

The Decision-making process: determination of cases

The adjudicative arm at the Competition Commission

The Competition Commission is made up of two organs, namely the office of the Executive Director which carries out investigations and the other being the Commissioners who have the function of deciding if a breach has been committed. The Commissioners as the adjudicative arm also determine the imposition of fines and remedies through directions.

Convening a hearing

Upon receipt of a report of Investigation of the Executive Director, The Commissioners will initiate the decision-making process.

Thus, the Commissioners may convene a hearing if requested by the enterprise under investigation. But if the matter being determined also involves the possible imposition of fines and of remedial directions, then the Commissioners shall conduct a hearing with the enterprises concerned.

Opportunity for the enterprise to be heard

The hearing process is a further opportunity to make submissions to the Commission. The enterprise concerned will be informed about the date of the hearing and they will be granted time to submit their representations and skeleton arguments for their intended oral submissions.

Information not admissible at hearing

Information that were already in the possession or knowledge of an enterprise during the investigation will not be allowed by the Commissioners if same was not submitted to the Executive Director at the stage of the investigation.

However, the Commissioners may exceptionally allow the information where the enterprise satisfies the Commissioners that it was not given sufficient opportunity at the investigation to submit the information, or that the investigation deliberately or negligently omitted to consider such information. The Commissioners may also allow additional evidence if they consider it to be in the interests of natural justice.

Hearing open to Public

Generally, a hearing is open to the public and the Commissioners may even entertain submissions from the public if they have a substantial interest in the outcome of the proceedings. Hearing proceedings would not be open to the public if this would cause significant harm to a party, or if it would not be efficient and proper to do so.

Decision of the Commissioners

After the hearing proceedings, The Commissioners will issue their decision within 40 days as far as practicable. A public version of the decision is published by the Competition Commission.



Separation of powers

The adjudicative functions are triggered upon the submission of a final report of investigation by the Executive Director to the Commissioners.

The Commissioners are not involved at all during the stage of investigation.

It is only upon receipt of the Report of Investigation that the Commission are exposed to the case. Similarly, once the matter is at Commission level, the Executive Director cannot employ his powers of investigation since the investigation is closed at that stage.

Appeals

Any party who is dissatisfied with an order or direction of the Commission may appeal to the Supreme Court. The Supreme Court may affirm, reverse amend or alter the decision or order, it may remit the matter back to the Commission with its opinion; or make such orders as it thinks fit.

These materials do not constitute legal advice and should not be relied upon as such.