

AND

..... RESPONDENT

NOTICE OF MOTION

TAKE NOTICE that on the day of
20.....at.....o'clock in the forenoon or soon thereafter the
Applicant will move the Tribunal for the following ORDERS:

1.
2.
3.
4.

WHICH SAID APPLICATION is based on the following grounds:

1.
2.
3.
4.

AND FURTHER supported by the duly sworn affidavit of
.....as well as further grounds to be adduced at the
hearing hereof.

DATED atthis..... day of.....,
20.....

.....
Applicant/Advocate for the Applicant

DRAWN AND FILED BY (Kindly indicate email address)

TO BE SERVED UPON

¹ If any party served does not appear at the time and place above mentioned such order will be made and proceedings taken as the Tribunal may deem just and expedient

FORM CT4

(r.15(1))

REPUBLIC OF KENYA
IN THE COMPETITION TRIBUNAL
AT NAIROBI

CASE NO.....OF.....20.....

BETWEEN

..... APPELLANT

AND

..... RESPONDENT

NOTICE OF APPEAL

TAKE NOTICE that.....being dissatisfied with
the decision of the Competition Authority of Kenya given at
on theday of.....,20.....intends to appeal to the Tribunal
against the decision of the Authority.

The address of service of the Appellant is.....

Physical address.....

Postal address.....

Tel. No.....

Cell Phone No.....

Email.....

It is intended to serve copies of this notice on

Dated this.....,day of20.....

Signed.....Appellant/Advocate for the Appellant

FOR OFFICIAL USE ONLY:

Lodged with the Secretary Competition Tribunal on.....day of20.....

Signed:.....

Secretary:.....

DRAWN AND FILED BY

TO BE SERVED UPON

FORM CT5

(r.15(1))

REPUBLIC OF KENYA
IN THE COMPETITION TRIBUNAL
AT NAIROBI

CASE NO.....OF.....20.....

BETWEEN

..... APPELLANT

AND

..... RESPONDENT

Appeal from a ⁽²⁾.....of the Competition Authority of Kenya at
..... dated theday
of.....,20.....
Case Numberof theday of
.....,20.....

MEMORANDUM OF APPEAL

I/WE.....,the above named Appellant/s appeals to the Tribunal against the
whole or part of the above named decision on the following grounds

1.
2.
3.
4.
5.

It is proposed to ask the Tribunal for an order that

SIGNED BY:..... (APPELLANT/ADVOCATE
FOR THE APPELLANT)

DATED on this(day of)20.....

FOR OFFICIAL USE ONLY:

Lodged with the Secretary Competition Tribunal onday of
.....20.....

Signed:.....

Secretary:.....

Copies to be served on.....

DRAWN AND FILED BY

TO BE SERVED UPON

²Insert order or decision as the case may be

FORM CT6

(r.16(4))

REPUBLIC OF KENYA
IN THE COMPETITION TRIBUNAL
AT NAIROBI

CASE NO.....OF....20...

..... BETWEEN

..... APPELLANT

AND

..... RESPONDENT

NOTICE OF CROSS- APPEAL

TAKE NOTICE that on the hearing of this Cross Appeal, the above named Respondent will contend that the above mentioned decision ought to be varied or reversed to the extent and in the manner and on the grounds hereinafter set out, namely-

1.
2.
3.
4.
5.

It is proposed to ask the Tribunal for an order(s) that ⁽³⁾.....

It is intended to serve copies of this notice on

SIGNED BY:..... (RESPONDENT/ADVOCATE
FOR THE RESPONDENT)

DATED on this(day of).....20.....

FOR OFFICIAL USE ONLY:

Lodged with the Secretary Competition Tribunal on..... day of20.....

Signed:.....

Secretary:.....

Copies to be served on.....

DRAWN AND FILED BY

TO BE SERVED UPON

³Set out order(s) being requested

FORM CT 7

(r. 28(1))

REPUBLIC OF KENYA
IN THE COMPETITION TRIBUNAL
AT NAIROBI
CASE NO.....OF....20...

BETWEEN

.....

APPELLANT
/APPLICANT

AND

.....

RESPONDENT

SUMMONS

To

.....(name
)

Of Physical address.....

Postal address.....

Tel. No.....

Cell Phone No.....

Email.....

TAKE NOTICE that an Appeal/Application has been filed in the Tribunal at
.....in Tribunal Case No.....of 20.....
in which you are required to
TAKE FURTHER NOTICE that unless you appear as required,on
day.....of.....9 o'clock, the Tribunal shall issue orders against you in
accordance with the law.

Issued by the Secretary Competition Tribunal onthis day of...20.....

Signed:

Secretary:

FORM CT 8

(r. 32(2))

REPUBLIC OF KENYA
IN THE COMPETITION TRIBUNAL
AT NAIROBI
CASE NO.....OF....20...

BETWEEN

..... APPELLANT/
APPLICANT

AND

..... RESPONDENT

HEARING NOTICE

- TO: 1.
2.
3.
4.

TAKE NOTICE that the above matter has been set down for hearing on theday
of..... 20.....at.....o'clock

If you fail to appear the appellant/applicant may proceed with the matter and a
determination by order of the Tribunal may be made in your absence.

Dated on(day
of).....20.....

DRAWN AND FILED BY

TO BE SERVED UPON

FORM CT9

(r. 37(1) (a))

REPUBLIC OF KENYA
IN THE COMPETITION TRIBUNAL
AT NAIROBI
CASE NO.....OF....20...

BETWEEN
..... APPELLANT/
APPLICANT
AND
..... RESPONDENT

CONFIDENTIALITY CLAIM FORM

TAKE NOTICE that the Appellant/Applicant requests the Tribunal to treat the following information as confidential:

- 1.
- 2.
- 3.
- 4.
- 5.

The above request is made on the following grounds:

- 1.
- 2.
- 3.
- 4.
- 5.

Statement of confidentiality:

I believe that the information identified in the list is confidential.

SIGNED BY..... (APPELLANT/APPLICANT)

ADVOCATE FOR THE APPELLANT/APPLICANT)

DATED on this.....(day of)20.....

For official use only:

Tribunal Case Number:

Filed onthis day.....of20.....

SIGNED BY.....

EXPLANATORY NOTE FOR CONFIDENTIALITY CLAIM FORM

This form is issued for the purpose of identifying and protecting confidential materials. The Tribunal shall treat as confidential any material identified by you in this form after satisfying itself that the material is confidential according to the provisions of the Rules.

DRAWN AND FILED BY

SECOND SCHEDULE

TRIBUNAL SCHEDULE OF FEES

(r 48(1))

<i>Filing Fees</i>	<i>Fees KSh.</i>
Administrative Fee	5,000
Upon filing an appeal from the decision of the Authority.	1 % of the value of the subject matter before the tribunal but not less than 70,000
All other matters where the value of the subject matter cannot be ascertained/not provided for	50,000
Cross-Appeal	1 % of the value of the subject matter before the tribunal but not less than 50,000. 00
Conservatory orders / Injunctions	50,000
Applications under Part VI (Consumer welfare) by individuals	5,000
Replying Affidavit	2,000
Notice of Appeal	1,000
Notice of Appearance	1,000
For other reply or counter-statement	5,000
Fee for copies	
For judgments, orders or other documents used in a proceeding before the tribunal, per page:	20
Additional fee for certification, per document	1000
File Perusal	100
Adjournment fees	100,000
REVIEW OF MERGER DETERMINATIONS	
Where the combined asset/turnover for acquirer and target company exceeds 500,000,000 but does not exceed 1B (health sector)	50,000 and 5000 for each 10,000,000 in excess of 500,000,000
Where the combined asset/turnover for acquirer and target company exceeds 1B but does not exceed 50B	85,000 and 10,000 for each 100,000,000 in excess of 1B
Where the combined asset/turnover for acquirer and target company is 50B plus	1,000,000 and 20,000 for each 200,000,000 in excess of 50B
Any other matter not provided for	25,000

Dated the 16th June, 2017.

HENRY ROTICH,
Cabinet Secretary for the National Treasury.

