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Common Market for Eastern
and Southern Africa

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CCC - CID - Practice Note 1 of 2021

**Practice Note on Procedures for the Conduct of Hearings before the
CID**

1. The hearings shall be conducted before the CID which is appointed by the Chairperson of the Board of Commissioners pursuant to Rule 24(b) of the COMESA Competition Rules (the "Rules") upon receipt of a notification from the Director of the Commission in terms of Rule 24(a) of the Competition Rules where it is believed that there has been a breach of the Regulations. Pursuant to Rule 24(c), the respondent party(ies) and the Commission may be represented by an attorney. Parties may also be accompanied by experts in the field, provided they notify the Commission fourteen (14) days before the hearing.
2. In accordance with the Competition Rules, undertakings or associations of undertakings concerned shall be given an opportunity to be heard at the hearing on the matters on which the Commission has made a finding of a breach of the Regulations.
3. In particular, the following steps shall be followed:
 - a) Upon the Board Chairperson convening the CID to hear the matter and notifying the respondent party of the date and time of the hearing, the Chairperson of the CID shall give twenty-one (21) days' notice in advance of the date scheduled for the hearing to the respondents under investigation in accordance with Rule 24 and 49 of the Competition Rules and to the persons who will be required by virtue of the relevant provisions of the Competition Rules to attend the hearing.
 - b) The CID may hold a pre-hearing with all parties to consider any application to be determined by the CID.
 - c) The parties can request a pre-hearing conference with the Registrar of the Commission on matters such as:

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- a. making sure all parties have received all the documentation they will be relying upon at the hearing; or,
 - b. to confirm all parties who will attend the hearing.
- d) The structure of the hearing may vary on a case-by-case basis, although it should include the following stages:
- i. Introduction of the hearing by the CID Chairperson and introduction of the attendees;
 - ii. Presentation of the facts surrounding the case by the Commission and the findings of the investigation;
 - iii. Presentation of the facts and arguments by the respondents in response;
 - iv. Response by the Commission to the arguments raised by the respondents;
 - v. Final response by the respondents to the response of the Commission;
 - vi. Responses by both parties relating to the questions put forward by the CID at the hearing; and
 - vii. The CID shall thereafter make a determination within forty-five (45) days.
- e) The principles to guide the conduct of the hearing proceedings shall include the following:
- i. every party is heard in the presence of all other parties to the hearing, unless they are exempted by the CID to preserve that party's legitimate interests to confidentiality or exempted for any other legitimate reason.
 - ii. No new evidence shall be allowed to be presented during the hearing without prior application to the CID to do so, as this will prejudice all the parties to the proceedings who will be denied a proper right of reply.
 - iii. The hearing can be conducted either in private or in public in either of the following manners:
 - a. video-conference, or
 - b. physical attendance, or
 - c. both.
 - iv. Where a party fails to appear at the hearing, after receiving the required notice of the hearing, the hearing will proceed without further recourse to them.
 - v. Where the CID has made an order of breach, in appropriate circumstances, parties may be directed by the CID to discuss the remedy. Where an agreement on the remedy is reached, the parties will submit such agreement to the CID, for the CID to issue an appropriate order. Where the parties fail to

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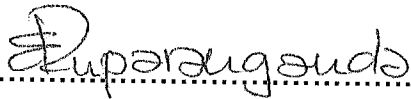
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reach an agreement on the remedy, the CID will proceed to issue an appropriate order without further recourse to the parties.

4. The CID shall make a determination within forty-five (45) days from the date of hearing. Any party aggrieved shall have a right of appeal to the Board of Commissioners in accordance with Rule 24 (d), (e) and (f).
5. The determination of the CID shall be published in its official publication in terms of Rule 28 of the Competition Rules unless there is an objection based on legitimate business interests from the parties.
6. Where there is an objection based on legitimate business interests from the parties, the Commission shall review the objection and where the legitimacy of business interests is verified, a redacted version of the determination of the CID will be published.
7. The procedures will provide clarity and legal certainty to the parties to investigations on the procedures to be followed in the conduct of hearings.



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Commissioner Brian M. Lingela



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Commissioner Ellen Ruparanganda