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GOVERNMENT NOTICE

DEPARTMENT OF TRADE AND INDUSTRY

No. 489

3 June 2011

**RULES REGULATING THE FUNCTIONING OF THE NATIONAL
CONSUMER COMMISSION IN TERMS OF THE CONSUMER
PROTECTION ACT, 2008 (No.68 of 2008)**

I, Dr. Rob Davies, the Minister of Trade and Industry hereby publish the rules regulating the functioning of the National Consumer Commission.

In terms of section 120(1)(b) of the Consumer Protection Act, 2008 (No. 68 of 2008) ("the Act"), the Minister of Trade and Industry may, in consultation with the National Consumer Commission, and by notice in the Gazette, make regulations for matters relating to the functions of the Commission.



Dr. Rob Davies, MP

Minister of Trade and Industry

The Department of Trade and Industry

**NATIONAL CONSUMER COMMISSION RULES
REGULATING THE FUNCTIONS OF THE NATIONAL CONSUMER COMMISSION**

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**NATIONAL CONSUMER COMMISSION RULES
REGULATING THE FUNCTIONS OF THE NATIONAL CONSUMER COMMISSION**

Part 1 – General Provisions

1. Short title

These Regulations are the National Consumer Commission Rules.

2. Interpretation

- (1) A word or expression defined in the Act bears the same meaning in these Rules as in the Act.
- (2) In these Rules -
 - (a) a reference to a section by number refers to the corresponding section of the Act;
 - (b) a reference to a rule by number refers to the corresponding item of these Rules; and
 - (c) a reference to a sub-rule or paragraph by number refers to the corresponding item of the rule in which the reference appears.
- (3) In these Rules unless the context indicates otherwise,
 - (a) "application" means a request for an exemption submitted in terms of section 5(3);
 - (b) "certified copy" means a copy of a document certified by a Commissioner of Oaths;
 - (c) "Commission" means the body established by section 85;
 - (d) "Commissioner" means the office holder appointed in terms of section 87;
 - (e) "Consumer Tribunal Rules" means the rules promulgated in terms of the Act and the National Credit Act, 2005 (Act No. 34 of 2005) for the regulation of procedures of the Tribunal;
 - (f) "complaint" means either
 - (i) a matter initiated by the Commission in terms of section 71(2); or
 - (ii) a matter that has been submitted to the Commission in terms of sections 71(1);
 - (g) "deliver" depending on the context, means to serve, or to file, a document;
 - (h) "file", when used as a verb, means to deposit with the Commission;
 - (i) "public holiday" means a public holiday referred to in section 1 of the Public Holidays Act, 1994 (Act No. 36 of 1994);
 - (d) "serve" means to deliver a document to a person other than the Commission;
 - (j) "the Act" means the Consumer Protection Act, 2008 (Act No.68 of 2008); and
 - (k) "Tribunal" means the National Consumer Tribunal established by section 26 of the National Credit Act, 2005.

3. Office hours and address of Commission

- (1) The offices of the Commission are open to the public every Monday to Friday, excluding public holidays, from 08h30 to 16h30.
- (2) Despite sub-paragraph (1) –
- (l) in exceptional circumstances the Commission may with due notice to all interested parties accept documents for filing on any day and at any time; and
 - (b) the Commission must accept documents for filing as directed by either the Tribunal or a member of the Tribunal assigned by its chairperson.
- (3) Subject to Rules 7 and 9, any communication to the Commission, or to a member of the staff of the Commission, may be –
- (a) delivered by hand at:
National Consumer Commission
77 Meintjies Street
Sunnyside
the dti Campus
Block E, 3rd Floor
Republic of South Africa
 - (b) addressed by post to:
National Consumer Commission
P O Box 30251
Sunnyside
Pretoria
0132
Republic of South Africa
 - (c) transmitted by Fax on 0861 515 259.
 - (d) transmitted by electronic mail to ncc@thedti.gov.za.

4. Condonation of time limits

On good cause shown, the Commissioner may condone late performance of an act in respect of which these Rules prescribe a time limit, other than a time limit that is binding on the Commission itself.

Part 2 – Delivery of Documents**5. Delivery of documents**

- (1) A notice or document that is required to be delivered may be served in any way permitted in the Act or these Rules.
- (2) Subject to sub-rule (3), a document delivered by a method listed in rule 3(a) to (d) will be deemed to have been delivered on the intended recipient on the date and at the time shown opposite that method, as indicated below –

Delivered by hand:	On the date of the receipt issued by the Commission
Addressed by post:	14 days after the date of posting
Transmitted by fax:	On the date of transmission to the Commission
Transmitted by email:	On the date of transmission to the Commission
- (3) If, in a particular matter, it proves impossible to serve or deliver a document in any manner provided for in these Rules –
 - (a) if the Commission is required to serve the document, the registrar may apply to the Tribunal for an order of substituted service;
 - (b) in any other case, the person concerned may apply to the Tribunal for an order of substituted service.
- (4) Subject to rule 3(2), if the date and time for the delivery or service of a document is outside of the office hours of the Commission as set out in rule 3(1), that document will be deemed to have been delivered on the next business day.
- (5) Despite sub-rules (1) - (4), if, in terms of rule 9, a fee is required in respect of a document that has been filed, that document will be deemed to have been filed –
 - (a) on the date and at the time indicated in section 2(6), if the filing fee is paid to the Commission within three business days of that date and time; or
 - (a) when the fee is paid to the Commission, if later.
- (6) A document that is delivered by fax must include a cover page, and a document that is transmitted by electronic mail must accompany a cover message, in either case setting out –
 - (a) the name, address, and telephone number of the sender;
 - (b) the name of the person to whom it is addressed, and the name of that person's representative, if it is being sent to the representative of a person;
 - (c) the date and time of the transmission;
 - (d) the total number of pages sent, including the cover page; and
 - (e) the name and telephone number of the person to contact if the transmission appears to be incomplete or otherwise unsuccessful.

6. Issuing documents

- (1) If the Act or these Rules require the Commission to issue a document –
 - (a) the document will have been issued by the Commission when it has been served on any person to whom it is addressed; and
 - (b) the document may be served at any time of day, despite rule 3(1).
- (2) Rule 5(4) does not apply to the service of a document issued by the Commission.

7. Filing documents

- (1) The Commission must assign distinctive case numbers to each complaint, application, notice, advisory opinion and order.
- (2) The Commission must ensure that every document subsequently filed in respect of the same proceedings is marked with the same case number.
- (3) The Commission may refuse to accept a document subsequently filed in respect of the same proceedings that is not properly marked with the assigned case number.
- (4) A person who files any document in terms of the Act or these Rules must provide to the Commission that person's -
 - (a) legal name;
 - (e) address for service;
 - (b) telephone number;
 - (c) if available, email address and fax number; and
 - (d) if the person is not a natural person, the name of the natural person authorised to deal with the Commission on behalf of the person filing the document.
- (5) All supporting documents which are delivered or served shall be numbered appropriately to allow ease of reference.

8. Fees

- (1) The Commission may not charge a fee to any person for filing a complaint.
- (2) The Commission may charge a fee of R1-00 excluding VAT per A4-size page or part thereof to any person wishing to copy a record in the possession of the Commission.
- (3) The Commission may determine reasonable fees payable for non-binding advisory opinions.

9. Form of orders, notices and applications

Whenever an order, notice or application is required in terms of a section of the Act, or an item of these Rules, the document must be in the form of the annexure prescribed in the Regulations to the Act.

10. Form of Orders and Notices of Referral

Whenever the Commission is required, either in terms of the Act or these Rules, to publish a notice in the *Gazette*, that notice must contain at least the following information:

- (a) the name of any supplier, or other person directly affected by the notice;
- (b) the file number assigned by the Commission to the relevant matter;
- (c) the provision of the Act or Rules in terms of which the notice is required;
- (d) a brief and concise description of the nature of the relevant matter;
- (e) if the notice invites submissions, the last date on which submissions may be received;
- (f) if the notice reports a decision –
 - (i) a brief and concise description of the nature of the relevant decision;
 - (ii) a statement indicating whether reasons for the decision have been published, and if so, how a copy of those reasons may be obtained; and
 - (iii) a statement of any right of review of, or appeal from, that decision, including the period during which a review or appeal may be lodged;
- and
- (g) the name, address and contact numbers of the person in the Commission responsible for publishing the notice.

11. Form of Annual Report

- (1) The annual report to be submitted by the Commission in terms of sections 91 and 98 of the Act must be divided into the following parts:
 - (a) a statement of the progress achieved during the preceding year towards realisation of the purposes of the Act.
 - (b) the proceedings of the Commission, being a summary report of the Commission's work in relation to complaints, orders and notices.
 - (c) the administrative activities of the Commission, being a summary report concerning the Commission's management, staff, infrastructure, rules and related matters.
 - (d) the Commission's finances being audited financial statements and an audited report prepared by the auditor general.
- (2) In addition to the matters required in terms of Part B of Chapter 5, each annual report must include a report on the following matters:
 - (a) the Commission's public awareness programs.
 - (b) relationships between the Commission and other regulatory authorities.

- (c) relationships between the Commission and foreign agencies.
- (d) research activities undertaken by the Commission and any proposals for law reform published by the Commission.

Part 3 - Access to Commission Records

12. Restricted information

- (1) In the event of a conflict between these Rules and the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), the provisions of that Act prevail.
- (2) For the purpose of this Part, the following five classes of information are restricted:
 - (a) Information that has been determined to be confidential information;
 - (b) The identity of a complainant, in the following circumstances:
 - (i) A person who provides information to the Commission may request that the Commission treat their identity as restricted information; but that person may be a complainant in the relevant matter only if they subsequently waive the request in writing.
 - (ii) If a person has requested in terms of sub-paragraph (i) that the Commission treat their identity as restricted information.
 - (c) Information that has been received by the Commission in a particular matter, other than that referred to in paragraphs (a) and (b) above, as follows:
 - (i) any other information received by the Commission during its investigation of the complaint, is restricted information until the Commission issues a referral or notice of non-referral in respect of that complaint.
 - (ii) An application and any information received by the Commission during its consideration of the application, or revocation of an exemption granted to the applicant, is restricted information.
 - (d) A document -
 - (i) that contains -
 - (aa) an internal communication between officials of the Commission, or between one or more such officials and their advisors;
 - (bb) an opinion, advice, report or recommendation obtained or prepared by or for the Commission;
 - (cc) an account of a consultation, discussion or deliberation that has occurred, including, but not limited to, minutes of a meeting, for the purpose of assisting to formulate a policy or take a decision in the exercise of a power or performance of a duty conferred or imposed on the Commission by law; or

- (ii) the disclosure of which could reasonably be expected to frustrate the deliberative process of the Commission by inhibiting the candid -
 - (aa) communication of an opinion, advice, report or recommendation; or
 - (bb) conduct of a consultation, discussion or deliberation; or
 - (cc) the disclosure of which could, by premature disclosure of a policy or contemplated policy, reasonably be expected to frustrate the success of that policy.
- (e) Any other document to which a public body would be required or entitled to refuse access to in terms of the Promotion of Access to Information Act, 2000.

13. Access to information

- (1) In the event of a conflict between these Rules and the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), the provisions of that Act prevail.
- (2) Any person, upon payment of the prescribed fee, may inspect or copy any Commission record -
 - (a) if it is not restricted information; or
 - (b) if it is restricted information, to the extent permitted, and subject to any conditions imposed, by
 - (i) this Rule; or
 - (ii) an order of the Tribunal, or a Court.
- (3) In a particular complaint the Commission may release otherwise restricted information, other than confidential information, relating to a possible agreement of terms of an appropriate order, or the consent of a complainant for an order to include an award of damages, to the respondent.
- (4) In addition to the provisions of sub-rule (1) and (2), the Commission may release restricted information to, or permit access to it by, only the following persons:
 - (a) the person who provided that information to the Commission;
 - (b) the supplier to whom the confidential information belongs; or
 - (c) any other person, with the written consent of the supplier to whom the information belongs.
- (5) When the Commission refers a matter to the Tribunal or supplies any other information to the Tribunal, the Commission must identify any information included in its submission as confidential information if it is such in terms of this Rule.

Part 4 – Complaint Procedures**14. Withdrawal of complaints**

- (1) At any time before the Commission has referred a complaint to the Tribunal, the complainant may withdraw the complaint.
- (2) The Commission may continue to investigate a complaint after it has been withdrawn, as if the Commission had initiated it.

15. Multiple complaints

- (1) At any time after a complaint has been initiated by the Commission, or submitted by another person, the Commission may publish a notice disclosing an alleged prohibited practice and inviting any person who believes that the alleged practice has affected or is affecting a material interest of that person to file a complaint in respect of that matter.
- (2) The Commission may consolidate two or more complaints under a common investigation if they concern the same supplier as potential respondent.
- (3) If the Commission consolidates two or more complaints as permitted by sub-rule (2) –
 - (a) each of those complaints must continue to be separately identified by its own complaint number;
 - (f) each person who submitted one of those complaints to the Commission remains the complainant with respect to the complaint that they submitted; and
 - (b) after referring one of those consolidated complaints to the Tribunal, or issuing a notice of non-referral in respect of it, the Commission may continue to investigate any of the remaining consolidated complaints.

16. Consent agreements

- (1) If, at any time before issuing a Notice of Non-referral in the form of Annexure G of the Regulations or referring a complaint to the Tribunal, it appears to the Commission that the respondent may be prepared to agree to terms of a proposed order, the Commission –
 - (a) must notify the complainant, in writing, that a consent order may be recommended to the Tribunal; and
 - (b) invite the complainant to inform the Commission in writing within 10 business days after receiving that notice –
 - (i) whether the complainant is prepared to accept damages under such an order; and
 - (ii) if so, the amount of damages claimed.

- (2) If the Commission and the respondent agree to the terms of an order, the Commission must –
 - (a) refer the complaint to the Tribunal;
 - (b) attach to the referral a consent agreement-
 - (i) setting out the section of the Act that has been contravened;
 - (ii) setting out the terms agreed between the Commission and the respondent, including, if applicable, the amount of damages agreed between the respondent and the complainant; and
 - (iii) signed by the Commission and the respondent indicating their consent to the consent agreement being made an order of the Tribunal; and
 - (c) serve a copy of the referral and consent agreement on the respondent and the complainant.
- (3) A draft consent agreement must be submitted to the Tribunal in terms of this rule notwithstanding the refusal by a complainant to consent to including an award of damages in that draft agreement.

Part 5 – Exemptions

17. Procedures relating to exemption applications

- (1) Upon receiving a request for an advice from the Minister regarding an application for exemption in terms of section 5(3), the Commission, may -
 - (a) if the application is incomplete, advise the applicant of any further information required before the application will be considered; or
 - (b) if the application is not specific enough with respect to the industry or sub-industries to which the exemption would be applicable, require the applicant to more specifically state the exemption sought before the application will be considered.
- (2) If the applicant -
 - (a) does not respond to the Commission within 20 business days after being served with a request for information in terms of paragraph (a) of sub-rule (1), the application will be deemed to have been abandoned by the applicant; or
 - (b) responds to the Commission, but does not, to the satisfaction of the Commission, meet the information requirements requested in terms of paragraph (a) of sub-rule (1), the Commission may again stipulate any further information, or clarification, required before the application will be considered, and the provisions of this sub-rule (2) (a) apply to such request.
- (3) If an application is deemed to have been abandoned in terms of sub-rule (2), the Commission may close its file on that application without making a decision.

- (4) Within a reasonable time after being furnished with the necessary information, the Commission must advise the Minister in accordance with the provision of section 5(4) of the Act.
-