

**COMPETITION ACT, 2007
(NO. 4 OF 2007)**

COMPETITION COMMISSION PROCEDURAL RULES, 2008

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**COMPETITION ACT, 2007
(NO. 4 OF 2007)**

**COMPETITION COMMISSION PROCEDURAL
RULES, 2008**

IN EXECISE of the powers conferred on the Competition Commission under section 18 (1)(b) of the Competition Act, 2007, these Rules are hereby made.

PART I – PRELIMINARY

Citation **1.** These Rules may be cited as the Competition Commission Procedural Rules, 2008.

Interpretation **2.** (1) In these Rules, except the context otherwise requires-

 "Act" means the Competition Act, 2007;

 "Commission" means the Competition Commission established under the Act;

 "Executive Director" means the Executive Director of the Commission;

 "investigation" has the meaning given to it in Parts VII and VIII of the Act and thus includes the investigation of collusive and bid rigging agreements that are subject to prohibition under the Act.

 (2) A word or phrase used in these Rules if defined in the Act, has the meaning given to it in the Act.

Scope and purpose of these Rules **3.** (1) The Commission is obliged by section 18 (1)(b) of the Act, to publish procedural rules specifying the various procedures it intends to follow when carrying out its functions under the Act.

 (2) Section 18 (4) of the Act further provides that the Commission shall, in particular, publish, procedural rules in respect of-

- (a) the handling of complaints;
- (b) the conduct of investigations;
- (c) the conduct of hearings;
- (d) the basis on which penalties and remedies will be determined;
- (e) the establishment of indicative time limits within which each phase of an enquiry or investigation will normally be completed.

(3) These Rules set out the procedural rules to be followed by the Commission in response to the requirements of sections 18 (1)(b) and 18(4) of the Act.

(4) All decisions by the Commission referred to in these rules shall, unless the contrary is specified, require a meeting of the Commission held in accordance with section 12 of the Act.

(5) For the reasons specified in rule 26 (1) of these Rules do not at present extend to the provisions of the Act dealing with the control of mergers.

(6) The burden of proof in cases arising under the Act (except where the contrary is specified in individual sections) is to be the civil standard of proof.

PART II – HANDLING OF COMPLAINTS

Handling of
complaints

4. (1) The Commission shall encourage enterprises and consumers to bring alleged anti-competitive practices to the attention of the Executive Secretary with as much detail relevant to the complaint as is possible.

(2) The Commission -

- (a) shall acknowledge, in writing, receipt of complaints submitted to it; and
- (b) may take into account anonymous complaints to the extent that they are corroborated by other information.

(3) The Executive Secretary shall-

- (a) reject unsubstantiated complaints and provide an explanation to complainants when the subject matter of a substantiated complaint clearly falls outside the scope of the Act;
- (b) seek a decision from the Commission when a substantiated complaint is received but there is a doubt as to whether the subject matter falls within the scope of the Act.

(4) Where practicable, the explanation of the Executive Secretary and the decision on admissibility by the Commission shall be published.

(5) A complainant may request the Commission-

- (a) to treat as confidential the information he or she provides;
- (b) not to reveal his or her identity to the enterprise about which the complaint is made.

(6) The Commission shall treat a request received under paragraph (5) of this rule sympathetically, but complainant should be aware that the Commission's ability to pursue the complaint may be inhibited, unless and until information emerges to suggest that other parties are also affected by the practice in question.

(7) If a case reaches the hearing stage-

- (a) the party under investigation is entitled to know the essence of the evidence submitted against him or her and to respond to that evidence and it will generally be impossible to conceal the identity of a complaint; but
- (b) a complainant may gain some protection from the use of closed sessions at the hearing.

(8) Information on the business of an individual complainant is also protected from wider public disclosure by the provisions of section 59 of the Act.

PART III – CONDUCT OF INVESTIGATIONS

Initiating a
Commission
investigation

5. (1) Before initiating an investigation, the Commission, in the case of-

- (a) a collusive or a bid rigging agreement, needs only to have reasonable grounds to suspect that a prohibited agreement exists; and
- (b) a non-collusive agreement or a monopoly situation, must have reasonable grounds to believe that the agreement or situation may have adverse effects for competition.

(2) The Executive Secretary is responsible for drawing the attention of the Commissioners to cases where, following receipt of a valid and substantiated complaint, a decision is required as to whether an investigation should be opened.

(3) An individual Commissioner or the Executive Secretary may also make proposals to the Commissioners for the opening of an investigation on the Commission's own initiative where sufficient information is available to substantiate a decision to that effect.

(4) The Commission-

- (a) has discretion to set its own priorities for investigation so as to maximise the effectiveness of its work within available resources;
- (b) is not obliged not open an investigation merely because a valid complaint has been received;
- (c) shall, as far as is practicable, indicate, where appropriate, (for example in its

annual report) what its current priorities are.

(5) Before the Commission decides to open an investigation into a non-collusive agreement or a monopoly situation, it-

- (a) must be satisfied that the share of supply thresholds set out in sections 29 and 31 of the Act are met; and
- (b) may request the Executive Secretary to obtain further information on the share of supply of the enterprise to be investigated before the decision is taken.

(6) If the Commission decides to open an investigation, it must determine whether it can conduct the investigation it must determine whether it can conduct the investigation itself or whether it needs to delegate its power of investigation to another body under section 16 (1) of the Act.

(7) During the period before the Commission acquires the staff and resources to undertake its own investigations as required under section 37 (1) of the Act, the Executive Secretary is responsible for ascertaining which Department of State, or State agency, is in a position to undertake the investigation.

(8) If no Department of State, or State agency, is able to undertake the investigation, the Commission shall invite the Secretary of State to resolve the matter in the accordance with section 38 (3) of the Act.

Process of investigation

6. (1) Where the provisions of section 39 (1) of the Act apply, the Commission may issue of a written Notice pursuant to section 39 (2) of the Act requiring the enterprise under investigation or any other person that appears to be in possession of relevant information or document to produce specified information either orally or in writing or documents or both, as the case may require.

(2) The Notice shall be accompanied by a short statement of the concerns that have caused the Commission to open the investigation.

(3) If the information submitted in response to the Notice suggests additional lines of inquiry to be pursued, further Notices can be issued.

(4) The criminal penalties specified in section 39 (4) of the Act apply if a person fails to comply with a Notice served on him or her, or knowingly or recklessly provides or supplies information that is false, misleading or incomplete.

(5) Subject to paragraph (8) of this rule and to the provisions of Rule 7, the Commission shall publicise the fact that a Notice under section 39 (2) of the Act has been served as soon as possible after the issue of the Notice, and specify the Department of State, the State agency or other entity that is to undertake the investigation if the Commission cannot do so itself.

(6) The Commission is not obliged to publish all the detailed questions contained in the Notice but must identify the recipient of the Notice and briefly describe the subject matter involved.

(7) Other enterprises and consumer organisations may be invited to submit their own information and comments on the case to the Commission or to the body undertaking the investigation on the Commission's behalf.

(8) The Commission has the discretion not to publicise, or to delay publicising, the service of a Notice under section 39 (2) of the Act when the investigation concerns an alleged collusive or bid rigging agreement and the Commission considers that publicity could encourage parties to hide or destroy information.

Entry into
premises

7. (1) Under section 40 of the Act, an officer or agent of the Commission may enter, without prior notice, the premises of an enterprise for the purpose of obtaining information and documents required for an investigation and, when those powers are exercised, the Commission may, at its discretion, delay the service of a Notice under

section 39 (2) of the Act on the enterprise until the officer or agent arrives at the premises with the Notice.

(2) The officer or agent may-

- (a) allow such time as he or she considers reasonable, in the circumstances, for the occupier's legal representative to arrive at the premises before the inspection continues; and
- (b) require that certain conditions are observed, for instance, that computers are kept under observation, during the waiting period and that any other necessary measures are taken to ensure that documents are protected.

(3) Under section 41 of the Act, forcible entry may be effected in limited circumstances by an officer or agent of the Commission into the premises of an enterprise, on the basis of a warrant issued by a Judge or Magistrate, for the purpose of obtaining information and documents, and if no Notice has previously been served under section 39(2) of the Act, the Commission may delay the service of the Notice on the enterprise until the officer or agent arrives at the premises with the Notice.

(4) Where forcible entry occurs in accordance with section 41 of the Act, the officer or agent of the commission-

- (a) shall, wherever practicable, allow the enterprise the same right as applies in the case of entry under the powers of section 40 to have a legal representative present; and
- (b) is not obliged to await the arrival of the legal representative if the circumstances of a forcible entry make it necessary to commence the search of the premises immediately.

(5) The powers conferred by section 41 of the Act should be used only as a last resort.

Use of information gathered during investigation

8. (1) Information gathered during an investigation, including information volunteered by other enterprises and consumer organisations, will be used by the staff of the Commission or by the body conducting the investigation under delegated authority, to produce a report on the alleged anti-competitive practice in question.

(2) The report shall be presented to the Executive Secretary who shall submit it to the Commissioners with any additional comments that he or she wishes to make.

(3) The report shall be a confidential document and shall not be published.

Insufficient evidence after investigation

9. (1) If the Commission decides that-

(a) the material in the report demonstrates that no collusive or bid rigging agreement exists; or

(b) the non-collusive agreement or monopoly situation under investigation does not have adverse effects for competition,

the investigation can be terminated before hearings are held.

(2) A decision by the Commission under paragraph (1) of this rule shall be published with reasons given.

(3) Notwithstanding paragraph (1) of this rule, the Commission may conduct a fresh investigation if significant new facts come to light at a subsequent stage of the investigation.

Decision to hold hearing

10. (1) If the Commission decides that further investigation is required, it shall hold a hearing.

(2) Under section 47 of the Act, unless the enterprise under investigation has chosen not to attend, or has failed to attend, a hearing, the Commission cannot impose a financial penalty or make a direction imposing a remedy without first holding a hearing.

PART IV – CONDUCT OF HEARINGS

Rules governing
hearings

11. The Rules set out in this Part constitute the rules governing hearings as required under section 48 (2) of the Act.

When to hold
hearing

12. (1) By virtue of section 45 (2) of the Act, the Commission-

- (a) may hold a hearing at any time during the investigation; and
- (b) shall hold a hearing if a party under investigation so requests.

(2) A request to hold a hearing shall be addressed to the Executive Secretary.

(3) The Commission may determine its response to the request through the decision taking procedure laid down under section 14 (1) of the Act and may, under section 45 (3) of the Act, delay the hearing until it has sufficient information on the case (for example, when the Executive Secretary submits a report pursuant to rule 8 (2) of these Rules).

Notice of date of
hearing

13. (1) When the Commission decides that a hearing is to be held, the Executive Secretary shall-

- (a) give at least fifteen working days notice in advance of the date scheduled for the hearing to the enterprise under investigation and to the persons who will be required by virtue of section 46 (1) of the Act to attend and to also produce specified documents or other material; and
- (b) publish a Notice announcing the hearing and inviting other interested parties to indicate if they wish to apply to appear at the hearing.

(2) The final selection of parties called to appear at the hearing may be determined by the Commission through the decision taking procedure laid down section 14 (1) of the Act.

Main source of information

14. The hearings before the Commissioners are not intended to be a major source of basic information relating to the investigation as information-gathering is primarily a matter to be addressed through responses to Notice served under section 39 (2) of the Act.

Notice of main issues

15. (1) The Executive Secretary shall give the enterprise under investigation at least ten working days' notice of-

- (a) the main issues that have been identified as a result of the evidence and information gathered during the investigation to date; and
- (b) the main questions that the Commissioners anticipate they will wish to raise.

(2) There is no limitation on the questions that may be put at the hearing, provided that the questions are reasonably related to the matter under investigation.

Testing of evidence

16. The hearing-

- (a) provides an opportunity for the Commissioners to test the evidence presented by different parties and to interrogate the enterprise under investigation about salient aspects of the case; and
- (b) gives the enterprise under investigation the opportunity to-
 - (i) clarify and develop the evidence it has given to investigators,
 - (ii) comment on and rebut evidence and information supplied by other parties, and
 - (iii) make further representations which may, in relevant cases, address the question of whether a practice has public benefits that may offset any adverse effects on competition.

Criminal penalties

17. The criminal penalties set out in section 46 (2) of the Act apply if a person, having been required to attend a hearing or to produce documents to a hearing, does not attend or produce the required documents.

Scheduling of hearing

18. (1) A hearing should be so scheduled as to enable at least three Commissioners (including any temporary Commissioners appointed for the case by virtue of section 13 (2) of the Act) to hear the case.

(2) If the Chairperson of the Commission is not in attendance, the Commissioners attending shall elect one of their number to be the chairperson of the hearing.

(3) If fewer than three Commissioners are available due to unforeseen circumstances, such as illness, the Chairperson of the Commission shall determine whether the hearing should still proceed.

Hearing

19. (1) A hearing shall normally be held in public, but if the Commissioners are satisfied that the legitimate commercial interests of a party would be significantly harmed by public disclosure of certain information about that party's business, they may hear the party's submissions in a closed session from which some or all other parties, and the public, may be excluded.

(2) The Commissioners-

- (a) may use information supplied at a closed session for the purpose of interrogating other parties; and
- (b) shall not disclose matters that might be directly prejudicial to the commercial interests of the party or parties heard during the closed session, unless the disclosure is essential to ensure a balanced appreciation of the issues raised by the case.

(3) An enterprise may elect to make its submissions at the hearing through its legal representative but the Commissioners may require

the officers of the enterprise to respond in person to particular questions.

(4) A Commissioner who has a direct or indirect interest in the outcome of the investigation to which the hearing relates shall not be present at the hearing (even as a member of the public).

(5) The Executive Secretary shall ensure that a transcript of the hearing is made.

(6) A copy of the transcript shall be made available at the Commission's offices for the parties to consult or purchase and for their comments.

Determination of case

20. If, following the hearing, the Commission-

- (a) is satisfied that, in the light of all the information now available, it can make a determination in the terms of section 49 (1) or 50 (1) of the Act, it may proceed to consider the imposition of a penalty or remedy; or
- (b) is not satisfied that a determination under section 49 (1) or 50 (1) of the Act can be made, it may decide to take no further action and terminate the investigation and publish the decision, with reasons.

PART IV – BASIS FOR DETERMINING PENALTIES AND REMEDIES

SUB-PART I - COLLUSIVE AND BID RIGGING AGREEMENTS

Penalty for breach

21. (1) The Commission may, if is satisfied that-

- (a) an enterprise is a party to an agreement which breaches one of the prohibitions established under section 25 and 26 of the Act; and
- (b) the breach has been committed intentionally or negligently,

decide to impose a financial penalty on that enterprise.

(2) Under section 49 (7) of the Act, the maximum amount of the penalty shall not exceed ten per cent of the turnover of the enterprise in The Gambia during the period of the breach of the prohibition, up to a maximum period of three years.

(3) The manner in which the turnover of an enterprise is to be calculated will be prescribed by regulations to be made by the secretary of State under section 49 (8) of the Act.

(4) The criteria to be applied by the Commission in determining the appropriate level of the penalty in any particular case are described in the Commission's Guidelines on the Economic and Legal Analysis of Cases issued under section 18 (1) (a) of the Act.

(5) The Commission shall-

- (a) notify the enterprise concerned of the financial penalty it has decided to impose and of the basis on which the penalty has been calculated;
- (b) provide the enterprise with a statement giving its reasons for determining that a breach of either of the prohibitions has occurred and setting out the evidence on which it relied in reaching that determination.

(6) If the Commission has also decided to issue a direction requiring an enterprise to take specified actions to remedy the adverse effects of a collusive or bid-rigging agreement, the enterprise shall at the same time be notified of the proposed direction and of the Commission's reasons for issuing it.

(7) The enterprise shall be allowed a reasonable period (but no longer than one calendar month) to make representations to the Commission on the penalty, the Commission's reasoning and the direction.

(8) The representations may address the question of whether information relating to the penalty, the reasoning or the direction should be treated as commercially confidential.

(9) The Commission shall, after considering any representations the enterprise has made, issue the final order imposing a financial penalty and the direction (if applicable), which shall be-

- (a) served, in writing, on the enterprise concerned; and
- (b) then be published, together with the Commission's reasoning, subject to the deletion of any material that the Commission has agreed to treat as commercially sensitive.

(10) The amount of the penalty shall always be revealed.

Immunity from
and reduction in
financial penalty

22. Where a party to an agreement that breaches either of the prohibitions-

- (a) voluntarily discloses to the Commission the existence of the agreement, of which the Commission had no prior knowledge, the Commission may grant the enterprise immunity from financial penalty; or
- (b) while not taking the initiative in disclosing the breach of the infringement to the Commission has, nonetheless, co-operated subsequently in the provision of information to the Commission about the infringement, the Commission may grant the enterprise concerned a reduction in the amount of financial penalty.

Direction where
financial penalty
not appropriate

23. (1) If the Commission is satisfied that an enterprise is a party to an agreement which breaches one of the prohibitions established by section 25 or 26 of the Act but concludes that a financial penalty would not be appropriate (for example, where the particular provisions that have been found to breach the prohibition are an unforeseen and unimplemented consequence of broader commercial arrangements),

it may issue a direction requiring the enterprise to take specified actions to remedy the adverse effects of the agreement.

(2) The Commission shall notify the enterprise concerned of the direction it proposes to make and of its reasons for making it.

(3) The enterprise shall be allowed a reasonable period (but no longer than one calendar month) to make representations to the Commission on the direction and the reasoning.

(4) The representations may address the question of whether any information relating to the direction or the reasoning should be treated as commercially confidential.

(5) The Commission shall, after considering any representations the enterprise has made, issue the direction which shall be-

- (a) served, in writing, on the enterprise concerned; and
- (b) published, together with the Commission's reasoning, subject to the deletion of any material that the Commission has agreed to treat as commercially sensitive.

SUB-PART II - OTHER FORMS OF RESTRICTIVE BUSINESS PRACTICE

Remedy for
breach

24. (1) In the case of a restrictive business practice which is not a collusive or bid rigging agreement, the Commission shall not impose a financial penalty but may impose a remedy by means of a direction.

(2) Before acting under paragraph (1), the Commission shall, in accordance with section 35 of the Act, first consider whether specified public benefits wholly or partly offset the adverse effects for competition identified during the Commission's investigation of the practice including any hearing that has been held.

(3) The Commission shall decide whether the benefits set out in section 35 (4) of the Act are present and are attributable to the practice in question, but may, before making a decision, seek the views of the enterprise under investigation and of other parties, including other enterprises and consumer organisations, on the question of offsetting benefits.

(4) If the Commission is satisfied that the benefits fully offset the adverse effects, it may decide to impose no remedy and shall publish the decision, with reasons.

(5) If the Commission concludes that there are no offsetting benefits or that the benefits do not fully offset the adverse effects for competition, it may decide that a direction should be issued with the objective of terminating or modifying the practices that have been found to prevent, restrict or distort competition.

(6) Section 50 (4) of the Act gives an illustrative list of possible remedies that may be imposed by a direction of the Commission in relation to non-prohibited restrictive agreements and to monopoly situations.

(7) The Commission may at its discretion impose another form of remedy if it judges that this would better serve to address the identified adverse effects for competition.

(8) The Commission may, before making a decision under paragraph (5), (6) or (7) of this rule, seek the views of parties other than the enterprise under investigation, including other enterprises and consumer organisations, on the appropriate form of the remedy.

(9) The Commission shall notify the enterprise concerned of the direction it proposes to make and of its reasons for adopting the selected remedy and the enterprise shall be allowed a reasonable period (but no longer than one calendar month) to make representations to the Commission on the direction and the reasoning.

(10) The representations may address the question of whether any information relating to the direction or the reasoning should be treated as commercially confidential.

(11) The Commission shall, after considering any representations the enterprise has made, issue the direction which shall be-

- (a) served, in writing, on the enterprise concerned; and
- (b) published, together with the Commission's reasoning, subject to the deletion of any material that the Commission has agreed to treat as commercially sensitive.

PART V - INDICATIVE TIME LIMITS

Indicative time
limits

25. (1) The guiding principle for time limits is that the Commission shall carry out its functions as expeditiously as is compatible with the need for procedural fairness and thoroughness in its investigations.

(2) The investigations, particularly of the most serious forms of anti-competitive practice, may be prolonged, and it is not in the public interest to set a mandatory deadline for the completion of such investigations.

(3) The Commission shall endeavour to observe the following indicative time limits –

- (a) the Executive Secretary should respond within one calendar month to complaints submitted in writing or in person;
- (b) the Commission should, within three months of receiving a substantive complaint or a request to investigate, decide whether to open an investigation;
- (c) if the Commission decides to open an investigation, the Executive Secretary should within one calendar month of the Commission's decision, issue the Notice under section 39 (2) of the Act;

- (d) the Commission should, within nine months of the date of the issue of a Notice under section 39 (2) of the Act, announce whether hearings shall be held; and
 - (e) the Commission should publish its final decision within four calendar months of the completion of the hearings.
- (4) A failure to meet these indicative time limit will not constitute grounds for a defence under section 18 (5) of the Act.

PART VI – MISCELLANEOUS

Merger control

26. (1) Until regulations are made by the Secretary of State under section 33 of the Act, the Commission shall not conduct investigations of merger situations under section 32 or exercise the powers specified under section 51 of the Act.

(2) When merger control is brought into operation, measures to address the time limits within which the various phases of merger control are to be completed, will be introduced, but until then any adverse effects from a merger in The Gambia may be investigated on an *ex post facto* basis by the Commission, if the situation created by the merger constitutes a monopoly situation within the terms of section 31 of the Act.

Undertakings

27. (1) Under section 53 of the Act, an enterprise may voluntarily offer an undertaking to the Commission to address any concern that has arisen, or is likely to arise, during an investigation of a restrictive business practice other than a collusive or bid-rigging agreement.

(2) An enterprise may undertake to terminate or modify certain practices to which attention has been drawn during an investigation and may offer the undertaking to the Commission at any time after a Notice under section 39 (2) of the Act has been issued.

(3) The Commission must then make an informed decision on whether the proposed undertaking meets all relevant concerns about the effects of the restrictive business practice.

(4) If an undertaking is offered before the hearing stage is reached, the Commission may decide to consult other interested enterprises and consumer organisations on the terms of the proposed undertaking and if, following the consultation, the Commission concludes that the undertaking is acceptable, it may decide to conclude the case on that basis before the hearing is held.

(5) If an undertaking is proposed at or following a hearing at which the relevant issues have been fully addressed, the Commission may decide to accept the undertaking with or without further consultation on its terms.

(6) The Commission may require the enterprise that has given the undertaking to provide information on an ongoing basis to enable the undertaking to be monitored.

(7) Whether the Commission makes the decision to accept an undertaking, before, at or after a hearing, the undertaking so accepted shall be published in the form of a decision of the Commission, together with the Commission's reasons for its decision.

(8) An undertaking has effect as if it is a direction of the Commission.

Appeals

28. (1) Part X of the Act deals with appeals against decisions and determinations of the Commission which shall be governed by the Rules of Court made pursuant to section 58 (10) of the Act.

(2) A person who desires to lodge an appeal with the High Court against a decision of the Commission pursuant to section 58 (1) of the Act shall do so within two calendar months of the decision.

29. (1) A person who has reason to believe that an enterprise has failed to comply with a direction or with an undertaking may address a complaint to the Executive Secretary.

(2) The Commission also has a general duty under section 54 (1) of the Act to keep compliance with directions and the performance of undertakings under review.

(3) The Commission may decide to conduct an investigation of a possible failure to comply with a direction or undertaking.

(4) The modalities of an investigation conducted pursuant to paragraph (3) of this rule may, if necessary, be the same as those described in rules 5 to 19 of these Rules and may include a hearing.

(5) The Commission may, for the purpose of paragraph (4) of this rule, adopt a simpler procedure on a case by case basis provided that the enterprise under investigation is given adequate opportunity to present its views on the possible failure to comply and other interested parties are consulted.

(6) If, following an investigation, the Commission is satisfied that an enterprise has failed, without reasonable excuse, to comply with a direction or an undertaking, it may decide to make a determination to that effect, in which case the enterprise shall be-

(a) notified of the determination that the Commission proposes to make; and

(b) given a reasonable time (but no longer than one calendar month) to make representations to the Commission.

(7) The Commission shall, after considering representations made under paragraph (6) of this rule, finalise and publish its determination and may, following the determination, apply to the High Court under section 55 (3) of the Act, for an order requiring the enterprise to make

good the default within a time specified in the order.

(8) An enterprise that is subject to a direction from, or has given an undertaking to, the Commission may apply to the Executive Secretary for a variation to, or termination of, the direction.

(9) If the Commission is satisfied that there has been a material change of circumstances of an enterprise, it may decide to-

- (a) agree to a variation to, or termination of, the direction;
- (b) accept a variation to an undertaking; or
- (c) release the enterprise from an undertaking.

(10) The Commission's decision shall be published.

Interim
measures

30. (1) If the Commission proposes to make an interim measures direction to meet one or more of the objectives specified in paragraphs (a), (b) and (c) of section 52 (3) of the Act, it shall-

- (a) give the enterprise to which the direction is addressed reasonable time (but not more than five working days) to make representations on the proposed direction; and
- (b) after considering the representations, finalise and publish its interim measures direction.

(2) The interim measures direction may be modified at any time if the enterprise to which it is directed, or any other party, provides information to the Commission justifying the modification.

Civil damages

31. (1) A financial penalty imposed by the Commission is a civil penalty and does not involve corporate or personal criminal liability.

(2) A person who can show that he or she has suffered financial loss as a result of a breach of either of the prohibitions established by sections 25 and 26 of the Act may apply to the Court for civil damages against the offending party or parties.

(3) An application shall be founded on the Commission's decision that a breach of one or other of the prohibitions has occurred but the Commission itself will have no role in an action for damages.

(4) An action for civil damages does not lie for losses alleged to have occurred as the result of a restrictive business practice other than a collusive or bid rigging agreement, even if the practice has been the subject of a direction.

(5) An enterprise which breaches a direction from the Commission may expose itself to an action for damages in respect of the breach.

Reference to
publication and
consultation

32. (1) Where reference is made in these Rules to "publish", "publicise" or "publicising", in relation to decisions of the Commission, the publishing or publicising shall be made on the Commission's website and in the *Gazette*.

(2) Where these Rules provide for the Commission to "consult" certain parties, the consultation may be undertaken through the Commission website or in bilateral correspondence with the parties concerned.

(3) The Commission shall provide a comprehensive record of its decisions, directions and determinations in its annual report and on its website.

MADE this day of 2008

**CHAIRPERSON
COMPETITION COMMISSION**