

**DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION**

**NO. 3127**

**8 March 2023**

**DRAFT RULES RELATING TO A DIVESTITURE RECOMMENDATION BY THE COMMISSION IN TERMS OF SECTION 43D(2) OF THE ACT**

- (1) Within 90 business days after the Commission has published a report referred to in section 43B(6), the Commission may make a recommendation to the Tribunal in terms of section 43D(2) for an order in terms of section 60(2)(c).
- (2) A recommendation by the Commission to the Tribunal in terms of section 43D(2), must be made by filing a Notice of Motion in Form CT 6 and supporting affidavit setting out the facts upon which its recommendation is based.
- (3) A Notice of Motion in terms of this Rule must -
  - (a) indicate the order recommended by the Commission; and
  - (b) state the name and address of each person in respect of whom the order is recommended.
- (4) An affidavit in terms of this Rule must set out in numbered paragraphs -
  - (a) a concise statement of the grounds of the recommendation;
  - (b) the material facts or the points of law relevant to the recommendation and relied on by the Commission; and
  - (c) concise reasons as to why the order recommended is reasonable and practicable, taking into account relevant factors, including the factors referred to in section 43D(4).
- (5) The Commission must serve a copy of the Notice of Motion and affidavit on each respondent named in the Notice, within 5 business days of filing them.
- (6) Within 20 business days of being served with a Notice of Motion and affidavit in terms of this Rule, a respondent who wishes to oppose the recommendation must-
  - (a) serve a copy of their Answer on the Commission; and
  - (b) file the Answer with proof of service.
- (7) An Answer that raises only a point of law must set out the question of law to be resolved.
- (8) Any other Answer must be in affidavit form, setting out in numbered paragraphs—

- (a) a concise statement of the grounds on which the recommendation is opposed;
  - (b) the material facts or points of law on which the respondent relies; and
  - (c) an admission or denial of each ground and of each material fact relevant to each ground set out in the recommendation.
- (9) An allegation of fact set out in the recommendation that is not specifically denied or admitted in an Answer will be deemed to have been admitted.
- (10) In an Answer, the respondent must qualify or explain a denial of an allegation, if necessary in the circumstances.
- (11) Within 15 business days of being served with an Answer that raises issues not addressed in the recommendation, other than a point of law alone, the Commission may-
  - (a) serve a Reply; and
  - (b) file a copy of the reply and submit proof of service.
- (12) A Reply must be in affidavit form, setting out in numbered paragraphs—
  - (a) An admission or denial of each new ground or material fact raised in the Answer; and
  - (b) The position of the Commission on any point of law raised in the Answer.
- (13) If the Commission does not file a Reply, it will be deemed to have denied each new issue raised in the Answer, and each allegation of fact relevant to those issues.
- (14) Rules 18 to 23, each read with changes required by the context, apply to an a recommendation under this Rule.

[Ends]