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STATUTORY INSTRUMENTS

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**2015 No. 1648**

**The Competition Appeal Tribunal Rules 2015**

**PART 2**

**APPEALS**

**COMMENCING APPEAL PROCEEDINGS**

**Time and manner of commencing appeals**

**9.**—(1) An appeal to the Tribunal shall be made by filing a notice of appeal within two months of the date upon which the appellant was notified of the disputed decision or the date of publication of the decision, whichever is the earlier.

(2) The Tribunal may not extend the time limit provided under paragraph (1) unless it is satisfied that the circumstances are exceptional.

(3) The notice of appeal shall state—

- (a) the name and address of the appellant;
- (b) the name and address of the appellant's legal representative, if any;
- (c) an address for service in the United Kingdom;
- (d) the name and address of the respondent to the proceedings,

and shall be signed and dated by the appellant, or on its behalf by its duly authorised officer or legal representative.

(4) The notice of appeal shall contain—

- (a) a concise statement of the facts;
- (b) details of the decision to which the proceedings relate;
- (c) observations on the question in which part of the United Kingdom the proceedings of the Tribunal are to be treated as taking place under rule 18;
- (d) a summary of the grounds for contesting the decision, identifying in particular—
  - (i) under which statutory provision the appeal is brought;
  - (ii) to what extent (if any) the appellant contends that the disputed decision was based on an error of fact or was wrong in law;
  - (iii) to what extent (if any) the appellant is appealing against the respondent's exercise of its discretion in making the disputed decision;
- (e) a succinct presentation of the arguments supporting each of the grounds of appeal;
- (f) the relief sought by the appellant, and any directions sought in accordance with rule 19;
- (g) a schedule listing all the documents annexed to the notice of appeal; and
- (h) a statement identifying the evidence (whether witness statements or other documents annexed to the notice of appeal) the substance of which, so far as the appellant is aware, was not before the maker of the disputed decision.

(5) In proceedings under the 2003 Act, the notice of appeal shall include a statement indicating the extent to which the appeal relates to price control or a specified price control matter arises in the appeal.

(6) There shall be annexed to the notice of appeal—

- (a) a copy of the disputed decision; and
- (b) as far as practicable, a copy of every document (or part of a document) on which the appellant relies, including the written statements of all witnesses of fact and expert witnesses, if any.

(7) Unless the Tribunal otherwise directs, the signed original of the notice of appeal shall be accompanied by ten copies of the notice of appeal and its annexes certified by the appellant or its legal representative as conforming to the original.

### **Defective notices of appeal**

**10.**—(1) If the Tribunal considers that a notice of appeal does not comply with rule 9, or is materially incomplete, or is unduly prolix or lacking in clarity, the Tribunal may give such directions as may be necessary to ensure that those defects are remedied.

(2) The Tribunal may, if satisfied that the efficient conduct of the proceedings so requires, instruct the Registrar to defer service of the notice of appeal on the respondent until after the directions referred to in paragraph (1) have been complied with.

### **Power to strike out**

**11.**—(1) The Tribunal may, after giving the parties an opportunity to be heard, strike out an appeal in whole or in part at any stage in the proceedings if—

- (a) it considers that the Tribunal has no jurisdiction to hear or determine the appeal;
- (b) it considers that the notice of appeal, or part of it, discloses no valid ground of appeal;
- (c) it considers that the appellant does not have (or represent those who have) a sufficient interest in the decision in respect of which the appeal is made;
- (d) it is satisfied that the appellant has habitually and persistently and without any reasonable ground—
  - (i) instituted vexatious proceedings, whether against the same person or different persons; or
  - (ii) made vexatious applications in any proceedings; or
- (e) the appellant fails to comply with any rule, practice direction issued under rule 115, or order or direction of the Tribunal.

(2) When the Tribunal strikes out an appeal it may make any consequential order it considers appropriate.

### **Amendments to notice of appeal**

**12.**—(1) The appellant may amend the notice of appeal only with the permission of the Tribunal.

(2) Where the Tribunal grants permission under paragraph (1) it may do so on such terms as it thinks fit, and may give any further or consequential directions it considers necessary.

(3) In deciding whether to grant permission under paragraph (1), the Tribunal shall take into account all the circumstances including whether the proposed amendment—

- (a) involves a substantial change or addition to the appellant's case;
- (b) is based on matters of law or fact which have come to light since the appeal was made; or

- (c) for any other reason could not practicably have been included in the notice of appeal.

### **Withdrawal of the appeal**

**13.**—(1) The appellant may withdraw its appeal only with the permission of the Tribunal, or if no Tribunal has been constituted, the President.

(2) Where permission is granted under paragraph (1), the Tribunal or the President, as the case may be, (“the grantor”) may—

- (a) do so on such terms as the grantor thinks fit;
  - (b) instruct the Registrar to publish notice of the withdrawal on the Tribunal website or in such other manner as the grantor may direct; and
  - (c) publish any decision which the grantor would have made had the appeal not been withdrawn.
- (3) Where an appeal is withdrawn—
- (a) any interim order of the Tribunal, other than an order made in respect of costs, immediately ceases to have effect; and
  - (b) no fresh appeal may be brought by the appellant in relation to the decision which was the subject of the appeal without the permission of the Tribunal.

## **RESPONSE TO APPEAL PROCEEDINGS**

### **Acknowledgment and notification**

**14.**—(1) On receiving a notice of appeal the Registrar shall—

- (a) send an acknowledgement of its receipt to the appellant; and
- (b) subject to rules 10(2) and 11, send a copy of the notice of appeal to the respondent who made the disputed decision.

(2) Subject to rules 10 and 11, the Registrar shall as soon as practicable upon receipt of a notice of appeal publish a summary on the Tribunal website and in any other manner the President may direct.

(3) The summary referred to in paragraph (2) shall—

- (a) state that a notice of appeal has been received;
- (b) contain the name and address of the appellant and its legal representative (if any);
- (c) specify the disputed decision to which the appeal relates and the person by whom it was made;
- (d) specify particulars of the relief sought by the appellant;
- (e) contain a summary of the principal grounds relied on; and
- (f) contain a statement indicating that any person with sufficient interest may apply to intervene in the proceedings, in accordance with rule 16, within three weeks of publication of the summary or within any other period the President may direct.

### **Defence**

**15.**—(1) The respondent shall file a defence in the form required by this rule within six weeks (or such further time as the Tribunal may allow) of the date on which the respondent received a copy of the notice of appeal in accordance with rule 14(1)(b).

(2) The defence shall state—

- (a) the name and address of the respondent;

(b) the name and address of the respondent's legal representative, if any;  
(c) an address for service in the United Kingdom,  
and shall be signed and dated by the respondent, or on its behalf by its duly authorised officer or legal representative.

(3) The defence shall contain—

- (a) observations on the question in which part of the United Kingdom the proceedings of the Tribunal are to be treated as taking place under rule 18;
- (b) a succinct presentation of the arguments of fact and law upon which the respondent will rely;
- (c) details of any objection to the admission of evidence put forward by the appellant;
- (d) the relief sought by the respondent and any directions sought under rule 19;
- (e) a schedule listing all the documents annexed to the defence; and
- (f) a statement identifying the evidence (whether witness statements or other documents annexed to the defence) the substance of which, so far as the respondent is aware, was not referred to in the disputed decision or disclosed to the appellant before that decision was made.

(4) In proceedings under the 2003 Act, the defence shall include a statement indicating the extent to which the appeal relates to price control or a specified price control matter arises in the appeal, including (where applicable) a statement in rebuttal of a statement under rule 9(5).

(5) As far as practicable, there shall be annexed to the defence a copy of every document (or part of a document) upon which the respondent relies including the written statements of all witnesses of fact and expert witnesses, if any, but excluding any document (or part of a document) annexed to the notice of appeal.

(6) The signed original of the defence shall be accompanied by ten copies of the defence and its annexes certified by the respondent or its duly authorised officer or legal representative as conforming to the original.

(7) Rules 10(1), 11 (except paragraph (1)(a), (c) and (d)) and 12 apply to a defence as if—

- (a) references to “notice of appeal” were references to “defence”;
- (b) references to “an appeal” or “the appeal” were references to “a defence” or “the defence”;
- (c) references to “ground of appeal” were references to “ground of defence”;
- (d) references to “the appellant” were references to “the respondent”; and
- (e) in rule 10(1), the reference to rule 9 were a reference to rule 15.

(8) The respondent shall send a copy of the defence and any accompanying documents to each other party at the same time as it files the defence.

## INTERVENTION, CONSOLIDATION AND FORUM

### Intervention

**16.—**(1) Any person with sufficient interest in the outcome may make a request to the Tribunal for permission to intervene in the proceedings.

(2) The request shall be filed within the period referred to in rule 14(3)(f).

(3) The Registrar shall give notice of the request for permission to intervene to all the other parties to the proceedings and invite their observations on that request within a specified period.

(4) A request for permission to intervene shall state—

- (a) the title of the proceedings to which that request relates;

- (b) the name and address of the person wishing to intervene;
  - (c) the name and address of its legal representative, if any; and
  - (d) an address for service in the United Kingdom.
- (5) The request shall contain—
- (a) a concise statement of the matters in issue in the proceedings which affect the person making the request;
  - (b) the name of any party whose position the person making the request intends to support; and
  - (c) a succinct presentation of the reasons for making the request.
- (6) If the Tribunal is satisfied, having taken into account the observations of the parties, that the intervening party has a sufficient interest, it may permit the intervention on such terms and conditions as it thinks fit.
- (7) On granting permission under paragraph (6), the Tribunal may any consequential directions it considers necessary with regard, in particular, to the service on the intervener of the documents lodged with the Registrar, the filing by the intervener of a statement of intervention and, if appropriate, the filing by the principal parties of a response to the statement of intervention and any objections to the admission of evidence put forward by the intervener.
- (8) The statement of intervention shall contain—
- (a) a succinct presentation of the facts and arguments supporting the intervention;
  - (b) the relief sought by the intervener;
  - (c) a schedule listing all the documents annexed to the intervention; and
  - (d) a statement identifying the evidence (whether witness statements or other documents annexed to the statement of intervention) the substance of which, so far as the intervener is aware, was not before the maker of the disputed decision.
- (9) As far as practicable, there shall be annexed to the statement of intervention, a copy of every document (or part of a document) on which the intervener relies including the written statements of witnesses of fact and expert witnesses, if any, but excluding any document (or part of a document) annexed to the notice of appeal or defence.
- (10) Rules 10(1), 11 (except paragraph (1)(a), (c) and (d)) and 12 apply to a statement of intervention as if—
- (a) references to “notice of appeal” were references to “statement of intervention”;
  - (b) references to “an appeal” or “the appeal” were references to “a statement of intervention” or “the statement of intervention”;
  - (c) references to “ground of appeal” were references to “ground of intervention”;
  - (d) references to “the appellant” were references to “the intervener”; and
  - (e) in rule 10(1), the reference to rule 9 were a reference to rule 16.
- (11) The intervener shall send a copy of the statement of intervention and any accompanying documents to each other party at the same time as it files the statement of intervention.

## **Consolidation**

**17.—**(1) Where two or more proceedings are pending in respect of the same decision, or which involve the same or similar issues, the Tribunal may, on the request of a party or of its own initiative, order that the proceedings or any particular issue or matter raised in the proceedings be consolidated.

(2) Before making an order under this rule, the Tribunal shall invite the parties to the relevant proceedings to submit their observations.

## Forum

**18.**—(1) The Tribunal, after taking into account the observations of the parties, may at any time determine whether any proceedings, or part of any proceedings, before it are to be treated, for all or for any purpose (including a purpose connected with any appeal from a decision of the Tribunal made in those proceedings) as proceedings in England and Wales, in Scotland or in Northern Ireland.

(2) Despite any determination under paragraph (1), the Tribunal may hold any meeting, case management conference, pre-hearing review or hearing, or give any directions, in such place and in such manner as it thinks fit having regard to the just, expeditious and economical conduct of the proceedings.

(3) In making a determination under paragraph (1), the Tribunal may have regard to all matters which appear to it to be relevant and in particular the part of the United Kingdom where—

- (a) any individual party to the proceedings is habitually resident or has its head office or principal place of business;
- (b) the majority of the parties are habitually resident or have their head offices or principal places of business;
- (c) any agreement, decision or concerted practice to which the proceedings relate was made or implemented or intended to be implemented;
- (d) any conduct to which the proceedings relate took place;
- (e) in collective proceedings or proceedings concerning a collective settlement, the place where the class representative or settlement representative is habitually resident or has its head office or principal place of business.

(4) Without prejudice to paragraph (3), in making a determination under paragraph (1) for the purposes of a claim under section 47A (claims for damages etc.) or section 47B (collective proceedings) of the 1998 Act <sup>M1</sup>, the Tribunal may have regard to the law which is applicable to the claim.

### Marginal Citations

**M1** 1998 c.41; sections 47A and 47B were substituted by paragraphs 4 and 5 respectively of Schedule 8 to the Consumer Rights Act 2015 (c. 15).

## CASE MANAGEMENT

### Directions

**19.**—(1) The Tribunal may at any time, on the request of a party or of its own initiative, at a case management conference, pre-hearing review or otherwise, give such directions as are provided for in paragraph (2) or such other directions as it thinks fit to secure that the proceedings are dealt with justly and at proportionate cost.

(2) The Tribunal may give directions—

- (a) as to the manner in which the proceedings are to be conducted, including any time limits to be observed in the conduct of the oral hearing;
- (b) that the parties file a reply, rejoinder or other additional pleadings or particulars;
- (c) for the preparation and exchange of skeleton arguments;
- (d) requiring persons to attend and give evidence or to produce documents;
- (e) requiring clarification of any matter in dispute or additional information in relation to any such matter;

- (f) as to the evidence which may be required or admitted in proceedings before the Tribunal and the extent to which it must be oral or written;
  - (g) as to the submission in advance of a hearing of any witness statements or expert reports;
  - (h) as to the examination or cross-examination of witnesses;
  - (i) for the filing of a list of issues;
  - (j) for the production of bundles for any hearing;
  - (k) for the creation of a confidentiality ring;
  - (l) as to the fixing of time limits with respect to any aspect of the proceedings;
  - (m) as to the abridgement or extension of any time limits, whether or not expired;
  - (n) that the whole or part of any proceedings or judgment be stayed either generally or until a specified date or event;
  - (o) to enable a disputed decision to be referred back in whole or in part to the person by whom it was taken;
  - (p) for the disclosure and the production by a party or third party of documents or classes of documents;
  - (q) for the appointment and instruction of experts, whether by the Tribunal or by the parties and as to the manner in which expert evidence is to be given;
  - (r) for the costs management of proceedings, including for the provision of such schedules of incurred and estimated costs as the Tribunal thinks fit;
  - (s) for the award of costs or expenses, including any allowances payable to persons in connection with their attendance before the Tribunal;
  - (t) for the hearing of any issues as preliminary issues prior to the main substantive hearing; and
  - (u) for hearing a person who is not a party where, in any proceedings, it is proposed to make an order or give a direction in relation to that person.
- (3) The Tribunal may also, of its own initiative—
- (a) put questions to the parties;
  - (b) invite the parties to make written or oral submissions on certain aspects of the proceedings;
  - (c) ask the parties or third parties for information or particulars;
  - (d) ask for documents relating to the case to be produced;
  - (e) summon the parties' representatives or the parties in person to meetings.
- (4) A request by a party for directions shall—
- (a) be made in writing as soon as practicable;
  - (b) be supported by reasons and indicate whether it is agreed or contested by the other parties;
  - (c) be served on any other party who might be affected by such directions; and
  - (d) be determined by the Tribunal taking into account the observations of the parties.

#### **Case management conference etc.**

**20.**—(1) Where it appears to the Tribunal that any proceedings would be facilitated by holding a case management conference or pre-hearing review the Tribunal may, on the request of a party or of its own initiative, give directions for such a conference or review to be held.

(2) Unless the Tribunal otherwise directs, a case management conference is to be held as soon as practicable after the filing of an appeal, whether or not the time for service of the defence has expired.

- (3) The purpose of a case management conference or pre-hearing review is—
- (a) to ensure the efficient conduct of the proceedings;
  - (b) to determine the points on which the parties must present further argument or which call for further evidence to be produced;
  - (c) to set a timetable up to an oral hearing in the proceedings, and, if appropriate, fix a date for that hearing;
  - (d) to clarify the forms of order sought by the parties, their arguments of fact and law and the points at issue between them;
  - (e) to hear and determine any submissions in relation to the admission of evidence;
  - (f) to determine any issues relating to confidentiality;
  - (g) to ensure that all agreements that can be reached between the parties about the matters in issue and the conduct of the proceedings are made and recorded;
  - (h) to facilitate the settlement of the proceedings.
- (4) The Tribunal may authorise the President or a chairman to carry out on its behalf a case management conference, pre-hearing review or any other preparatory measure relating to the organisation or disposal of the proceedings.

## Evidence

- 21.**—(1) The Tribunal may give directions as to—
- (a) the provision by the parties of statements of agreed matters;
  - (b) the issues on which it requires evidence, and the admission or exclusion from the proceedings of particular evidence;
  - (c) the nature of the evidence which it requires to decide those issues;
  - (d) whether the parties are permitted to provide expert evidence;
  - (e) any limit on the number of witnesses whose evidence a party may put forward, whether in relation to a particular issue or generally; and
  - (f) the way in which evidence is to be placed before the Tribunal.
- (2) In deciding whether to admit or exclude evidence, the Tribunal shall have regard to whether it would be just and proportionate to admit or exclude the evidence, including by reference to the following factors—
- (a) the statutory provision under which the appeal is brought and the applicable standard of review being applied by the Tribunal;
  - (b) whether or not the substance of the evidence was available to the respondent before the disputed decision was taken;
  - (c) where the substance of the evidence was not available to the respondent before the disputed decision was taken, the reason why the party seeking to adduce the evidence had not made it available to the respondent at that time;
  - (d) the prejudice that may be suffered by one or more parties if the evidence is admitted or excluded;
  - (e) whether the evidence is necessary for the Tribunal to determine the case.
- (3) Unless the Tribunal otherwise directs, no witness of fact or expert witness may be heard unless the relevant witness statement or expert report has been submitted in advance of the hearing and in accordance with any directions of the Tribunal.



(4) The Tribunal may require any witness to give evidence on oath or affirmation or if in writing by way of affidavit.

(5) The Tribunal may allow a witness to give evidence through a video link or by other means.

(6) The Tribunal may dispense with the need to call a witness to give oral evidence if a witness statement or expert report has been submitted in respect of that witness.

(7) The Tribunal may limit cross-examination of witnesses to any extent or in any manner it considers appropriate.

### **Summoning or citing of witnesses**

**22.**—(1) Subject to paragraphs (2) and (3), the Tribunal may, at any time, either of its own initiative or at the request of any party, issue a summons (or in relation to proceedings taking place in Scotland, a citation) in any form authorised by the Tribunal, requiring any person wherever that person may be in the United Kingdom to do one or both of the following—

(a) attend as a witness before the Tribunal, at the time and place set out in the summons or citation;

(b) answer any questions or produce any documents or other material in the possession or under the control of that person which relate to any matter in question in the proceedings.

(2) A request by a party for the issue of a summons or citation under this rule shall state with reasons—

(a) upon which facts the witness is to be questioned;

(b) the documents or material required to be produced.

(3) No person may be required to attend in compliance with a summons or citation under this rule unless that person—

(a) has been given at least seven days' notice of the hearing; and

(b) is offered or paid such sum as would be recoverable by that witness in respect of attendance in proceedings before the Senior Courts of England and Wales, the Court of Session or the Court of Judicature of Northern Ireland, as appropriate according to any determination of the Tribunal under rule 18.

(4) The Tribunal may make the summoning or citation of a witness in accordance with paragraph (1) conditional upon the deposit with the Registrar of a sum determined by the Tribunal as sufficient to cover—

(a) the costs of the summons or citation;

(b) the sum referred to in paragraph (3)(b).

(5) The Registrar shall advance the funds necessary in connection with the examination of any witness summoned by the Tribunal of its own initiative.

(6) The Tribunal may direct a party to serve on its behalf a summons issued under this rule and to pay the sum referred to in paragraph (3)(b).

### **Failure to comply with directions**

**23.**—(1) If any party fails to comply with any direction given in accordance with these Rules, the Tribunal may if it considers that the justice of the case so requires, order that—

(a) the requirements of the direction be waived;

(b) the failure be remedied;

(c) the party be debarred from taking any further part in the proceedings without the permission of the Tribunal;

(d) the party (or its representative) be subject to an order for any costs the Tribunal sees fit.

(2) Before making an order under paragraph (1)(c) or (d), the Tribunal shall give the party (or its representative) the opportunity to make submissions as to why the order should not be made.

## INTERIM ORDERS AND MEASURES

### Power to make interim orders and to take interim measures

24.—(1) The Tribunal may make an order on an interim basis—

- (a) suspending in whole or part the effect of any decision which is the subject matter of proceedings before it;
- (b) in the case of an appeal under section 46 (appealable decisions)<sup>M2</sup> or 47 (third party appeals)<sup>M3</sup> of the 1998 Act, varying the conditions or obligations attached to an exemption;
- (c) granting any remedy which the Tribunal would have the power to grant in its final decision.

(2) Without prejudice to the generality of paragraph (1), if the Tribunal considers that it is necessary as a matter of urgency for the purpose of—

- (a) preventing significant damage to a particular person or category of person, or
- (b) protecting the public interest,

the Tribunal may give such directions as it considers appropriate for that purpose.

(3) The Tribunal shall exercise its power under this rule taking into account all the relevant circumstances, including—

- (a) the urgency of the matter;
- (b) the effect on the party making the request if the relief sought is not granted;
- (c) the effect on competition if the relief is granted; and
- (d) the existence and adequacy of any offer of an undertaking as to damages.

(4) Any order or direction under this rule is subject to the Tribunal's further order, direction or final decision.

(5) A party shall apply for an order or a direction under paragraph (1) or (2) by filing a request for interim relief in the form required by paragraph (6).

(6) The request for interim relief shall state—

- (a) the subject matter of the proceedings;
- (b) in the case of a request for a direction under paragraph (2), the circumstances giving rise to the urgency;
- (c) the factual and legal grounds establishing a prima facie case for the granting of interim relief by the Tribunal;
- (d) the relief sought;
- (e) where no appeal or application has been made in accordance with rule 9 in respect of the decision which is the subject of the request for interim relief, an outline of the information required by rule 9(4).

(7) The request for interim relief shall be verified by a statement of truth, signed and dated by the applicant or on its behalf by its duly authorised officer or legal representative.

(8) On receiving a request for interim relief the Registrar shall send a copy to all the other parties to the proceedings (or where no appeal or application has been made in accordance with rule 9, to the person who made the decision to which the request for interim relief relates) and shall inform them of the date by which they may submit written or oral observations to the Tribunal.

(9) Subject to paragraph (10), an order or direction for interim relief may be made against a person who is not a party to the proceedings, provided that no such order may be made unless that person has been given an opportunity to be heard.

(10) If the urgency of the case so requires, the Tribunal may grant the request for interim relief before the observations of the other parties have been submitted or the person referred to in paragraph (9) has been heard.

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**Marginal Citations**

- M2** [Section 46](#) was amended by paragraph 2 of Schedule 5 to the [Enterprise Act 2002 \(c. 40\)](#), **paragraph 26** of Schedule 5 to the [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#) and by [S.I. 2004/1261](#).
- M3** [Section 47](#) was substituted by section 17 of the Enterprise Act 2002 and amended by paragraph 27 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013 and [S.I. 2004/1261](#).

**Changes to legislation:**

There are currently no known outstanding effects for the The Competition Appeal Tribunal Rules 2015, PART 2.