

---

STATUTORY INSTRUMENTS

---

**2015 No. 1648**

**The Competition Appeal Tribunal Rules 2015**

**PART 6**

**GENERAL AND SUPPLEMENTARY**

**THE HEARING**

**Hearing to be in public**

**99.**—(1) Every hearing is to be in public except that a hearing or part of a hearing may be in private if the Tribunal is satisfied that it will be considering information which is, in the opinion of the Tribunal, information of the kind referred to in paragraph 1(2) of Schedule 4 to the 2002 Act.

(2) Where a hearing, or part of it, is to be held in private, the Tribunal may determine who is entitled to attend the hearing or part of it.

**Quorum**

**100.**—(1) If, after the commencement of any hearing, the chairman is unable to continue, the President may appoint either of the remaining two members to chair the Tribunal; and in that case the Tribunal is to consist of the remaining two members for the rest of the proceedings.

(2) If the person appointed under paragraph (1) is not a member of the panel of chairmen, the President may attend the proceedings and advise the remaining members on any questions of law arising, or appoint some other suitably qualified person to do so.

(3) For the purposes of paragraph (2), a person is “suitably qualified” if that person is, or is qualified for appointment as, a member of the panel of chairmen.

(4) If, after the commencement of any hearing, a member of the Tribunal (other than its chairman) is unable to continue, the President may decide that the Tribunal is to consist of the remaining two members for the rest of the proceedings.

(5) Where in accordance with this rule the Tribunal consists of two members, a decision of the Tribunal shall be unanimous.

**CONFIDENTIALITY**

**Requests for confidential treatment**

**101.**—(1) A request for the confidential treatment of any document or part of a document provided in the course of proceedings before the Tribunal shall—

(a) be made in writing indicating the relevant words, figures or passages for which confidentiality is claimed; and

(b) be supported in each case by specific reasons,

and, if so directed by the Registrar, the person making the request shall supply a non-confidential version of the relevant document.

(2) In the event of a dispute as to whether confidential treatment should be accorded, the Tribunal shall decide the matter after hearing the parties and having regard to the need to exclude information of the kind referred to in paragraph 1(2) of Schedule 4 to the 2002 Act.

(3) The Tribunal may direct that documents, or parts of a document, containing confidential information are disclosed within a confidentiality ring.

**Subsequent use of documents provided in proceedings**

**102.**—(1) Subject to paragraphs (2) to (4), a party to whom a document has been provided in the course of proceedings—

- (a) by the Tribunal;
- (b) by another party; or
- (c) in accordance with an order under rule 63,

may use that document only for the purpose of those proceedings.

(2) Except where a document or a part of a document has been provided within a confidentiality ring, the restriction in paragraph (1) does not apply to a document if—

- (a) subject to paragraph (5), the document has been read to or by the Tribunal, or referred to, at a hearing which has been held in public;
- (b) the Tribunal gives permission; or
- (c) the party who produced or disclosed the document and the person to whom the document belongs agree.

(3) Where a document or part of a document has been provided within a confidentiality ring, the restriction in paragraph (1) applies unless the Tribunal gives permission for further use of that document or the information contained in the document or part of a document.

(4) The restriction in paragraph (1) does not prevent the CMA or any statutory body which is the maker of a disputed decision that is remitted to it by the Tribunal from using such documents for the purposes of determining the remitted issue.

(5) The Tribunal may, either of its own initiative or on the application of a party under paragraph (6), make an order restricting or prohibiting the use of any document provided in the course of proceedings, even where the document has been read to or by the Tribunal, or referred to, at a hearing which has been held in public.

(6) An application for such an order may be made—

- (a) by a party;
- (b) by any person to whom the document belongs; or
- (c) by any person who claims that the document contains confidential information relating to them.

DECISION OF THE TRIBUNAL

**Delivery of the decision**

**103.**—(1) The decision of the Tribunal shall be delivered—

- (a) by handing down the decision in public on a date fixed for that purpose;
- (b) by publishing the decision on the Tribunal’s website; or
- (c) in such other manner as may be specified by practice direction.

(2) The Registrar shall send a copy of the document recording the decision to each party and shall enter it on the register.

(3) The decision of the Tribunal is to be treated as having been notified on the date on which a copy of the document recording it is sent to the parties under paragraph (2).

(4) The decision of the Tribunal be published in such manner as the President considers appropriate.

### **Costs**

**104.**—(1) For the purposes of these rules “costs” means costs and expenses recoverable before the Senior Courts of England and Wales, the Court of Session or the Court of Judicature of Northern Ireland, as appropriate, and include payments in respect of the representation of a party to proceedings under section 47A (claims for damages) or 47B (collective proceedings) of the 1998 Act<sup>(1)</sup>, where the representation by a legal representative was provided free of charge.

(2) The Tribunal may at its discretion, subject to rules 48 and 49, at any stage of the proceedings make any order it thinks fit in relation to the payment of costs in respect of the whole or part of the proceedings.

(3) For the purposes of paragraph (2), applications made under rule 62 or 63 are considered to be proceedings of the Tribunal.

(4) In making an order under paragraph (2) and determining the amount of costs, the Tribunal may take account of—

- (a) the conduct of all parties in relation to the proceedings;
- (b) any schedule of incurred or estimated costs filed by the parties;
- (c) whether a party has succeeded on part of its case, even if that party has not been wholly successful;
- (d) any admissible offer to settle made by a party which is drawn to the Tribunal’s attention, and which is not a Rule 45 Offer to which costs consequences under rules 48 and 49 apply;
- (e) whether costs were proportionately and reasonably incurred; and
- (f) whether costs are proportionate and reasonable in amount.

(5) The Tribunal may assess the sum to be paid under any order under paragraph (2) or may direct that it be—

- (a) assessed by the President, a chairman or the Registrar; or
- (b) dealt with by the detailed assessment of a costs officer of the Senior Courts of England and Wales or a taxing officer of the Court of Judicature of Northern Ireland or by the Auditor of the Court of Session, as appropriate.

(6) The power to award costs under paragraphs (1) to (5) includes the power to direct any party to pay to the Tribunal such sum as may be appropriate in reimbursement of any costs incurred by the Tribunal in connection with the summoning or citation of witnesses or the instruction of experts on the Tribunal’s behalf; and any sum due as a result of such a direction may be recovered by the Tribunal as a civil debt due to the Tribunal.

### **Interest**

**105.**—(1) If it imposes, confirms or varies any penalty under Part 1 of the 1998 Act, the Tribunal may, in addition, order that interest is to be payable on the amount of any such penalty from such date, not being a date earlier than the date of the notice of appeal, and at such rate, as the Tribunal considers appropriate.

---

(1) 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).

(2) Interest ordered to be paid under paragraph (1) is to form part of the penalty and be recoverable as a civil debt in addition to the amount recoverable under section 36 of the 1998 Act<sup>(2)</sup>.

(3) If it makes an award of damages the Tribunal may include in any sum awarded interest on all or any part of the damages in respect of which the award is made, for all or any part of the period between the date when the cause of action arose and—

- (a) in the case of any sum paid before the decision making the award, the date of the payment; and
- (b) in the case of the sum awarded, the date of that decision.

(4) Unless the Tribunal otherwise directs, the rate of interest ordered to be paid or included in an award in accordance with this rule shall not exceed the rate specified in any Order made under section 44 of the Administration of Justice Act 1970<sup>(3)</sup>.

### **Consent orders**

**106.**—(1) If all the parties agree the terms of an order, the Tribunal may, if it thinks fit, make the order, in which case it shall be identified as having been made by consent.

(2) If the Tribunal considers that a draft consent order may have a significant effect on competition, it may—

- (a) require the parties to file a consent order impact statement; and
- (b) direct the Registrar to publish a notice on the Tribunal website or in such other manner as the Tribunal may direct.

(3) A consent order impact statement shall provide an explanation of the draft consent order, including an explanation of the circumstances giving rise to the draft order, the relief to be obtained if the order is made and the anticipated effects on competition of that relief.

## **APPEALS FROM THE TRIBUNAL**

### **Permission to appeal**

**107.**—(1) A request to the Tribunal for permission to appeal from a decision of the Tribunal shall be made in writing and sent to the Registrar within three weeks of the notification of that decision.

(2) A request for permission to appeal shall be signed and dated by the party or its representative and shall—

- (a) state the name and address of the party and of any representative of the party;
- (b) identify the Tribunal decision to which the request relates;
- (c) state the grounds on which the party intends to rely in its appeal; and
- (d) state whether the party requests a hearing of its request and any special circumstances relied on.

### **Decision of the Tribunal on request for permission to appeal**

**108.**—(1) On receipt of a request for permission to appeal, the Tribunal may decide without a hearing whether or not to grant such permission, unless it considers that special circumstances render a hearing desirable.

(2) The decision of the Tribunal on a request for permission to appeal shall be recorded in writing and the Registrar shall notify the parties of the decision.

---

(2) 1998 c. 41.

(3) 1970 c. 31.

## REFERENCES TO THE EUROPEAN COURT

### References to the European Court

**109.**—(1) A reference may be made by the Tribunal of its own initiative at any stage in the proceedings or on application by a party before or at the oral hearing.

(2) A reference shall include a schedule setting out the request for the preliminary ruling of the European Court and the Tribunal may give directions as to the manner and form in which the schedule is to be prepared.

(3) The proceedings in relation to which a reference is made shall, unless the Tribunal otherwise directs, be stayed (or in Scotland, sisted) until the European Court has given a preliminary ruling on the question referred to it.

(4) When a reference has been made, the Registrar shall send a copy of it to the Registrar of the European Court.

(5) In this rule—

“European Court” means the Court of Justice of the European Union;

“reference” means an order referring a question to the European Court for a preliminary ruling under Article 267 of the TFEU<sup>(4)</sup> or as provided for under any agreement to which the European Union or the Member States of the European Union are parties.

## SUPPLEMENTARY

### Power of President, chairman and Registrar to exercise powers of Tribunal

**110.**—(1) Any act required or authorised by these Rules, other than one required or authorised by the following rules—

- (a) rules 11 and 26(3) (power to strike out);
- (b) rule 13 (withdrawal of the appeal), in the case of a withdrawal during or after the hearing;
- (c) rule 41 (power to strike out);
- (d) rule 42 (default judgment);
- (e) rule 43 (summary judgment);
- (f) rule 44 (withdrawal of the claim), in the case of a withdrawal during or after the hearing;
- (g) rule 77 (determination of the application for a collective proceedings order);
- (h) rule 85 (stay, variation or revocation of the collective proceedings order), in the case of revocation of the collective proceedings order;
- (i) rule 87 (applications for withdrawal by the class representative);
- (j) rules 94(8) and 97(6) (making of a collective settlement approval order);
- (k) rule 96(6) (determination of the application for a collective settlement order);
- (l) rule 108 (decision of the Tribunal on request for permission to appeal);
- (m) rule 109 (references to the European Court),

may be done by the President or a chairman acting alone.

(2) If so authorised by the President, the Registrar may, subject to paragraph (3) and without prejudice to rule 104(5)—

- (a) make any order by consent (except where rule 106(2) applies);

---

(4) OJ No C83, 30.3.2010, p.47.

- (b) make a direction under rule 9(7);
- (c) deal with extensions or abridgments of time limits under rule 19(2)(m), except a request for an extension of time for filing an appeal or application under Part 2 or Part 3 of these Rules;
- (d) deal with requests for confidential treatment under rule 101;
- (e) exercise the Tribunal's powers in respect of the service of documents under rule 111.

(3) A party may within five days of any decision by the Registrar in accordance with paragraph (2) request in writing that the decision be reviewed by the President, and the President may determine the matter acting alone or refer the matter to a chairman or to the Tribunal.

#### **Documents etc.**

**111.**—(1) Subject to paragraph (16), any document required to be sent to or served on any person for the purposes of proceedings under these Rules (including documents required to be sent to the Registrar for filing) may be—

- (a) delivered personally at the appropriate address;
- (b) sent to that person at the appropriate address by first class post;
- (c) served through a document exchange or by any other service which provides for delivery on the next business day;
- (d) where authorised by the Tribunal, sent to that person by fax or other means of electronic communication; or
- (e) sent or served in such other manner as may be specified by practice direction.

(2) Where it appears to the Tribunal that there is a good reason to authorise service by a method or at a place not otherwise permitted by these Rules, the Tribunal may of its own initiative or on the request of a party make an order permitting and specifying an alternative method of service or place, and specifying when the document is to be deemed to be served.

(3) The Tribunal may dispense with service of a document if the interests of justice so require.

(4) A document which is filed, sent to or served on a person in accordance with these Rules is to be treated as if it had been filed, received by or served on that person—

- (a) in the case of personal delivery, on the day of delivery;
- (b) when sent by first class post, through a document exchange or any other service in accordance with paragraph (1)(c), on the second day after it was posted or left at the document exchange or delivered to or collected by the relevant service provider; and
- (c) in the case of a fax or other electronic communication sent on a business day before 5pm, on that day, or in any other case, on the next business day.

(5) If a document (other than a fax or other electronic communication) is filed, sent or served or is treated in accordance with paragraph (4) as having been filed, sent or served at or after 5pm on a business day, or at any time on a Saturday, Sunday or a Bank Holiday, the document is to be treated as having been filed, sent or served on the next business day.

(6) For the purposes of these Rules “business day” means any day except Saturday, Sunday or a Bank Holiday and “Bank Holiday” includes Christmas Day and Good Friday.

(7) With regard to an appeal or application made under Part 2 or 3 of these Rules, the appropriate address for a person for the purposes of paragraph (1) is—

- (a) in the case of a document directed to the appellant or applicant (or to its representative), the address stated in the notice of appeal or notice of application, or such other address as may be subsequently notified to the Tribunal;

- (b) in the case of a document addressed to the respondent, the address stated in the defence, or such other address as may be subsequently notified to the Tribunal;
- (c) in the case of an intervener, the address stated in the request to intervene, or such other address as may be subsequently notified to the Tribunal.

(8) With regard to a claim made or collective proceedings brought under Part 4 or 5 of these Rules, the appropriate address for a person for the purposes of paragraph (1) is—

- (a) in the case of a document directed to the claimant or the person applying for a collective proceedings order, the address stated in the claim form or the collective proceedings claim form or such other address as may be notified by the Tribunal;
- (b) in the case of a claim form to be served on the defendant, subject to paragraph (9), the address of the defendant stated in the claim form or the collective proceedings claim form;
- (c) in the case of any other document addressed to the defendant, the address stated in that defendant's acknowledgment of service filed with the Tribunal or such other address as may be subsequently notified to the Tribunal.

(9) Where—

- (a) the defendant has given in writing the business address within the jurisdiction of a legal representative as an address at which the defendant may be served with the claim form or collective proceedings claim form; or
- (b) a legal representative acting for the defendant has notified the claimant or person applying for a collective proceedings order in writing that the legal representative is instructed by the defendant to accept service of the claim form or collective proceedings claim form on behalf of the defendant at a business address within the jurisdiction,

the claim form or collective proceedings claim form shall be served at the business address of that legal representative.

(10) The appropriate address for the Registrar and Tribunal for the purposes of paragraph (1) is the Tribunal's address for service in accordance with rule 6.

(11) Where the address for service of a party changes, that party shall give notice in writing of the change as soon as it has taken place to the Tribunal and every other party.

(12) Anything required to be sent to or served on a company or other corporation is duly sent or served if it is sent to or served on a person holding a senior position within the company or corporation; and for that purpose, each of the following persons is a person holding a senior position—

- (a) in respect of a registered company or corporation, a director, the treasurer, the secretary of the company or corporation, the chief executive or other officer of the company or corporation; and
- (b) in respect of a company or corporation which is not registered, in addition to any of the persons set out in paragraph (a), the mayor, the chairman, the president, a town clerk or similar officer of the company or corporation.

(13) Anything required to be sent or delivered to or served on a partnership is duly sent or served if it is sent to or served on any one of the partners for the time being or a person who, at the time of service, has the control or management of the partnership business at its principal place of business.

(14) Where—

- (a) a document is to be served by the Tribunal; and
- (b) the Tribunal is unable to serve it,

the Tribunal shall send a notice of non-service, stating the method attempted, to the other parties to the proceedings.

(15) The Registrar shall, at the request of the Tribunal, or any party, certify the steps taken to serve a document in accordance with this rule, including the date and manner of service.

(16) With regard to a claim form or collective proceedings claim form to be served on a defendant outside the jurisdiction (and subject to rules 31, 33(2) and 76(2)), the claimant or person applying for a collective proceedings order shall serve the claim form or collective proceedings claim form by any method permissible under Part 6 of the CPR in relation to proceedings in England and Wales or the equivalent provisions in the equivalent procedural rules for Scotland or Northern Ireland in relation to proceedings taking place in Scotland or Northern Ireland respectively.

## Time

**112.**—(1) Unless otherwise specified, an act required by the Tribunal, the President, a chairman or the Registrar, or by these Rules, to be done on or by a particular day shall be done before 5pm on that day.

(2) Where a period expressed in days, weeks or months is to be calculated from the moment at which an event occurs or an action takes place, the day during which that event occurs or that action takes place is not to be counted as falling within the period in question.

(3) A period expressed in weeks or months ends with the expiry of whichever day in the last week or month is the same day of the week or falls on the same date in the month, as the day during which the event or action from which the period is to be calculated occurred or took place; and if, in a period expressed in months, the day on which it should expire does not occur in the last month, the period ends with the expiry of the last day of that month.

(4) “Month” means calendar month.

(5) Where the time prescribed for doing any act expires on a Saturday, Sunday or Bank Holiday, the act is in time if done on the next following day which is not a Saturday, Sunday or Bank Holiday.

## Funding Arrangements

**113.** Subject to section 47C(8) of the 1998 Act<sup>(5)</sup> and rule 93(4), the rules on funding arrangements made under Part 2 of the Courts and Legal Services Act 1990<sup>(6)</sup> apply to proceedings before the Tribunal.

## Irregularities

**114.**—(1) Any irregularity resulting from failure to comply with any provision of these Rules before the Tribunal has reached its decision does not of itself render the proceedings void.

(2) Where any such irregularity comes to the attention of the Tribunal, the Tribunal may, and shall if it considers any person may have been prejudiced by the irregularity, give such directions as it thinks just, to cure or waive the irregularity before reaching its decision.

(3) Clerical mistakes in any document recording a direction, order or decision of the Tribunal, the President, a chairman or the Registrar, or errors arising in such a document from an accidental slip or omission, may be corrected by the President, that chairman or the Registrar, as the case may be, by—

- (a) sending notification of the amended direction, order or decision, or a copy of the amended document, to each party; and
- (b) making the necessary amendment to any information published on the Tribunal website in relation to the direction, order or decision.

---

(5) 1998 c.41; section 47C of the Competition Act 1889 was inserted by paragraph 6 of Schedule 8 to the Consumer Rights Act 2015 (c. 15).

(6) 1990 c. 41.



### **General power of the Tribunal**

**115.**—(1) Subject to the provisions of these Rules, the Tribunal may regulate its own procedure.

(2) A power of the Tribunal under these Rules to make an order or direction includes a power to vary or revoke the order or direction.

(3) The President may issue practice directions in relation to the procedures provided for by these Rules.