

CARICOM  
competition  
commission



**CARICOM Competition Commission**  
**Rules of Procedure**  
**2011**



# CARICOM COMPETITION COMMISSION

## RULES OF PROCEDURE 2011

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## Whereas:

- (1) By Article 177 of the Treaty the Member States undertook to prohibit anti-competitive conduct defined in that Article and in Articles 178 and 179.
- (2) Pursuant to Article 171 of the Treaty the Member States set up the Competition Commission for the purposes of implementing Community Competition policy.
- (3) Subject to the provisions of Articles 175 and 176 of the Treaty, the Member States accorded to the Commission powers inter alia to investigate and make determinations and take action to inhibit and p e n a l i s e enterprises whose business conduct prejudices trade or prevents, restricts or distorts competition within the Caribbean Single Market and Economy ("CSME").
- (4) By Article 175 of the Treaty it was agreed that where a Member State has reason to believe that business conduct by an entity located in another Member State prejudices trade and prevents, restricts or distorts competition in the territory of the requesting Member State, the latter may request the Commission to conduct an investigation.
- (5) By Article 176 of the Treaty it was agreed that where the Commission has reason to believe that business conduct by an enterprise in the CSME prejudices trade and prevents, restricts or distorts competition within the CSME and has cross-border effects, the Commission shall request the national competition authority to undertake a preliminary examination, as a result of which it may be determined that the Commission has jurisdiction to conduct an investigation.
- (6) When the Commission conducts an investigation pursuant to Article 175 or 176 of the Treaty, it exercises the powers listed in Article 174 and follows the procedures set out in paragraphs (5) to (8) of Article 175. These paragraphs recognise three separate phases: an investigation, an enquiry following the investigation, and a determination by the Commission as to whether or not a person has engaged in anti-competitive conduct by the Member States prohibited by the legislation they adopt pursuant to their commitments given in Article 177 of the Treaty.
- (7) By Article 174(4) of the Treaty, the Member States agreed that, where as a result of the procedures described above, the Commission determines that a party has engaged in prohibited conduct, the Commission may order the termination or nullification of such conduct, direct the enterprise concerned to cease and desist from such conduct, order payment of compensation to persons affected and impose fines. The enforcement of the Commission's orders given pursuant to Article 174(4) of the Treaty depends on the national legislation which the Member States agreed to adopt pursuant to Article 174(6) of the Treaty.
- (8) By Article 174(7) of the Treaty the Member States agreed that the Commission may establish its own rules of procedure. Such rules of procedure should address the principles (i) that the persons carrying out investigations should not be the same as those adjudicating on the case, and vice versa, (ii) that the rights of the defence should be respected and notably the right to know the case against one and the right to a hearing, and (iii) that confidential and propriety information should be protected but that abridged versions of such information should, to the extent reasonably practicable, be made available to the parties concerned. In particular it is noted that Article 175(7) requires the Commission to afford any party complained of, the opportunity to defend its interest; that Article 175(8) requires the Commission to notify the interested parties of its determination, and Article 170(4) expresses a standard of protection of confidential information.
- (9) As a general principle of good administration, the Commission needs to have rules of procedure to enable it to deal with matters fairly, expeditiously and in accordance with all applicable legal provisions.

NOW THEREFORE PURSUANT TO ARTICLE 174(7) OF THE REVISED  
TREATY OF CHAGUARAMAS, THE CARICOM COMPETITION  
COMMISSION HEREBY ESTABLISHES THE FOLLOWING RULES:

**PART I**  
**PRELIMINARY**

**Preliminary**

1. (1) These Rules shall apply to all proceedings of the Commission under Chapter Eight of the Revised Treaty of Chaguaramas and may be cited as the CARICOM Competition Commission Rules of Procedure, 2011.
- (2) The Rules shall come into force on the 11<sup>th</sup> day of July, 2011.

**Interpretation**

2. In these Rules unless the context otherwise requires

“**Adjudicating Panel**” means a panel of the Commission designated by the Chairman pursuant to Rule 10(2) to conduct an enquiry, with a view to making a determination pursuant to Article 174(3) of the Treaty and, if appropriate, to make an order, direction or imposition pursuant to Article 174(4) of the Treaty;

“**affidavit**” means written evidence under oath or affirmation, sworn or affirmed before a civil notary, Justice of the peace or any other person authorized to administer oaths;

“**authorized officer**” means an employee or agent of the Commission with authority under the relevant national law to act as required or empowered by these Rules;

“**business day**” is a day which is not a holiday;

“**Chairman**” means the Chairman of the Commission;

“**Commission**” means the CARICOM Competition Commission as established under Article 171 of the Treaty and shall, where the context so requires, be limited to an Adjudicating Panel or an Investigating Panel of the Commission as the case may be;

“**Commissioner**” means a Commissioner of the Commission and includes the Chairman;

“**Court**” means the Caribbean Court of Justice;

“**cross border**” has the same meaning as in Articles 174 to 176 of the Treaty;

“**days**” means business days;

“**document**” means anything on or in which information of any description is recorded and includes papers relating to pleadings, proceedings, evidence or judgments required or permitted by these Rules to be filed or laid before the Commission in connection with an investigation or enquiry and includes documents in electronic form;

“**employee**” means a person who works under a contract of employment;

**“enquiry”** means the process referred to as such in Article 175(7) of the Treaty and shall be conducted in accordance with the present rules before an Adjudicating Panel;

**“Executive Director”** means a person appointed to that position or other officer for the time being discharging the duties of the Executive Director;

**“exhibit”** means a document, record or other tangible object received into evidence;

**“to file”** and **“filed”** means to file and filed with the Registrar in accordance with Rule 66;

**“hearing”** means a hearing in any enquiry before an Adjudicating Panel and can be an oral hearing or a hearing by written procedure;

**“holiday”** means a Saturday, a Sunday or any public holiday or a day determined by the Commission from time to time to be a holiday for the purpose of these Rules;

**“interrogatory”** means a request in writing for information or particulars made to a party in a proceeding pursuant to Rule 17;

**“Investigating Panel”** means a panel of the Commission designated by the Chairman pursuant to Rule 4(2) to conduct an investigation;

**“investigation”** means the process referred to as such in Articles 174, 175 and 176 of the Treaty and shall be conducted in accordance with Part II of these Rules by an Investigating Panel;

**“legal professional adviser”** means an attorney-at-law, or a legal practitioner, or an advocate or jurist;

**“Member State”** means a State of the Caribbean Community but it does not include a State admitted to associate membership of the Community pursuant to Article 231 of the Treaty;

**“motion”** means a request of the kind and in the form described in Rule 56;

**“national”** means a person, natural or juridical, of a Member State within the meaning of Article 222 of the Treaty;

**“offence”** means an infringement of a provision of a Member State's legislation implementing Article 177(1) (a), (b) or (c) of the Treaty;

**“official language”** means the official language of the Commission mentioned in Rule 57;

**“party”** means a party to proceedings before the Commission;

**“person”** includes a juridical person, including a Member State;

**“presiding member”** in relation to an Adjudicating Panel means the member of an Adjudicating Panel designated by the Chairman to be the chairman of that Panel;

**“Registrar”** means the Registrar of the Commission or other officer for the time being discharging the duties of the Registrar;

**“Registry”** means the Registry of the Commission located at the seat of the Commission;

**“respondent”** means an enterprise or association of enterprises within the meaning of Article 177 of the Treaty whose conduct is alleged to be illegal by notice made pursuant to Rule 10;

**“service”** has the meaning given to this term by Rule 72, and “serve” and “served” shall be construed accordingly;

**“trade secrets”** means the secrets of any trade, business, industry, profession or occupation, relating to the supply or acquisition of goods or services;

**“Treaty”** means the Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market and Economy signed on the 5th July, 2001;

**“written evidence”** means information and material intended to be presented by a party as evidence and shall be:

- a) set out in consecutively numbered paragraphs;
- b) in question and answer format with questions numbered; or
- c) in any other format approved by the Adjudicating Panel.

### **Primary Objective**

3. (1) The primary objective of these Rules is to enable the Commission to deal with competition matters fairly and expeditiously so as to ensure a just result in each case.
- (2) Nothing in these Rules shall
- (a) limit or otherwise affect the power of the Commission to make such orders as may be necessary to meet the ends of justice or to prevent abuse of the process of the Commission;
  - (b) empower the Commission to find that the issues are not clear; or
  - (c) prejudice the power of the Commission to decide a dispute in the interest of justice and in good faith, *ex aequo et bono*, if the parties so agree.
  - (d) prejudice the exercise of any power conferred on the Commission by the law of a Member State.

## **PART II**

# **INVESTIGATIONS**

### **Power to investigate**

4. (1) The Commission may conduct an investigation if it has reasonable grounds for suspecting that there has been an infringement of national provisions implementing Article 177(1)(a), (b) or (c) of the Treaty, provided the Commission has jurisdiction pursuant to Articles 174, 175 and 176 of the Treaty. Such investigation may not be conducted in relation to any matter that is already the subject of an enquiry that has been commenced by the filing of a notice pursuant to Rule 10.
- (2) For the purposes of paragraph (1) of this Rule, the Chairman shall designate an Investigating Panel comprising one or more of the Commission's members to conduct an investigation and the said members shall not be part of any adjudicative process in relation to matters arising out of such investigation.

### **Power when conducting investigation**

5. (1) For the purposes of an investigation referred to in Rule 4(1), the appointed Investigating Panel may, by notice in writing to any person, require any person to produce to the Investigating Panel a specified document, or any specific information or item, which the Panel considers relevant to any aspect of the investigation.
- (2) A notice under the previous paragraph shall indicate-
  - (a) the subject matter and purpose of the investigation;
  - (b) a reference to the provisions of the Treaty or the relevant national provisions under which the investigation takes place; and
  - (c) any applicable penalties under the relevant national law for failure to comply with the notice.
- (3) The Investigating Panel may also specify in the notice-
  - (a) the time and place at which the document, information or item is to be produced or provided; and
  - (b) the manner and form in which the said document, information or item is to be produced or provided
- (4) The power under this section to require a person to produce a document includes the power-
  - (a) if the document is produced-
    - i) to take copies of it or extracts from it; and
    - ii) to require such person, or any person who is a current or past employee of the entity being investigated, to provide an explanation of the document; or
  - (b) if the document is not produced, to require such person to state, to the best of his knowledge and belief, where the said document may be located.



(5) In paragraph (1), “specified” means-

- (a) stipulated or described in the notice; or
- (b) falling within a category which is specified, or described, in the notice.

(6) All information obtained pursuant to this Rule shall be treated as confidential and shall not be disclosed in public hearings before an Adjudicating Panel unless the person from whom the information was obtained agrees that it is not confidential, or unless the information is disclosed in a non-confidential summary form agreed by such person.

#### **Power to enter premises under warrant**

6. (1) For the purposes of ascertaining whether any person has engaged or is engaging in conduct constituting or likely to constitute a contravention of the provisions of Chapter Eight of the Treaty, the Investigating Panel may require an authorized officer to apply for a warrant under the relevant national provisions to:
- (a) enter the premises specified in the warrant;
  - (b) search the premises to inspect and remove documents which have or appear to have a bearing on the investigation for the purpose of making copies or extracts;
  - (c) search any person on those premises if there are reasonable grounds for believing that that person has in his possession any document, equipment or article which has a bearing on the investigation;
  - (d) take possession of any document which has or appears to have any bearing on the investigation if-
    - i) such action appears to be necessary for preserving the documents or preventing tampering with them; or
    - ii) it is not reasonably practicable to take copies of the documents on the premises;
  - (e) take any other step which appears to be necessary for the purpose mentioned in paragraph (d) i)
  - (f) require any person to provide an explanation of the content of any document which has or appears to have a bearing on the investigation or to state to the best of his knowledge and belief who can assist with such explanation;
  - (g) obtain access to any information which is held in a computer or other electronic device or in the possession of any person found on the premises and which the authorized officer considers relevant to the investigation and require that information to be produced in a form in which:
    - i) can be removed from the premises; and
    - ii) is visible and legible
  - (h) use any computer system on the premises, or require the assistance of any person on the premises to use that computer system to-

- l) search any data contained in or available to that computer system;
  - ii) reproduce any record from that data; and
  - iii) seize any output from that computer for examination and copying; and
- (i) attach and, if necessary, remove from the premises for examination and safekeeping, anything that has a bearing on the investigation.
- (2) For the purposes of this rule an authorized officer who removes anything from the premises being searched shall issue to the owner or person in control of the premises a receipt for the items removed.
- (3) For the purpose set out in this Rule the Investigating Panel may require an authorized officer to apply for a warrant pursuant to the relevant national provisions to seal the premises named in the warrant or any article or thing found on the premises.
- (4) All information obtained pursuant to this Rule shall be treated as confidential and shall not be disclosed in public hearings before an Adjudicating Panel unless the person from whom the information was obtained agrees that it is not confidential, or unless the information is disclosed in a non-confidential summary form agreed by such person.

#### **Savings for professional legal advisers**

- 7. (1) Nothing shall compel-
  - (a) a professional legal adviser to disclose or produce a privileged communication, or a document or other material which is in his possession.
  - (b) a person to disclose or produce a privileged communication, document or other material provided by a professional legal adviser in the course of advising that person on the application of the competition rules to that person or to that person's business.

#### **Investigating Panel Report**

- 8. The Investigating Panel shall, upon completion of its investigation, draw up a report of its findings stating with reasons whether an offence has been committed, the nature of the offence, and whether the Commission has jurisdiction over such offence pursuant to Articles 174, 175 and 176 of the Treaty. The report shall not be made available to the public except in so far as non-confidential summaries or extracts of the report may be reproduced orally at a public hearing in an enquiry conducted pursuant to these Rules.

#### **Action following the Investigating Panel Report**

- 9. (1) When the Investigating Panel concludes an investigation the Investigating Panel shall forward the Report to the Executive Director.
- (2) If the Investigating Panel concludes that an offence has been committed but that the Commission does not have jurisdiction, the Commission shall consult with each Member State concerned to examine whether the competition authority of that Member State should pursue the matter.

## **PART III**

### **ENQUIRY BEFORE AN ADJUDICATING PANEL**

#### **Commencement of Enquiry**

10. (1) Where, in accordance with Rule 9 the Report of the Investigating Panel is forwarded to the Executive Director, the Executive Director shall commence an enquiry by filing a Notice together with a Statement of Issues and Material Facts before an Adjudicating Panel, if the Investigating Panel recommends an enquiry.
- (2) For the purposes of paragraph (1) of this Rule, the Chairman shall designate an Adjudicating Panel consisting of the Commission's members to adjudicate on the notice and the said members shall not be members of the Investigating Panel.
- (3) In the case of any event of *force majeure* that prevents a member of an Adjudicating Panel from continuing to serve on the Panel, the Chairman shall designate another member of the Commission (not being a member of the Investigating Panel) in place of such member, and such appointment shall not invalidate the deliberations of the Panel.

#### **Notice by the Executive Director**

11. (1) Every notice by the Executive Director shall contain:
- (a) the legal provision under which the notice is issued;
  - (b) the nature of the determination that may be made by the Commission including the penalties or consequences that may be imposed;
  - (c) the name and address of the respondent;
  - (d) the disclosure that the failure of the respondent to respond to the notice may result in the Commission taking such steps that are just and reasonable; and
  - (e) a clear and concise statement of issues and material facts attached, which shall be divided into consecutively numbered paragraphs.
- (2) Every notice shall:
- (a) be signed by or on behalf of the Executive Director;
  - (b) provide any other information that may be useful in explaining the notice.
- (3) The Executive Director shall file seven (7) original copies of the notice.
- (4) Upon the filing of the notice the Registrar shall, in writing, notify the Executive Director that the notice has been accepted for filing and communicate the assigned action number.
- (5) Where the notice is incomplete, or does not comply with this Rule or any procedural order issued by the Adjudicating Panel, and the Executive Director fails to provide the information required to enable the notice to be filed, the Adjudicating Panel may dismiss the notice after giving the Executive Director a reasonable time to show in writing why the notice should not be dismissed.

### **Action of Registrar upon filing of a Notice**

12. Upon receipt of the filing of a notice, the Registrar shall serve the notice along with all annexure on the respondent.

### **Response**

13. (1) Not later than sixty (60) business days after receipt of service of a notice, a respondent may file a response.
- (2) Every response shall contain:
- (a) any evidence or argument which the respondent wishes the Adjudicating Panel to take into consideration in making its determination;
  - (b) such rebuttals as the respondent considers necessary to rebut any allegations of fact or law made in the statement of issues and material facts;
  - (c) the determination requested by the respondent.
- (3) Every response shall:
- (a) be divided into consecutively numbered paragraphs each of which refers to a portion of the subject of the statement of issues and material facts;
  - (b) be signed by the respondent or the respondent's representative;
  - (c) provide the full name, address, telephone and facsimile access numbers and e-mail address of the respondent or the respondent's agent or representative; and
  - (d) provide any other information that may be useful in explaining or supporting the respondent's defence.
- (4) The Registrar shall upon the receipt of a response serve the same together with all annexure on the Executive Director.

### **Failure to comply**

14. (1) Where a party to an enquiry has not complied with any of the requirement set out in these Rules or any directions or procedural order issued by the Adjudicating Panel, the Adjudicating Panel may stay the enquiry until it is satisfied that such requirement has been complied with or make such other order or take such other action as it considers just and reasonable.
- (2) Unless the Adjudicating Panel orders otherwise, no enquiry is invalid by reason only of a defect or other irregularity in form.

### **Dismissal of notice for failure to act**

15. Where the Executive Director in breach of these Rules or any order of the Adjudicating Panel, fails to take any steps with respect to a notice for more than six months from the date of filing, the Adjudicating Panel may declare the notice dismissed after giving the Executive Director a reasonable time to present in writing grounds why the notice should not be dismissed.

## **Withdrawal of notice**

- 16.** (1) The Executive Director may withdraw a notice:
- (a) before any step are taken by the Adjudicating Panel or a respondent, by filing at any time a notice of withdrawal of the notice, signed by or on behalf of the Executive Director; or
  - (b) at any subsequent stage with the permission of the Adjudicating Panel.
- (2) Where the notice of withdrawal is filed in pursuant to paragraph (1) (a) the Registrar shall serve the notice on the respondent.



## **PART IV**

### **PREHEARING PROCEDURES AND CONFERENCES**

#### **Interrogatories**

17. (1) The Adjudicating Panel may provide for interrogatories to:
- (a) clarify evidence filed by a party;
  - (b) simplify the issues of the matter before the Adjudicating Panel;
  - (c) assist with a full and satisfactory understanding of the matters to be considered.
- (2) A party may with leave of the Adjudicating Panel file interrogatories which shall:
- (a) be directed to the party from whom the response is sought;
  - (b) be numbered consecutively, or as otherwise directed by the Adjudicating Panel, in respect of each item of information requested and should contain a specific reference to the evidence;
  - (c) be grouped together according to the issues to which they relate;
  - (d) contain specific requests for clarification of a party's evidence, documents or other information that are in the possession of the party and are relevant to the enquiry;
  - (e) be filed as directed by the Adjudicating Panel; and
  - (f) set out the dates on which they are filed and served.
- (3) Upon the filing of interrogatories the Registrar shall forthwith serve the same on the parties.

#### **Response to interrogatories**

18. (1) Subject to paragraph (2) where interrogatories have been served on a party with leave of the Adjudicating Panel that party shall:
- (a) group the answers together according to the issue to which they relate;
  - (b) repeat the question at the beginning of its response;
  - (c) provide a full and adequate response to each interrogatory on a separate page or pages;
  - (d) number each response to correspond with each item of information requested or the relevant exhibit or evidence;
  - (e) specify the intended witness, witnesses or witness panel that prepared the response;
  - (f) file the response as directed by the Adjudicating Panel; and
  - (g) set out the dates on which the response is filed.

- (2) A party who is unable or unwilling to provide a full and adequate response to an interrogatory shall file a response:
- (a) where the party contends that the interrogatory is not relevant, setting out specific reasons in support of that contention; or
  - (b) where the party contends that the information necessary to provide an answer is not available or cannot be provided with reasonable effort, setting out the reasons for the unavailability of such information, and providing any alternative available information that the party considers would be of assistance to the person directing the interrogatory; or
  - (c) where the party contends that the information sought is of a confidential nature, setting out the reasons why it is considered confidential and why disclosure would be prejudicial to the public interest or to the legitimate interests of that party or the person who provided the information to that party; or
  - (d) in any other case, explaining why such response cannot be given.
- (3) Where a party is not satisfied with the response provided, the party may bring a motion requesting that the matter be settled by an order or decision of the Adjudicating Panel.
- (4) Upon the filing of a response to interrogatories the Registrar shall forthwith serve the same on the other parties.

#### **Technical conferences**

19. (1) The Adjudicating Panel may direct the parties to make submissions in writing or to participate in technical conferences for the purposes of reviewing and clarifying a notice and the statement of issues and material facts, a response, the evidence of a party, or matters connected with the interrogatories.
- (2) Any agreement reached at a technical conference shall be transcribed and the transcript shall be served on the parties by the Registrar and form part of the record of the enquiry.
- (3) The inability of a member of the Adjudicating Panel to attend a technical conference held by way of oral hearing shall not be a reason for an adjournment. If a presiding member is unable to attend he or she may designate another member of the Adjudicating Panel to preside in his or her place.
- (4) Unless otherwise directed by the Adjudicating Panel any technical conference held by way of oral hearing shall be held in public

#### **Issues conferences**

20. (1) The Adjudicating Panel may direct the parties to make submissions in writing or to participate in an issues conference for the purposes of identifying and clarifying all the issues raised by the parties and which of those issues are contested, and which are agreed by the parties.
- (2) Any agreement reached at an issues conference shall be transcribed and the transcript shall be served on the parties by the Registrar and form part of the record of the enquiry.
- (3) The inability of a member of the Adjudicating Panel to attend an issues conference held by way of oral hearing shall not be a reason for adjournment. If the presiding member is unable to attend he or she may designate another member of the Adjudicating Panel to preside in his or her place.

- (4) Unless otherwise directed by the Adjudicating Panel any issues conference held by way of oral hearing shall be held in public.

### **Procedural conferences**

- 21.** (1) In addition to technical conferences and issues conferences, the Adjudicating Panel may direct the parties to make submissions in writing or to participate in procedural conferences for the purposes of
- (a) admitting certain facts or proof of them by affidavit;
  - (b) permitting the use of documents by any party;
  - (c) recommending the procedures to be adopted before the Adjudicating Panel;
  - (d) setting the date and place for the commencement of the hearing; or
  - (e) deciding any other matter that may aid in the disposing of the enquiry in a just or expeditious manner.
- (2) Any agreement reached at a procedural conference shall be transcribed and the transcript served on the parties by the Registrar and form part of the record of the enquiry.
- (3) The inability of a member of the Adjudicating Panel to attend a procedural conference held by way of oral hearing shall not be a reason for adjournment. If the presiding member is unable to attend he or she may designate another member of the Adjudicating Panel to preside in his or her place.
- (4) Unless otherwise directed by the Adjudicating Panel any procedural conference held by way of oral hearing shall be held in public.

## **PART V**

### **EVIDENCE**

#### **Form of Evidence**

22. (1) The Adjudicating Panel may direct the form in which evidence shall be filed.
- (2) The Adjudicating Panel may order that:
- (a) any particular facts be proved by affidavit;
  - (b) the affidavit of a witness be read at an oral hearing; and
  - (c) a witness be examined before a Commissioner or other person authorized to administer oaths.

#### **Written evidence prior to appearance of witnesses**

23. (1) Any party who wishes to present evidence at an oral hearing shall file its written copy of the evidence it intends to adduce prior to the appearance of its witness, as directed by the Adjudicating Panel.
- (2) Witness(es) of a party presenting evidence at an oral hearing must confirm under oath or affirmation that the written evidence was prepared by the witness or under the direction or control of the witness and is accurate to the best of his or her knowledge or belief.
- (3) Written evidence supplementing the earlier written evidence referred to in paragraph (2) may be filed after the date directed with the permission of the Adjudicating Panel, and shall be served as directed by the Adjudicating Panel.
- (4) The written evidence of the Executive Director shall be deemed to include:
- (a) the notice and statement of issues and material facts;
  - (b) written evidence filed and served under paragraph (3); and
  - (c) any other information provided by the Executive Director in an interrogatory response.
- (5) The written evidence of a respondent shall be deemed to include:
- (a) the response to the notice;
  - (b) written evidence filed and served under paragraph (3); and
  - (c) any other information provided by the respondent in an interrogatory response.

#### **Oral testimony under oath or affirmation**

24. Witnesses at an oral enquiry shall be examined orally under oath or affirmation, or as directed by the Adjudicating Panel. The oath or affirmation shall be taken in the form set out in the Schedule.

### **Oral testimony - Hearsay evidence**

25. (1) During an enquiry the Adjudicating Panel may admit any evidence including hearsay, relevant to the subject matter of the enquiry.
- (2) When considering the weight to be given to hearsay evidence the Adjudicating Panel shall take into account the fact that, in the case of hearsay evidence of an oral statement, there has not been any opportunity to cross-examine the person who made the original statement, or in the case of records or copy documents, there has not been an opportunity to cross-examine the person who drew up the records or who made the copy.
- (3) Where the Adjudicating Panel deems any evidence irrelevant or otherwise improper, that evidence shall not be taken into consideration.

### **Oral testimony - Expert evidence**

26. (1) The Adjudicating Panel shall take into consideration expert evidence if it is adduced.
- (2) Where a person is called upon to give expert evidence each party will have an opportunity to cross-examine a proposed expert and make submissions, before the Adjudicating Panel makes a determination on the expert's qualifications.
- (3) Where a person is not found to be qualified to give expert evidence on a particular subject matter, the Adjudicating Panel may still receive the witness' testimony, regard being had for the provision of paragraph 4.
- (4) The Adjudicating Panel will determine what weight should be given to each witness' testimony; and the qualifications and experience of the witness will be among the factors in determining the weight to be given to that witness' testimony.
- (5) Any party who intends to introduce the evidence of an expert witness at the hearing shall file an affidavit of the expert witness at least thirty (30) business days before the commencement of the hearing.
- (6) The affidavit referred to in paragraph (5) shall be served by the Registrar on the other parties at least twenty-one (21) business days before the commencement of the hearing.
- (7) A party on whom an affidavit has been served pursuant to paragraph (5) of this Rule and who wishes to rebut a matter set out in the affidavit with expert evidence shall file the affidavit of an expert witness at least fifteen business days (15) days before the commencement of the hearing.
- (8) The affidavit referred to in paragraph (7) shall be served by the Registrar on the other parties at least twelve (12) business days before the commencement of the hearing.
- (9) The affidavit shall include a full statement of the evidence of the deponent and the qualifications of the deponent as an expert.

### **Oral testimony - Witness panel**

27. (1) In the interests of the efficient conduct of the enquiry, the Adjudicating Panel may receive evidence from a panel of witnesses composed of two or more persons.
- (2) Questions that are addressed to a witness panel shall be directed to specific members of the panel. With



leave of the Adjudicating Panel the same question may be directed successively to more than one member of the panel or a member of the witness panel may be asked to enlarge upon an answer given by another member.

- (3) Persons on a witness panel may not confer amongst themselves.

#### **Evidence on affidavit – Form of affidavit**

28. (1) Every affidavit must be-
- (a) headed with the title of the enquiry;
  - (b) divided into paragraphs numbered consecutively;
  - (c) written in the first person and state the name, address and occupation of the deponent and, if more than one, of each of them;
  - (d) marked on the top right hand corner of the affidavit (and of the back sheet) with-
    - (i) the name of the party on whose behalf it is filed;
    - (ii) the initials and surname of the deponent or deponents, and, if more than one, of each of them;
    - (iii) (where the deponent swears more than one affidavit in any enquiry), the sequential number of the affidavit in relation to the deponent;
    - (iv) the identifying reference of each exhibit referred to in the affidavit;
    - (v) the date sworn; and
    - (vi) the date when filed.
- (2) Every affidavit must state if any deponent is employed by a party to the enquiry.

#### **Evidence on affidavit - Making of affidavit**

29. (1) An affidavit must-
- (a) be signed by all deponents;
  - (b) be sworn or affirmed by each deponent;
  - (c) be completed and signed by the person before whom the affidavit is sworn or affirmed; and
  - (d) contain the full name, address and qualifications of the person before whom it is sworn or affirmed.
- (2) The statement authenticating the affidavit ("the *jurat*") must follow immediately from the text and not be on a separate page.
- (3) An affidavit may not be admitted into evidence if sworn before the legal practitioner of the party on

whose behalf it is to be used or before any agent, partner, employee or associate of such legal practitioner.

- (4) If it appears that the deponent is illiterate or blind, the person before whom the affidavit is sworn or affirmed must certify in the jurat that the -
  - (a) affidavit was read to the deponent by him in his presence;
  - (b) deponent appeared to understand it;
  - (c) deponent signed or made his mark in his presence.

#### **Evidence on affidavit - Exhibits**

30. (1) Any document to be used in conjunction with an affidavit must be exhibited with it.
- (2) If there is more than one document, those documents must be included in a bundle which is arranged chronologically or in some other convenient order and is properly paginated.
- (3) Clearly legible photocopies of original documents may be exhibited, provided that the originals are made available for inspection by the other parties before the enquiry and by the Commission at the enquiry.
- (4) Each exhibit or bundle of exhibits must be-
  - (a) produced to and verified by the deponent;
  - (b) accurately identified by an endorsement on the exhibit or on a certificate attached to it signed by the person before whom the affidavit is sworn or affirmed; and
  - (c) marked in accordance with Rule 28(1) (d) (iv)

#### **Evidence on affidavit - Content of affidavits**

31. (1) An affidavit shall be confined to the statement of facts within the personal knowledge of the person making the affidavit unless the facts are clearly stated to be based on his information and belief.
- (2) Where a statement is made on information and belief, the source of the information and the grounds on which the belief is based shall be set out in the affidavit.

#### **Documentary evidence - Production of documents**

32. (1) Any party who intends to rely on a document that has not been filed shall file the document at least five (5) business days in advance of referring to it in the enquiry.
- (2) The Registrar shall upon receipt of the document serve a copy of the document on the parties forthwith.
- (3) Unless the Adjudicating Panel otherwise directs, a party who fails to comply with this Rule shall not put the document in evidence or use it in the cross-examination of a witness.
- (4) Where in a document a party refers to another document upon which he/she intends to rely, any other party may file a notice to have that party produce the document for inspection and copying.

- (5) Where the party fails to produce the document no later than five (5) business days after receiving the notice, a party may file a Notice of Motion to have an appropriate order made by the Adjudicating Panel.

#### **Documentary evidence - Verification by affidavit**

33. The Adjudicating Panel may require the whole or any part of a document filed to be verified by affidavit.

#### **Agreed facts**

34. The Adjudicating Panel may receive and act on any facts agreed on by the parties without proof or evidence.

#### **Evidence in other Enquiries**

35. Relevant information or evidence received in another enquiry before the Adjudicating Panel, or any report, decision, finding or order made in respect of such other enquiry may, on the motion by a party, be received in an enquiry.

## **PART VI**

### **HEARINGS**

#### **Scope**

- 36.** This Part applies to all hearings, whether of a notice made pursuant to Rule 10 or of interlocutory applications by notice of motion. It shall not apply to Technical Conferences pursuant to Rule 19, Issues Conferences pursuant to Rule 20 or Procedural conferences pursuant to Rule 21.

#### **Written procedure**

- 37.** (1) The Adjudicating Panel may hold all or part of a hearing by means of written procedure.
- (2) Where the Adjudicating Panel decides to conduct all or part of a hearing by written procedure, the following shall apply:
- (a) The party issuing the notice or making the motion shall be invited to file a presentation of case.
  - (b) Upon receipt of service of the presentation of case, the other party (or parties) shall file a response (or responses).
  - (c) Upon receipt of service of a defence, the party issuing the notice or making the motion may file a reply
  - (d) Upon receipt of service of a reply from the party issuing the notice or making the motion, the other party (or parties) concerned may file a rejoinder (or rejoinders)
  - (e) Documents may be exhibited to any of the above written briefs.
  - (f) In fixing the deadline for filing written observations, the Adjudicating Panel shall take into consideration the nature and complexity of the matter, as well as the likely volume of work involved. By way of guidance, the deadline would be at least thirty (30) days for matters such as presentation of case, response, reply and rejoinder in relation to a notice issue by the Executive Director, and a shorter period for matters heard on motion.
- (3) Upon receipt of the documents pursuant to paragraph 2(a), (b), (c), and (d) the Registrar shall serve the documents on the parties within the deadline fixed by the Adjudication Panel.
- (4) Where the Adjudicating Panel decides to hold all or part of the hearing by means of oral hearing, the remaining rules of this Part shall apply.

#### **Procedure at the oral hearing**

- 38.** (1) An oral hearing shall be opened and directed by the presiding member of the Adjudicating Panel, who shall be responsible for the proper conduct of the hearing.
- (2) If any member of the Adjudicating Panel is unable to attend, an oral hearing shall be adjourned except where the presiding member decides that, for reasons of urgency, the matter should be heard notwithstanding the absence of one or more members of the Adjudicating Panel. An application for interim measures pursuant to Rule 55 should normally be considered as a matter of urgency.

**Conduct of hearings**

39. (1) All persons appearing before the Adjudicating Panel in any oral hearing shall conform to the conduct required in the High Court of the jurisdiction in which such oral hearing is being conducted.
- (2) Parties to an enquiry, their Counsel and spectators shall conduct themselves in a respectful manner and conduct that is contemptuous by any person appearing at an oral hearing shall be grounds for excluding that person from the hearing.

**Sittings**

40. Where an oral hearing has commenced, the Adjudicating Panel shall hold the hearing on successive days unless prevented by some reasonable cause.

**Adjournments**

41. The Adjudicating Panel may adjourn a hearing from time to time either on its own initiative or upon motion by a party, and on such conditions as the Adjudicating Panel considers appropriate.

**Opening Statements**

42. (1) Unless the Adjudicating Panel otherwise directs, at the beginning of every oral hearing each party shall give a brief opening statement that describes the issues that the party will address at the hearing.
- (2) The opening statement referred to in paragraph (1) shall include
- (a) a description of the nature of the notice and statement of issues and material facts or response as the case may be;
  - (b) an outline of the evidence the party intends to introduce;
  - (c) a list of witnesses;
  - (d) the topics to be covered; and
  - (e) the amount of time required.

**Presentation of evidence**

43. (1) Unless the Adjudicating Panel otherwise directs the evidence at the hearing shall be presented by the parties in the following order
- (i) the Executive Director;
  - (ii) the respondent or respondents;
- (2) Examination of witnesses shall proceed as follows:-
- (i) direct examination by the party presenting the evidence;
  - (ii) cross examination by the other parties;



- (iii) examination by members of the Adjudicating Panel;
  - (iv) re-examination by the party presenting the evidence.
- (3) Cross-examination will be permitted only to the extent necessary for full and fair disclosure of facts.
  - (4) The Adjudicating Panel may, in the exercise of its discretion, permit examination of witnesses in relation to additional matters as if on direct evidence.
  - (5) A member of the Adjudicating Panel may, with leave of the presiding member, question any witness for clarification of anything the witness may have said or generally.
  - (6) In order to prevent repetitive lines of enquiry the Adjudicating Panel may limit cross-examination of witnesses to any extent or in any manner it deems appropriate, having regard to the just, expeditious and economical conduct of the enquiry.

#### **Witness summons**

44. (1) A party who requires the attendance of a person as a witness at an oral hearing may with leave of the Adjudicating Panel obtain a summons from the Registrar and the summons shall require the person to produce the documents and things set out in the summons.
- (2) Unless the Adjudicating Panel otherwise directs, the summons shall be served personally at least two (2) business days before the time fixed for the attendance of the person before the Adjudicating Panel unless the Adjudicating Panel otherwise directs, and the party shall at the same time be paid attendance money to the extent that this is provided for by the law of the place where the hearing is held.
- (3) The summons shall be enforceable in accordance with the relevant provisions of national law.

#### **Distribution at hearing**

45. When a party offers new exhibits or revised exhibits at an oral hearing, the party must provide sufficient copies for all parties and the Adjudicating Panel.

#### **Evidence by telephone**

46. (1) The Adjudicating Panel may authorise a witness to give evidence and to be cross-examined at an oral hearing over the telephone.
- (2) A party wishing to call a witness to give evidence via telephone shall make a request in writing to the Registrar at least fifteen (15) business days before the oral hearing. Such request shall identify the name and address of the witness and the telephone number at which the witness can be called for the purpose of giving evidence.
- (3) The Adjudicating Panel shall notify its decision accepting or rejecting the request referred to in paragraph (2), at least eight (8) days before the oral hearing. If the Adjudicating Panel accepts the request, such notification shall contain directions for the conduct of the telephone call, including measures to ensure that the witness does not confer with a third party while giving evidence, and making provisions as to who should bear the costs of the telephone call.

### **Hearing in the absence of the public**

47. (1) Upon application by motion the Adjudicating Panel may hold an oral hearing or part of an oral hearing in the absence of the public where the Adjudicating Panel is of the opinion that matters may be disclosed which contain confidential information the disclosure of which would be prejudicial to the public interest or to the legitimate commercial interests of a party or of a person who provided such party with the information. Without limitation to the generality of the foregoing, this condition is satisfied if matters involving public security or trade, financial, commercial, scientific, or technical secrets may be disclosed.
- (2) Subject to paragraph (3), where in any enquiry the Adjudicating Panel directs an oral hearing or part of an oral hearing to be held in the absence of the public, the hearing may be attended only by:
- (a) the persons testifying before the Adjudicating Panel;
  - (b) counsel for any of the parties;
  - (c) the Commission's employees and advisers authorized by the Adjudicating Panel; and
  - (d) such other persons as the Adjudicating Panel is of the opinion should be present and on such conditions as the Adjudicating Panel considers appropriate.
- (3) With the exception of the persons referred to in paragraph (2) who are bound by an obligation of professional secrecy not to disclose confidential matters revealed at the hearing, every person who attends the part of an oral hearing held in the absence of the public pursuant to this Rule shall file a Secrecy Undertaking in the form set out in the Schedule. Breach of the Secrecy Undertaking shall be sanctioned in accordance with the law of the place of the hearing.
- (4) Evidence and transcripts with respect to the hearing filed under this Rule shall be marked "Confidential" and shall be kept separate from the public record and access to said evidence and transcripts shall only be by order of the Adjudicating Panel.
- (5) Evidence and transcripts of the hearing under this Rule may be made available to the parties to the enquiry at the discretion of the Adjudicating Panel and on such conditions as the Adjudicating Panel considers appropriate.
- (6) The relevant portion of written testimony may be separately submitted to the Adjudicating Panel and shall be marked "Confidential", kept separate from the public record and access shall only be by order of the Adjudicating Panel.
- (7) Subject to the Adjudicating Panel's direction, all parties attending an oral hearing or part of an oral hearing under this Rule shall, at the end of the argument phase of the hearing, return the transcripts, notes, and any other confidential documents, in a sealed envelope to the Registrar who may keep them with the documents mentioned in paragraph (4) or destroy them.

### **Oral Arguments**

48. The Adjudicating Panel may make provisions for closing argument to be made orally by the parties immediately following the close of evidence although written argument instead of oral argument may be filed at that time if so directed by the Adjudicating Panel.

### **Order of presentation of closing arguments**

49. Unless otherwise directed by the Adjudicating Panel closing arguments shall be presented in the following order-

- (a) the Executive Director;
- (b) the respondent or respondents.

**Transcripts**

- 50.**
- (1) Verbatim transcripts of evidence heard will be produced and made available no later than five (5) business days of the presentation of the evidence.
  - (2) Each party shall bear its own costs for transcripts, including charges for expedited service when a party requests it.

**PART VII**  
**DELIBERATION AND DETERMINATION**

**Ruling**

51. (1) TheAdjudicating Panel shall adjourn to consider its decision.
- (2) The decision of the Adjudicating Panel shall be based upon a consideration of the entire record of the evidence properly before it.

**The Adjudicating Panel's determination**

52. (1) The Adjudicating Panel shall at the end of its deliberation draw up its determination in writing, and such determination shall be signed by all the members of theAdjudicating Panel.
- (2) TheAdjudicating Panel shall publish its determination,including the reasons for such determination.
- (3) The enquiry is concluded when the Adjudicating Panel issues its determination on the notice with statement of issues and material facts.
- (4) Copies of determinations of theAdjudicating Panel shall be available free of charge upon request and shall be sent to all parties.
- (5) In the light of its determination, the Adjudicating Panel shall take any action it considers appropriate in accordance withArticle 174(4) of the Treaty. It may also make such order as it sees fit requiring a party to compensate another party for the costs incurred by the latter in taking part in the enquiry to the extent permitted by the law of any relevant Member State.

## **PART VIII**

### **REVIEW OR VARIATION**

#### **Commencement of review or variation**

53. (1) The Adjudicating Panel may at any time, without notice or hearing of any kind, correct a typographical error, error of calculation, misstatement, ambiguity, technical error or other similar error made in its determination.
- (2) The Adjudicating Panel may at any time indicate its intention to review any matter or to rescind or vary any determination by serving a letter on all the parties to the enquiry.
- (3) Nothing in these Rules shall affect the possibility for a party to apply to the Court in relation to any act of the Commission.

#### **Extension of time for compliance with Adjudicating Panel decision or order**

54. Where a party is unable to comply with an order of the Adjudicating Panel within the time prescribed, that party may apply to the Adjudicating Panel for an extension of time pursuant to Article 175(10) of the Treaty.

## **PART IX**

### **INTERIM AND INTERLOCUTORY APPLICATIONS**

#### **Interim measures**

- 55.** (1) If the Executive Director -
- (a) has issued a notice pursuant to Rule 10; and
  - (b) that notice establishes a prima facie case that an offence has been committed and that the Commission has jurisdiction pursuant to Articles 174, 175 and 176 of the Treaty; and
  - (c) it is necessary for it to act under this Rule as a matter of urgency for the purpose of-
    - (i) preventing serious, irreparable damage to a particular person or category of person; or
    - (ii) protecting the public interest,
- the Executive Director may apply on motion to an Adjudicating Panel to give such order as it considers appropriate for that purpose, pursuant to Article 174(4) (b) of the Treaty and the relevant national provisions.
- (2) Before giving an order under this Rule the Adjudicating Panel shall-
- (a) give written notice to the person to whom it proposes to give the order; and
  - (b) give that person an opportunity to make representations; and
  - (c) take into account the balance of all the interests concerned.
- (3) A notice under paragraph (2) shall indicate the nature of the order which the Adjudicating Panel is proposing to give and its reasons for wishing to give it.
- (4) An order given under this Rule shall have effect unless or until it is amended, substituted, revoked or withdrawn by the Adjudicating Panel.

#### **Interlocutory application by notice of motion**

- 56.** (1) Where these Rules require that a request for a decision or order or direction shall be made to the Adjudicating Panel, such request shall be made by Notice of Motion.
- (2) A Notice of Motion shall be in writing and shall:
- (a) contain the decision or order sought, the grounds upon which the motion is made, and an indication of any oral or other evidence sought to be presented;
  - (b) be accompanied by a supporting affidavit setting out a clear and concise statement of the facts;
  - (c) be accompanied by any documents that may support the motion; and
  - (d) set out the reasons why the party bringing the motion desires an oral hearing of the motion, or indicate that such party does not desire an oral hearing; and

- (e) indicate that further directions for the hearing of the motion will be fixed by the Adjudicating Panel.
- (3) The party bringing the motion shall file the Notice of Motion.
- (4) The Adjudicating Panel shall fix a deadline for parties to respond in writing to the Notice of Motion and the Registrar shall communicate such deadline to all the parties. A party who wishes to respond to the Notice of Motion may, no later than such deadline, shall file:
  - (a) a written response;
  - (b) an affidavit in support of the response, setting out a clear and concise statement of any facts relied on by the party making the response
  - (c) the reasons if any why the party desires an oral hearing, or an indication that such party does not desire an oral hearing of the motion;
  - (d) if the party desires an oral hearing, an indication of any oral evidence sought to be presented at such oral hearing; and
  - (e) any other documents which may support the response.
- (5) The Registrar upon receipt of the notice of motion shall serve a copy no later than two (2) business days of the date of filing.
- (6) Any written response filed by the parties under paragraph (4) shall be served by the Registrar as fixed by the Adjudicating Panel.
- (7) Where the Adjudicating Panel decides that the motion will be heard orally, the Adjudicating Panel shall issue a Notice of Hearing of Motion to all parties to the enquiry at least two (2) business days before the motion is scheduled to be heard.
- (8) In hearing a motion the Adjudicating Panel may permit oral or other evidence in addition to the supporting documents accompanying the notice, response, reply or rejoinder.
- (9) Where the Adjudicating Panel decides that the motion shall be disposed of by written procedure, Rule 37 shall apply.
- (10) The Adjudicating Panel may permit an oral motion to be made during any oral hearing of another matter, and it shall be disposed of in accordance with such procedures as the Adjudicating Panel may order.

## **PART X**

### **LANGUAGE, TRANSLATION AND INTERPRETATION**

#### **Official language of the Commission**

57. The official language of the Commission shall be English which shall, subject to this Rule, be used in all matters brought before the Commission, including written and oral submissions, evidence and supporting documents and records, determinations, orders and directions of the Commission.

#### **Translation of documents**

58. (1) A document filed and expressed in a language other than the official language shall be accompanied by a:
- (a) translation in English by a translator approved by the Registrar; and
  - (b) sworn statement by the translator stating that the translation is true and correct.
- (2) In the case of lengthy documents, translation may be confined to a summary accompanied by an explanatory note indicating which passages are translated. The Adjudicating Panel may, however, of its own motion or at the instance of a party, call for a complete or fuller translation.

#### **Use of another language**

59. (1) Where a party is a Member State in which the first language is not English or is a national of such a Member State, that party shall, subject to the Rule 58, paragraph (1), be entitled to conduct its or his case at any oral hearing in the first language of the said Member State and the Registrar shall arrange for an interpreter to attend the oral hearing in order to enable it to be conducted both in English and in the first language of that Member State.
- (2) Where a witness is unable to express himself adequately in the official language, the Adjudicating Panel may authorize his evidence to be given in another language and, in such cases, the Registrar shall arrange for an interpreter to attend the hearing in order to translate the questions addressed to the witness and the answers given by the same.

#### **Translation and interpretation**

60. (1) The Registrar shall establish and maintain a list of suitably qualified interpreters and translators approved by the Registrar.
- (2) A person may be included or added to the list by the Registrar either of the Adjudicating Panel's own motion or on application by that person or party if the Adjudicating Panel is satisfied as to the integrity and competence of that person.
- (3) The list of the approved interpreters and translators shall be posted on the Commission's website and published at least once a year in the Gazettes of each Member State in which the first language is not English, and in the Member State in which the seat of the Commission is located.
- (4) The list of approved interpreters and translators shall be made available to any party on request to the Registrar.



### **Arrangements and costs of interpretation**

- 61.** (1) A party on whose behalf interpretation from a language other than the official language is to be made shall notify the Registrar in sufficient time for the necessary arrangements to be made.
- (2) The costs of interpretation at an oral hearing shall be borne by the Commission.
- (3) Before first interpreting in the case, interpreters shall make the following declaration at the enquiry:  
“I solemnly declare upon my honour and conscience that my interpretation will be faithful and complete.”

## **PART XI**

### **DOCUMENTS, FILING AND SERVICE**

#### **Commission documents**

62. The Adjudicating Panel may issue orders, letters of direction, notices, and other documents under the signature of the presiding member of that Panel or the Registrar.

#### **Form of documents**

63. (1) Every document prepared for use by the Commission (whether by an Investigating Panel or an Adjudicating Panel) must be on white "letter sized" paper approximately 11 inches (28 cm) long by 8.5 inches (21.5 cm) wide. Margins of one inch (2.5 cm) must be left at the top and bottom of each page and of 1.5 inches (3.5 cm) at the left side of the page and one inch (2.5 cm) on the right side of the page.
- (2) marked with the assigned Commission file number or other pertinent subject matter identification.

#### **Format of document prescribed by practice direction**

64. The Chairman may by practice direction:
- (a) require any document filed or to be used at the Commission be in the format that the Chairman prescribes to facilitate recording or filing of that document;
  - (b) prescribe the conditions under which documents may be filed or served electronically; and
  - (c) provide for documents to be sealed or signed by electronic means.

#### **Contents of documents filed**

65. (1) Every document to be filed shall-
- (a) be headed with the
    - (i) full name of the enquiry, and
    - (ii) title of the document; and
  - (b) state the
    - (i) name;
    - (ii) bar number or other means of identification (if any);
    - (iii) business address;
    - (iv) telephone number;
    - (v) fax number (if any); and

- (vi) e-mail address (if any) of the person filing it,
  - (c) contains its date;
  - (d) be signed by or on behalf of the party filing the document; and
  - (e) state the name of the party on whose behalf it is filed
- (2) The full name of the signatory must be set out legibly below the signature.

### **Filing of documents**

- 66.**
- (1) Documents shall be filed with the Registrar.
  - (2) Seven (7) original copies of each document shall be filed at all times. Where there are more than two (2) parties an additional copy of each document must be filed for each additional party.
  - (3) A document may be filed by:
    - (a) hand delivery;
    - (b) courier service;
    - (c) ordinary or registered mail;
    - (d) facsimile transmission to a number designated by the Registrar for this purpose;
    - (e) e-mail transmission to an e-mail address designated by the Registrar for this purpose; or
    - (f) any other means directed by the Commission.
  - (4) Documents filed shall be date stamped when received at the Commission's office, and any document received by the Commission after 4.00 p.m. (in the time zone of the Commission's seat), or on weekends or on a holiday shall be considered filed on the next business day.
  - (5) A party may request written confirmation from the Registrar that where a transmission document is filed by facsimile transmission or e-mail that it was properly received.
  - (6) Where a filing is made by facsimile transmission, the party shall file the original and all copies no later than ten days of the filing by facsimile transmission, or as directed by the Adjudicating Panel.
  - (7) Subject to Rule 68, where an oral hearing is in progress, any document may be filed at the hearing.

## **Public record**

**67.** Subject to Rule 68, documents filed in respect of an enquiry shall be placed on the public record.

## **Confidential documents**

- 68.** (1) A party, upon the filing of a document, may request by motion that all or any part of the document be held in confidence by the Adjudicating Panel, hereinafter referred to as a “request for confidentiality”.
- (2) A request for confidentiality shall:
- (a) include a summary of the nature of the information in the document;
  - (b) explain why, having regard to Article 170(4) of the Treaty and Rule 46, paragraph (1):
    - the information is confidential; and
    - disclosure of the information would be prejudicial to the public interest or to the legitimate commercial interests of the party or of the person who provided the party with the information. ;
  - (c) state any objection to placing an abridged version of the document on the public record and the reasons for such objection;
  - (d) be filed with the Commission and served by the Registrar on the parties.
- (3) A request under paragraph (1) shall be placed on the public record maintained by the Commission at the Registry.
- (4) Where a party has made a request under this Rule, the document, if filed with the Commission, shall be held in confidence unless the Adjudicating Panel decides that the document should be placed on the public record.
- (5) A person may object to a request for confidentiality by filing an objection and the objection shall be served by the Registrar on the parties at least two (2) business days prior to the hearing.
- (6) An objection shall address the reasons:
- (a) why the party objecting requires disclosure of the document; and
  - (b) why the explanations provided pursuant to point (b) of paragraph (2) are invalid or unfounded; and
  - (c) why it is possible to provide an abridged confidential version of the document that respects the requirements of Article 170(4) of the Treaty.
- (7) After giving the party claiming confidentiality an opportunity to reply to an objection, if any, the Adjudicating Panel may:
- (a) Order that the document be placed on the public record; or
  - (b) Order that the document be held in confidence by the Adjudicating Panel (in which case it may also order that an abridged non-confidential version of the document be placed on the public record); or
  - (c) Make any other order that the Adjudicating Panel may deem to be in the public interest.
- (8) The burden of satisfying the Adjudicating Panel that a document should be held in confidence is on the person claiming confidentiality.

- (9) Information that has been determined by the Adjudicating Panel to be confidential shall be treated as follows:
  - (i) An original and seven (7) copies of the information shall be provided for use by the Adjudicating Panel and staff; and
  - (ii) The copies referred to in paragraph (1) shall be stamped confidential and held within the Commission's offices in secure locations.
- (10) Where any party desires to place some or all of the information which has been determined to be confidential into the record during an enquiry, whether by exhibit, pleadings, testimony, direct or cross-examination, oral argument, or brief, then such party or member of staff shall notify all parties and the Adjudicating Panel fifteen (15) business days in advance of the intention to introduce such confidential information and request that the Adjudicating Panel place it in a sealed record.
- (11) Where any of the information which has been determined to be confidential in accordance with this Rule is thereafter released or made public by unauthorized disclosure by anyone other than the party who sought its protection, the protection shall remain in full force and effect, binding all parties and the Commission.

### **Forms**

69. (1) The Schedule to these Rules sets out outline forms by way of guidance. These are for illustrative guidance only and do not exonerate an Investigating Panel, the Executive Director, an Adjudicating Panel and respondents from respecting the formal requirements set out in these Rules. A form should be varied if required by the circumstances of a particular case.
- (2) The Registrar may notify any party of a formal defect in a document filed with the Commission and provide a reasonable deadline for that party to correct the defect.

### **Sealing of documents issued by the Commission**

70. (1) The following documents are required to be sealed with the Seal of the Commission on issue –
  - (a) notice pursuant to rule 10, and
  - (b) determinations, orders, directions and impositions of the Commission.
- (2) The Commission may place the Seal on a document by-
  - (a) hand, or
  - (b) printing a facsimile of the Seal on the document electronically, or by any other means.
- (3) All determinations, orders and directions of an Adjudicating Panel shall be signed by the Registrar.
- (4) A document purporting to bear the Seal of the Commission shall be admissible in evidence without further proof.

### **Amendment of documents**

71. (1) The Adjudicating Panel may, upon such terms as it may determine, allow, or order an amendment to any document that in the opinion of the Adjudicating Panel, may tend to prejudice or embarrass any

person, or delay the fair hearing of the case upon its merits or where, in the opinion of the Adjudicating Panel, such an amendment is necessary for the purpose of hearing and determining the real question in issue in the enquiry.

- (2) A party may, with leave of the Adjudicating Panel, amend any document where significant new information becomes available before the decision or order is issued, and where the information is necessary for the purpose of hearing and determining the real questions in issue in the enquiry.
- (3) A party who by amendment introduces a totally new matter shall attach a sworn affidavit explaining why the matter was not submitted with the original document, and shall identify the amendment by having it typed in italics and underlined in red.
- (4) Where all or any part of a document is amended, the party shall clearly indicate on each amended page
  - (a) the date of amendment; and
  - (b) the part of the page amended.

#### **Service of documents**

- 72.**
- (1) "Service" means the delivery of documents relating to any enquiry to a person or to the authorized representative of that person and providing when required proof of service by means of a certificate of service issued by the Registrar.
  - (2) Service may be made by:
    - (a) hand delivery;
    - (b) courier service;
    - (c) ordinary or registered mail;
    - (d) facsimile delivery;
    - (e) e-mail; or
    - (f) any other means directed by the Adjudicating Panel.
  - (3) The Adjudicating Panel may direct service of any document by public advertisement.
  - (4) Every document filed shall contain:
    - (a) an address for service;
    - (b) a facsimile number for service; and
    - (c) an e-mail address for service (if any).
  - (5) A party who changes his address for service shall immediately notify the Registrar and all parties of the change.
  - (6) A document is regarded as having been validly served when it is sent to the original address before any notice of change of address for service has been received by the Registrar.

- (7)
  - (a) Any document requiring service shall be served by the Registrar in such manner as is reasonable in all the circumstances; or
  - (b) any means as may be directed by the Adjudicating Panel.
- (8) Where an oral hearing is in progress, service may also be made by:
  - (a) providing the document to the parties present at the hearing and serving the document on any other party who is not present; or
  - (b) any other means directed by the Adjudicating Panel.
- (9) Where service is made by facsimile transmission or e-mail, the document shall include a cover page indicating the:
  - (a) name, postal and e-mail addresses, and telephone, and facsimile numbers of the sender;
  - (b) name of the person to be served;
  - (c) date and time the document is transmitted (to the extent that this is not provided automatically by the transmission system);
  - (d) total number of pages transmitted including the cover page;
  - (e) telephone and facsimile access numbers or e-mail address from which the document is transmitted; and
  - (f) name and telephone number of a person to contact if any problem arises with the transmission.
- (10) The Registrar may request confirmation of service from a party that is served by facsimile transmission or e-mail.
- (11) Service will be effective where:
  - (a) the document is delivered by hand, courier or by facsimile transmission or e-mail, on the same day that the delivery is made, subject to paragraph (12);
  - (b) the document is delivered by registered mail, on the seventh (7<sup>th</sup>) business day after the date of mailing;
  - (c) the service is made by public advertisement, on the last business day of publication where there is more than one business day of publication; or
  - (d) service is made by any other means, no later than the deadline directed by the Adjudicating Panel.
- (12) Any documents served after 4:00 p.m. (in the time zone of the person on whom the documents were served) or on a holiday shall be considered served on the next business day.

## **PART XII**

### **MISCELLANEOUS PROVISIONS**

#### **Combined and joint hearings**

73. (1) Where two or more enquiries are pending before one or more Adjudicating Panels and it appears that
- (a) they have an issue or question of law, fact or policy in common; or
  - (b) hearing the two enquiries together will result in the most expeditious, just, and least expensive determination of the enquiries the Adjudicating Panel or Panels concerned may order that:
    - (i) the enquiries be combined;
    - (ii) the enquiries be heard at the same time;
    - (iii) the enquiries be heard one immediately after the other; or that one of the enquiries be stayed until after the determination of any other of them;
    - (iv) the evidence adduced in one enquiry be applied in the other enquiry; or
    - (v) an order or decision made with respect to an enquiry be applied to the other enquiry.
- (2) The Adjudicating Panel or Panels may make such other orders as it or they deem appropriate in the circumstances.
- (3) Where a party objects to the proposed order or decision, the Adjudicating Panel or Panels shall suspend its or their decision or order until after an opportunity has been given to hear the party in writing on the issue.

#### **Questions or issues of law**

74. Where in the opinion of the Adjudicating Panel there is a question or issue of law or jurisdiction that should be decided before its enquiry continues, the Adjudicating Panel may direct that the question or issue be raised for its determination; and the Adjudicating Panel may adjourn the whole or any part of the enquiry pending the determination of the question or issue.

#### **Computation of time**

75. (1) In the computation of time under these Rules or in respect of an order made by the Adjudicating Panel:
- (a) where there is reference to a number of business days between two events, they shall be clear business days counted by excluding the "day" on which the first event happens and the "day" on which the second event happens; and
  - (b) where the time for doing an act under these Rules expires on a holiday, the act may be done on the next business.
- (2) The Registrar shall publish annually a list of the days determined by the Commission to be holidays for



the purposes of these Rules.

#### **Extending or shortening of time**

76. (1) The Adjudicating Panel may on its own initiative or upon motion by a party extend or shorten a time limit directed by these Rules or by the Adjudicating Panel, on such conditions as the Adjudicating Panel considers just and reasonable.
- (2) The Adjudicating Panel may exercise its discretion under this Rule before or after the expiration of a time limit, with or without an oral hearing.
- (3) The Registrar shall notify all parties in writing of any extension or shortening of time granted under this Rule.

#### **Media coverage**

77. (1) Radio and television recording of a hearing which is open to the public may be permitted on the conditions the Adjudicating Panel considers appropriate.
- (2) The Adjudicating Panel may refuse to permit the recording of all or any part of a hearing if, in the opinion of the Adjudicating Panel, such coverage would inhibit the testimony of specific witness or disrupt the enquiry in any way.
- (3) Where recording is allowed, the Adjudicating Panel shall permit
- (a) equipment which does not produce distracting sound or light to be used
  - (b) existing audio systems present in the hearing room to be used;
  - (c) restrict the movement of media personnel while the hearing is in progress; and
  - (d) equipment to be positioned unobtrusively in the hearing room before the hearing begins and shall not allow the equipment to be relocated while the hearing is in progress.

#### **Procedural Directions**

78. The Commission may issue procedural directions, from time to time, and such directions shall govern the conduct of its enquiry and shall prevail over any provision under these Rules that is inconsistent with those directions.

**Made by the Chairman and the six Commissioners of the CARICOM Competition Commission  
on this 11<sup>th</sup> day of July, 2011**

*Kusha Haraksingh* .....

Dr. Kusha Haraksingh, Chairman

*P. Cheltenham* .....

Mr. Patterson Cheltenham Q.C., Commissioner

*Trevor M.A. Farrell* .....

Dr. Trevor Farrell, Commissioner

*H.R. Lim A Po* .....

Hans Lim A Po, Commissioner

*M. Paul* .....

Dr. Maureen Paul, Commissioner

*Barton Scotland* .....

Dr. Barton Scotland, Commissioner

*A.B. Stewart Stephenson* .....

Ambassador Stewart Stephenson, Commissioner

## **SCHEDULE**

### **FORMS**

Form 1	Notice of Investigating Panel	Rule 5
Form 2	Response	Rule 13
Form 3	Withdrawal of Notice	Rule 16
Form 4	Form of Oath for Witness	Rule 24
Form 5	Affidavit	Rules 28 to 30
Form 6	Witness Summons	Rule 44
Form 7	Secrecy Undertaking	Rule 47
Form 8	Notice of Motion	Rule 56
Form 9	Directions of the Adjudicating Panel	General Form
Form 10	Order of the Adjudicating Panel	General Form

## **FORM 1: Notice of Investigating Panel**

## **Rule 5**

[Name and address]

Subject: Case no \_\_\_\_; [Product/service]

Request for Information

Dear Sir,

An Investigating Panel of the Commission is currently investigating alleged anti-competitive behaviour which has cross-border effects within the CARICOM Single Market and Economy (CSME). If the existence of such behaviour were to be confirmed, it might constitute an infringement of [state the relevant national legislation implementing Article 177 of the Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market and Economy ("the Treaty")].

This letter is a formal request for information made pursuant to rule 5 of the CARICOM Competition Commission Rules of Procedure 2011 and the following national legislation [set out relevant national legislation giving the commission power to request information]. These provisions empower the Commission to require enterprises and associations of enterprises to provide all necessary information whether or not they are suspected of an offence.

The information you are requested to provide is set out in Annex I, which forms an integral part of this formal request. This information will enable the Commission to assess whether a breach of the Treaty has been committed in full knowledge of the facts and in their correct economic context. You are invited to make any representation you consider appropriate to assist the Investigating Panel in formulating its assessment.

Your reply to this request must reach the Investigating Panel no later than [date].

You are asked to indicate which parts of your reply contain confidential information within the meaning of Article 170(4) of the Treaty. We may contact you later for a non-confidential abridged version of such information if we need to produce it in a public hearing before an adjudicating panel of the commission.

Please confirm receipt of this request without delay by [telefax/email/ etc. give details]

Please address your reply to [name and address] by [sealed mail package/or other details].

**FORM 2: Response**

**Rule 5**

**THE CARICOM COMPETITION COMMISSION**

CCC ENQ. No.      of 20

**BEFORE**

**THE ADJUDICATING PANEL OF  
THE CARICOM COMPETITION COMMISSION**

**In the Matter of an Enquiry**

**and**

**In the Matter of a Request**

**and**

**In the Matter of**

***RESPONSE***

The Respondent hereby files its response to the notice of the Executive Director dated *[date]*

- (a) The Respondent wishes the Adjudicating Panel to take into consideration the following additional evidence: *[Set out additional evidence]*
- (b) The notice is contested on the following grounds: *[Set out rebuttals of fact and law]*
- (c) The Respondent requests that the Adjudicating Panel make the following determination: *[Set out desired determination, e.g. that the Notice be rejected.]*

I certify that all facts set out in this Response are true to the best of my knowledge, information and belief.

Dated the      day of      20

Respondent's or Respondent's Representative's Signature

[SEAL]

Filed by [      ] Attorneys-at-Law/Representative for the Respondent, whose address for service is that of the Respondent Attorneys-at-Law/Representative.

**FORM 3: Withdrawal of Notice**

**Rule 16**

**THE CARICOM COMPETITION COMMISSION**

CCC ENQ. No.      of 20

**BEFORE**

**THE ADJUDICATING PANEL OF  
THE CARICOM COMPETITION COMMISSION**

**In the Matter of an Enquiry**

**and**

**In the Matter of a Request**

**and**

**In the Matter of**

**WITHDRAWAL OF NOTICE**

**TAKE NOTICE** that the Executive Director desires to and hereby withdraws the notice against the Respondent in the captioned matter.

*Dated the                      day of                      20*

.....  
Executive Director/Attorneys-at-Law for the Executive Director

To:                      Registrar  
CARICOM Competition Commission

And to:                C.D.  
Respondent  
c/o Attorneys-at-Law/Representative

.....  
**REGISTRAR**

Filed by [                      ] Executive Director whose address for service is

**FORM 4: Form of Oath**

**Rule 24**

Taking the appropriate religious text in his/her raised right hand, the witness says:  
"I swear that the evidence I shall give shall be the truth."

Or a witness who wishes to affirm raises his/her right hand and says:  
"I solemnly affirm that the evidence I shall give shall be the truth."

**FORM 5: Affidavit**

**Rule 28 to 30**

Filed on behalf of [Name of party]

Deponent [Name and initials]

Affidavit no: [if more than one made by deponent]

Exhibits: [ref. nos]

CCC ENQ. No.      of 20

**BEFORE**

**THE ADJUDICATING PANEL OF  
THE CARICOM COMPETITION COMMISSION**

**In the Matter of an Enquiry**

**and**

**In the Matter of a Request**

**and**

**In the Matter of**

**AFFIDAVIT**

I [name] [make oath] [solemnly affirm] and say as follows:

[Text]

[I am not employed by any party to the enquiry/I am employed by the following party to the enquiry]

Taken and sworn at [Place] this [Date]

Before me

A Commissioner for Oaths/Notary Public/Registrar of the Commission



**FORM 6: Witness Summons**

**Rule 44**

CCC ENQ. No.      of 20

**BEFORE**

**THE ADJUDICATING PANEL OF  
THE CARICOM COMPETITION COMMISSION**

In the Matter of an Enquiry

and

In the Matter of a Request

and

In the Matter of

To                      (witness' name)

of                      (witness' address)

**WITNESS SUMMONS**

**YOU ARE SUMMONED** to attend at the CARICOM Competition Commission, Hendrikstraat # 69, Paramaribo, Suriname [*or any other venue as determined*] at    am/pm on the day      of      20      , the date fixed for the hearing of the [*here state whether for the enquiry or other application*] in this matter and on consecutive days or as may be determined by the Commission until the end of the enquiry into this matter, to give evidence [*and/or to produce the following documents*] on behalf of the [*the name of the relevant party*].

This summons was issued with the authority of the Commission, out of the Registry of the CARICOM Competition Commission, Hendrikstraat # 69, and Paramaribo, Suriname on the day of      20      .

.....  
**REGISTRAR**

*The CARICOM Commission Competition Registry is at Hendrikstraat # 69, Paramaribo, Suriname telephone number (597) 491-480, FAX (597) 530-639. The Registry is open between 8:30 a.m. and 4:00 p.m. Monday to Friday, except on holidays. When corresponding with the Commission please address forms or letters to the Registrar and quote the action number.*

**FORM 7: Secrecy Undertaking**

**Rule 47**

CCC ENQ. No.      of 20

**BEFORE**

**THE ADJUDICATING PANEL OF  
THE CARICOM COMPETITION COMMISSION**

In the Matter of an Enquiry

and

In the Matter of a Request

and

In the Matter of

I, [name and address], hereby undertake not to disclose confidential information revealed at the hearing held [on [date]] [from [date] to [date]] in this matter. For the purposes of this undertaking, information is confidential if it was communicated to me orally or in a document during the said hearing, and:

- was identified as confidential during the hearing;
- was not in the public domain at the time the information was communicated; and
- does not subsequently enter the public domain.

Provided that where information that is confidential within the meaning of the first two indents above subsequently enters the public domain through unauthorized disclosure by anyone attending the hearing other than the party who sought its protection, such information shall remain confidential for the purposes of the present undertaking and shall not be disclosed by me.

Signed:

Date:

**FORM 8: Notice of Motion**

**Rule 56**

CCC ENQ. No.      of 20

**BEFORE**

**THE ADJUDICATING PANEL OF  
THE CARICOM COMPETITION COMMISSION**

In the Matter of an Enquiry

and

In the Matter of a Request

and

In the Matter of

**NOTICE OF MOTION**

**TAKE NOTICE** that the [Executive Director] [Respondent] hereby: *[choose one or more of the texts below]*:

- seeks leave pursuant to Rule 17 to serve interrogatories on *[name of party]*;
- seeks an order pursuant to Rule 18 requiring *[name of party]* to serve a fuller response to interrogatories;
- seeks an order pursuant to Rule 32 requiring *[name of party]* to produce a document referred to in a document already produced;
- seeks an order for a witness summons pursuant to Rule 44 requiring *[name and address]* to attend and give evidence at the oral hearing fixed to be held at *[place]* on *[date]* and to produce the following documents and things *[set out details]*;
- seeks an order pursuant to Rule 47 to a hearing to be conducted in the absence of the public;
- seeks an order pursuant to Rule 54 of an extension of time to comply with the order of the Adjudicating Panel dated *[date]*;
- seeks an order pursuant to Rule 68 that a document or part of a document be held in confidence by the Adjudicating Panel;
- seeks leave to amend a document pursuant to Rule 71;
- seeks suspension pursuant to Rule 73 of an order dated *[date]* for joint hearing of the present matter with the matter *[details of other matter]*;
- seeks an order pursuant to Rule 76 extending or shortening the time limit fixed by *[details of Rule, order or direction fixing the time limit]*;
- seeks an order *[give details of any miscellaneous order required]*;

- seeks leave to *[give details or any miscellaneous leave required]*;

The grounds on which the present motion is made are as follows: *[set out the grounds]*

The [Executive Director] [Respondent] will rely on the following evidence *[set out brief description]*

The following supporting affidavits and documents are attached *[set out details]*:

The [Executive Director] [Respondent] [does not desire an oral hearing of motion] [desires an oral hearing of this Motion for the following reasons *[set out the reasons justifying the holding of an oral hearing]*]

## NOTICE

The Adjudicating Panel will issue directions for the hearing of this matter.

Notice of this application is being given to the following persons:

*[List the names and address for service of each Party]*

Date the      day of      20

.....  
Executive Director/Representative/Attorney-at-Law

Filed by [      ] Executive Director, whose address for service is

**FORM 9: Directions of Adjudicating Panel**

**General Form**

CCC ENQ. No.      of 20

**BEFORE**

**THE ADJUDICATING PANEL OF  
THE CARICOM COMPETITION COMMISSION**

In the Matter of an Enquiry

and

In the Matter of a Request

and

In the Matter of

**DIRECTIONS OF THE ADJUDICATING PANEL**

**TAKE NOTICE** that the Adjudicating Panel hereby directs as follows:

[Set out the subject matter of the direction, e.g.]

- Staying the enquiry for default of a procedural requirement [Rule 14]
- Participation in technical conference [Rule 19]
- Participation in issues conference (Rule 20)
- Participation in a procedural conference [Rule 21]
- Form of evidence (Rule 22)
- Service of documents by publication (Rule 72)
- Affidavit of service required (Rule 72)
- General procedural directions [Rule 78]
- [Details of any other direction requested]

**NOTICE OF THIS DIRECTION** is being given to the following parties:

*[List the name and address for service of each party that is to be given direction]*

[or **NOTICE OF THESE GENERAL PROCEDURAL DIRECTIONS** shall be published]

**FORM 10: Order of the Adjudicating Panel**

**General Form**

CCC ENQ. No.      of 20

**BEFORE**

**THE ADJUDICATING PANEL OF  
THE CARICOM COMPETITION COMMISSION**

In the Matter of an Enquiry

and

In the Matter of a Request

and

In the Matter of

**ORDER**

DATED THE ... DAY OF ..... 20..

ENTERED THE .... DAY OF ..... 20..

UPON MOTION by [the Executive Director] [the Respondent - name and address] under Rule [number] of the Rules of Procedure

filed on the ... day of .... 20..

AND UPON HEARING the parties in this matter

IT IS ORDERED THAT:  
[Details of Order]

BY THE ADJUDICATING PANEL OF THE COMMISSION

.....  
REGISTRAR

Notes

CCC ENG. No. 6126

BEFORE

THE CARICOM COMPETITION COMMISSION  
THE ADJUDICATING PANEL OF

In the Matter of an Enquiry

and

In the Matter of a Request

and

In the Matter of

ORDER

DATED THE ... DAY OF ... 20...

ENTERED THE ... DAY OF ... 20...

UPON MOTION by [the Executive Director] [the Respondent - name and address] under Rule [number] of the Rules  
of Procedure

Filed on the ... day of ... 20...

AND UPON HEARING the parties in this matter

IT IS ORDERED THAT  
[Details of Order]

BY THE ADJUDICATING PANEL OF THE COMMISSION

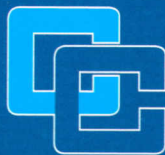
REGIS TRAR





This document has been produced with the financial  
assistance of the European Union.  
The views expressed herein can in no way be taken  
to reflect the official opinion of the European Union.





**CARICOM Competition Commission,  
Hendrikstraat # 69,  
Paramaribo,  
Suriname**

**Tel. (597) 49 14 80 / (597) 49 14 55**

**Fax (597) 53 06 39**

**[admin@ccc.sr](mailto:admin@ccc.sr)**