

SCHEDULES

SCHEDULE 2

APPEALS UNDER SECTIONS 24 AND 25

PART 5

APPEALS

Determination of appeal by group

- 17 (1) The following functions of the Competition Commission are to be carried out, in accordance with appeal rules, by a group selected for the purpose by the Chairman—
- (a) considering and determining an appeal, and
 - (b) giving directions and taking other steps to give effect to the Commission's determination on an appeal.
- (2) The group must consist of 3 members of the Competition Commission.
- (3) The Chairman must appoint one of the members of the group to be its chair.
- (4) The Chairman may—
- (a) select himself or herself to be a member of the group, and
 - (b) appoint himself or herself to be its chair.
- (5) A decision of the group is effective only if—
- (a) all of the members of the group are present when it is made, and
 - (b) at least 2 members of the group are in favour of the decision.

Replacing members of group

- 18 (1) The Chairman may select a member of the Competition Commission to replace another as a member of a group with the function of determining an appeal if—
- (a) the person being replaced has ceased to be a member of the Commission,
 - (b) the Chairman is satisfied that the person being replaced will be unable, for a substantial period, to perform the duties of a member of the group, or
 - (c) the Chairman is satisfied that, because of a particular interest of the person being replaced, it is inappropriate for that person to remain a member of the group.
- (2) The Chairman may select himself or herself to replace a member of the group.
- (3) The replacement of a member of the group does not—
- (a) prevent the group from continuing with anything begun before the member is replaced, or

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- (b) affect any decision made, or direction given, by the group before the member is replaced.

Representations made by the CAA

- 19 (1) This paragraph applies where an application for permission to appeal has been granted and the CAA makes representations to the Competition Commission for the purposes of the appeal.
- (2) The CAA must send a copy of its representations to—
- (a) the holder of the licence which is the subject of the appeal,
 - (b) if the appeal was brought by someone other than the holder of that licence, the appellant,
 - (c) any other person with a qualifying interest in the decision that is the subject of the appeal, and
 - (d) such bodies representing airport operators or providers of air transport services as the CAA considers appropriate.

Matters that may be disregarded

- 20 (1) A group with the function of determining an appeal may disregard matters raised by the CAA if it thinks it necessary to do so for the purpose of securing that the appeal is determined within the period allowed under section 28, unless they are matters contained in representations made to the Competition Commission—
- (a) in accordance with paragraph 16, or
 - (b) before the end of the period of 12 weeks beginning with the day on which the relevant notice was published.
- (2) In sub-paragraph (1) “the relevant notice” means—
- (a) in the case of an appeal under section 24, the notice published in accordance with section 15 of the decision to grant the licence, and
 - (b) in the case of an appeal under section 25, the notice published in accordance with section 22 of the decision that is the subject of the appeal.
- (3) A group with the function of determining an appeal may disregard matters raised by the appellant if it thinks it necessary to do so for the purpose of securing that the appeal is determined within the period allowed under section 28, unless the matters were raised by the appellant—
- (a) at the time of the application under paragraph 1 for permission to appeal, or
 - (b) in an application under paragraph 9 or 12 for a direction.
- (4) A group with the function of determining an appeal may disregard matters raised by an intervener if it thinks it necessary to do so for the purpose of securing that the appeal is determined within the period allowed under section 28, unless the matters were raised by the intervener—
- (a) at the time of the application under paragraph 4 for permission to intervene, or
 - (b) in an application under paragraph 9 or 12 for a direction.

Remitting decision to CAA

- 21 (1) This paragraph applies where the Competition Commission decides to remit a matter that is the subject of an appeal to the CAA for reconsideration and decision.
- (2) Where, on reconsidering the matter, the CAA decides to modify a licence, the notice under section 22(6) in respect of the modification may, with the agreement of the holder of the licence, specify a date falling—
- (a) before the end of the period of 6 weeks beginning with the date on which the notice is published, but
 - (b) on or after the date on which the decision that was the subject of the appeal took effect or would have taken effect but for its suspension under this Schedule.
- (3) Where, on reconsidering the matter, the CAA considers it appropriate to modify a licence by adding or altering a price cap condition in respect of goods and services—
- (a) sub-paragraph (4) applies if the highest charges that would be permitted by the new or altered price cap condition (disregarding sub-paragraphs (4) and (6)) (“the proposed maximum charges”) are lower than charges imposed by the holder of the licence in respect of such goods and services during all or part of the appeal period, and
 - (b) sub-paragraph (6) applies if the proposed maximum charges are higher than charges imposed by the holder of the licence in respect of such goods and services during all or part of that period.
- (4) Where this sub-paragraph applies, the CAA may modify the licence so that it includes such price cap conditions as the CAA considers appropriate with a view to putting the holder of the licence in the position that it would have been in if, during the appeal period, it had imposed such lower charges as the CAA considers appropriate.
- (5) The reference in sub-paragraph (4) to lower charges does not include charges of less than the proposed maximum charges.
- (6) Where this sub-paragraph applies, the CAA may modify the licence so that it includes such price cap conditions as the CAA considers appropriate with a view to putting the holder of the licence in the position that it would have been in if, during the appeal period, it had imposed such higher charges as the CAA considers appropriate.
- (7) The reference in sub-paragraph (6) to higher charges does not include charges of more than the proposed maximum charges.
- (8) For the purposes of this paragraph a licence condition is a price cap condition to the extent that it regulates prices by providing that the amount, or the maximum amount, that may be charged is an amount specified in, or determined in accordance with, the condition.
- (9) In this paragraph “appeal period” has the same meaning as in section 28.

Substituting CAA’s decision

- 22 (1) This paragraph applies where the Competition Commission decides to substitute its own decision for a decision of the CAA that is the subject of an appeal.
- (2) Section 23 applies to the Competition Commission as it applies to the CAA.

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- (3) The Competition Commission’s decision has effect as if made by the CAA, except that—
 - (a) section 22(6) does not apply, and
 - (b) an appeal may not be brought against it under this Chapter.
- (4) Any modification of a licence effected by the Competition Commission’s decision takes effect from the date specified by the Commission.
- (5) The Competition Commission may, with the agreement of the holder of the licence, specify a date falling—
 - (a) before the date on which the order containing its decision is published, but
 - (b) on or after the date on which the decision that was the subject of the appeal took effect or would have taken effect but for its suspension under this Schedule.
- (6) Where the Competition Commission considers it appropriate to modify the licence by adding or altering a price cap condition in respect of goods and services—
 - (a) sub-paragraph (7) applies if the highest charges that would be permitted by the new or altered price cap condition (disregarding sub-paragraphs (7) and (9)) (“the proposed maximum charges”) are lower than charges imposed by the holder of the licence in respect of such goods and services during all or part of the appeal period, and
 - (b) sub-paragraph (9) applies if the proposed charges are higher than charges imposed by the holder of the licence in respect of such goods and services during all or part of that period.
- (7) Where this sub-paragraph applies, the Competition Commission’s decision may modify the licence so that it includes such price cap conditions as the Commission considers appropriate with a view to putting the holder of the licence in the position that it would have been in if, during the appeal period, it had imposed such lower charges as the Commission considers appropriate.
- (8) The reference in sub-paragraph (7) to lower charges does not include charges of less than the proposed maximum charges.
- (9) Where this sub-paragraph applies, the Competition Commission’s decision may modify the licence so that it includes such price cap conditions as the Commission considers appropriate with a view to putting the holder of the licence in the position that it would have been in if, during the appeal period, it had imposed such higher charges as the Commission considers appropriate.
- (10) The reference in sub-paragraph (9) to higher charges does not include charges of more than the proposed maximum charges.
- (11) In this paragraph—
 - “appeal period” has the same meaning as in section 28;
 - “price cap condition” has the same meaning as in paragraph 21.