

TRIBUNAL DIRECTIVE FOR HEARING CASES DURING ALERT LEVEL 3 OF THE LOCKDOWN – ISSUED ON 9 JUNE 2020

On 24 May 2020, in accordance with the five-level COVID-19 alert system introduced by government to manage the gradual easing of the lockdown, President Ramaphosa announced that the alert level for the whole country would be lowered from alert level 4 to alert level 3 with effect from 1 June 2020.

In my capacity as the Chairperson of the Tribunal I hereby issue the following Directive as a guideline for dealing with matters during alert level 3 of the lockdown.

Covid-19 Excessive Pricing Complaints

1 The Tribunal Directive issued on 6 April 2020 remains in force subject to the following:

- 1.1. Unless requested by the parties, the Tribunal will hear consent orders and settlement agreements on the papers in chambers. Parties are not required to be present for the hearing.
- 1.2. Parties may, however, when filing an application for a consent order or settlement agreement, request in writing that the application be heard via video conference.
- 1.3. The Tribunal may at its discretion call for a hearing via video conference, in which case the parties will be required to attend and will be duly informed.

Consent Orders and Settlement Agreements (non-Covid-19)

- 1.4. Consent orders and settlement agreements will be granted on the papers in chambers. Parties will not be required to attend the hearing. Where the panel at its discretion indicates otherwise the matter will be set down for a hearing via video conference. In such a case, the parties will be duly informed.

Merger hearings

Phase 1 Mergers

2. Phase 1 mergers (**unopposed, non-complex mergers as classified by the Commission**) will be heard on the papers in chambers by an assigned panel via teleconference.
3. The Panel may, if required, request that additional information be submitted electronically by the Commission or merging parties.
4. Parties will not be required to be present for the teleconference by the panel. Parties may, should they wish, request in writing for the hearing to be held via video conference.

Phase 2 Mergers

5. Phase 2 mergers (**classified as complex but unopposed by the Commission**) will be heard in on the papers in chambers in a similar manner to Phase 1 mergers. Parties may request in writing for the hearing to be held via video conference.
6. Parties may be required to make themselves available for a virtual hearing should the panel, at its discretion, require such. In such cases, parties will be duly informed.

Phase 3 Mergers, Intermediate and Small Merger Consideration

7. Phase 3 Mergers (**very complex mergers that are opposed, as classified by the Commission**), Intermediate and Small Merger Consideration applications previously set down for hearing before 1 August 2020 are provisionally removed from the roll.
8. These matters will be re-enrolled by the Tribunal on a case-by-case basis, considering all relevant factors and subject to case-specific direction. Factors considered in the determination of re-enrolment may include:
 - 8.1. The urgency of the matter.
 - 8.2. The necessity to call factual witnesses/ economic experts.
 - 8.3. The number of days required.
 - 8.4. Whether the case can be heard virtually.
 - 8.5. Whether the Tribunal premises are compliant with all workplace regulations pertaining to the curbing of the spread of Covid-19 for a physical hearing at the Tribunal's premises.

Complaint Referrals (non Covid-19 Complaints)

9. Complaint referrals which were set down for hearing before 1 August 2020 are provisionally removed from the roll.
10. These matters will be re-enrolled by the Tribunal on a case-by-case basis, considering all relevant factors and subject to case-specific direction. Factors considered in the determination of re-enrolment may include:
 - 10.1. The urgency of the matter.
 - 10.2. The necessity to call factual witnesses/ economic experts.
 - 10.3. The number of days required.
 - 10.4. Whether the case can be heard virtually.

10.5. Whether the Tribunal premises are compliant with all workplace regulations pertaining to the curbing of the spread of Covid-19 for a physical hearing at the Tribunal's premises.

Interlocutory applications

11. The Tribunal will hear interlocutory applications via video conference.

12. Processes and protocols to be followed for video conferences will be relayed to parties when necessary.

Pre-hearing conferences

13. The Tribunal, at its discretion, or on request by parties, will convene pre-hearing video conferences for the conduct of proceedings of all matters during the lockdown period.

14. Processes and protocols to be followed for pre-hearing video conferences will be relayed to parties when necessary.

Interim relief and other urgent applications

15. Urgent matters will be set down and heard via video conference. Parties will be duly informed of the necessary arrangements.

Requests for Extension to Filing deadlines

16. Unopposed extensions for large mergers will be heard on the papers in chambers.

17. Requests for the extension of filing deadlines for all other matters should be made in writing and will be assessed in chambers on a case-by-case basis.

Documents

18. Please note that all documents must be filed electronically via email with the Registrar of the Tribunal, ctsa@comptrib.co.za or registry@comptrib.co.za. Mimecast, Dropbox or WeTransfer may be used for large size files.

For urgent matters the Registrar may be contacted on TebogoM@comptrib.co.za or 074 766 4965.

A handwritten signature in black ink, appearing to read 'M Mazwai', written over a horizontal line.

Ms Mondo Mazwai

Tribunal Chair

Date: 9 June 2020