



Competition Act 1998

1998 CHAPTER 41

PART I

COMPETITION

CHAPTER IV

[^{F1}APPEALS, PROCEEDINGS BEFORE THE TRIBUNAL AND SETTLEMENTS RELATING TO INFRINGEMENTS OF COMPETITION LAW]

[^{F1}Appeals and proceedings before the Tribunal]

Textual Amendments

- F1** S. 46 cross-heading substituted (1.10.2015) by [Consumer Rights Act 2015 \(c. 15\), s. 100\(5\), Sch. 8 para. 3](#); [S.I. 2015/1630, art. 3\(j\)](#)

46 Appealable decisions.

- (1) Any party to an agreement in respect of which the [^{F2}CMA] has made a decision may appeal to [^{F3}the Tribunal] against, or with respect to, the decision.
- (2) Any person in respect of whose conduct the [^{F2}CMA] has made a decision may appeal to [^{F3}the Tribunal] against, or with respect to, the decision.
- [^{F4}(3) In this section “decision” means a decision of the [^{F2}CMA] —
 - (a) as to whether the Chapter I prohibition has been infringed,
 - (b) as to whether the prohibition in [^{F5}Article 101(1)] has been infringed,
 - (c) as to whether the Chapter II prohibition has been infringed,
 - (d) as to whether the prohibition in [^{F6}Article 102] has been infringed,
 - (e) cancelling a block or parallel exemption,

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- (f) withdrawing the benefit of a regulation of the Commission pursuant to Article 29(2) of the EC Competition Regulation,
- (g) not releasing commitments pursuant to a request made under section 31A(4)(b)(i),
- (h) releasing commitments under section 31A(4)(b)(ii),
- (i) as to the imposition of any penalty under section 36 or as to the amount of any such penalty,

and includes a direction under section 32, 33 or 35 and such other decisions under this Part as may be prescribed.]

- (4) Except in the case of an appeal against the imposition, or the amount, of a penalty, the making of an appeal under this section does not suspend the effect of the decision to which the appeal relates.

- (5) Part I of Schedule 8 makes further provision about appeals.

Textual Amendments

- F2** Word in s. 46(1)-(3) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 26](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F3** Words in s. 46(1)(2) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 5 para. 2\(a\)](#); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F4** S. 46(3) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 29\(2\)](#) (with reg. 8)
- F5** Words in s. 46(3)(b) substituted (1.8.2012) by [The Treaty of Lisbon \(Changes in Terminology or Numbering\) Order 2012 \(S.I. 2012/1809\)](#), art. 2(1), [Sch. Pt. 1](#) (with art. 2(2))
- F6** Words in s. 46(3)(d) substituted (1.8.2012) by [The Treaty of Lisbon \(Changes in Terminology or Numbering\) Order 2012 \(S.I. 2012/1809\)](#), art. 2(1), [Sch. Pt. 1](#) (with art. 2(2))

Modifications etc. (not altering text)

- C1** Pt. 1 certain functions made exercisable concurrently by 1998 c. 41, s. 67(3) (as substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 2 para. 6\(2\)\(a\)](#))
- C2** Pt. 1 certain functions made exercisable concurrently by 1991 c. 56, s. 31(3) (as substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 2 para. 4\(2\)\(a\)](#))
- C3** Pt. 1 certain functions made exercisable concurrently by S.I. 1992/231 (N.I. 1) art. 46(3) (as substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 2 para. 5\(2\)\(a\)](#))
- C4** Pt. 1 certain functions made exercisable concurrently by 1986 c. 44, s. 36A(3) (as substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 2 para. 1\(2\)\(a\)](#))
- C5** Pt. 1 restricted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), regs. 1(a), [9\(2\)](#)
- C6** Pt. 1 certain functions made exercisable concurrently by 1989 c. 29, s. 43(3) (as substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 2 para. 3\(2\)\(a\)](#))
- C7** Pt. 1 certain functions made exercisable concurrently by S.I. 1996/275 (N.I. 2), art. 23(3) (as substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 2 para. 9\(2\)\(a\)](#))
- C8** Ss. 46-47 modified (1.3.2000) by S.I. 2000/261, [rule 3](#)
Ss. 46-47 modified (1.3.2000) by S.I. 2000/261, [rule 6](#)

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[^{F7}47 Third party appeals

- [^{F8}(1) A person who does not fall within section 46(1) or (2) may appeal to the Tribunal with respect to—
- (a) a decision falling within paragraphs (a) to (f) of section 46(3);
 - (b) a decision falling within paragraph (g) of section 46(3);
 - (c) a decision of the [^{F9}CMA] to accept or release commitments under section 31A, or to accept a variation of such commitments other than a variation which is not material in any respect;
 - (d) a decision of the [^{F9}CMA] to make directions under section 35;
 - (e) a decision of the [^{F9}CMA] not to make directions under section 35; or
 - (f) such other decision of the [^{F9}CMA] under this Part as may be prescribed.]
- (2) A person may make an appeal under subsection (1) only if the Tribunal considers that he has a sufficient interest in the decision with respect to which the appeal is made, or that he represents persons who have such an interest.
- (3) The making of an appeal under this section does not suspend the effect of the decision to which the appeal relates.]

Textual Amendments

- F7** S. 47 substituted (20.6.2003) by [Enterprise Act 2002 \(c. 40\), ss. 17, 279](#); [S.I. 2003/1397, art. 2\(1\), Sch. \(with art. 5\)](#)
- F8** S. 47(1) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\), reg. 1\(a\), Sch. 1 para. 30\(2\)](#) (with reg. 8)
- F9** Word in s. 47(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 5 para. 27](#) (with s. 28); [S.I. 2014/416, art. 2\(1\)\(d\)](#) (with Sch.)

Modifications etc. (not altering text)

- C9** Ss. 46-47 modified (1.3.2000) by [S.I. 2000/261, rule. 3](#)
Ss. 46-47 modified (1.3.2000) by [S.I. 2000/261, rule 6](#)

[^{F10}47A Proceedings before the Tribunal: claims for damages etc.

- (1) A person may make a claim to which this section applies in proceedings before the Tribunal, subject to the provisions of this Act and Tribunal rules.
- (2) This section applies to a claim of a kind specified in subsection (3) which a person who has suffered loss or damage may make in civil proceedings brought in any part of the United Kingdom in respect of an infringement decision or an alleged infringement of—
- (a) the Chapter I prohibition,
 - (b) the Chapter II prohibition,
 - (c) the prohibition in Article 101(1), or
 - (d) the prohibition in Article 102.
- (3) The claims are—
- (a) a claim for damages;
 - (b) any other claim for a sum of money;

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- (c) in proceedings in England and Wales or Northern Ireland, a claim for an injunction.
- (4) For the purpose of identifying claims which may be made in civil proceedings, any limitation rules or rules relating to prescription that would apply in such proceedings are to be disregarded.
- (5) The right to make a claim in proceedings under this section does not affect the right to bring any other proceedings in respect of the claim.
- (6) In this Part (except in section 49C) “infringement decision” means—
 - (a) a decision of the CMA that the Chapter I prohibition, the Chapter II prohibition, the prohibition in Article 101(1) or the prohibition in Article 102 has been infringed,
 - (b) a decision of the Tribunal on an appeal from a decision of the CMA that the Chapter I prohibition, the Chapter II prohibition, the prohibition in Article 101(1) or the prohibition in Article 102 has been infringed, or
 - (c) a decision of the Commission that the prohibition in Article 101(1) or the prohibition in Article 102 has been infringed.]

Textual Amendments

F10 S. 47A substituted (1.10.2015) by [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), [Sch. 8 para. 4\(1\)](#) (with [Sch. 8 para. 4\(2\)](#) and [The Competition Appeal Tribunal Rules 2015 \(S.I. 2015/1648\)](#), rules 1, 119(4)); [S.I. 2015/1630](#), art. 3(j)

[^{F11}47B Collective proceedings before the Tribunal

- (1) Subject to the provisions of this Act and Tribunal rules, proceedings may be brought before the Tribunal combining two or more claims to which section 47A applies (“collective proceedings”).
- (2) Collective proceedings must be commenced by a person who proposes to be the representative in those proceedings.
- (3) The following points apply in relation to claims in collective proceedings—
 - (a) it is not a requirement that all of the claims should be against all of the defendants to the proceedings,
 - (b) the proceedings may combine claims which have been made in proceedings under section 47A and claims which have not, and
 - (c) a claim which has been made in proceedings under section 47A may be continued in collective proceedings only with the consent of the person who made that claim.
- (4) Collective proceedings may be continued only if the Tribunal makes a collective proceedings order.
- (5) The Tribunal may make a collective proceedings order only—
 - (a) if it considers that the person who brought the proceedings is a person who, if the order were made, the Tribunal could authorise to act as the representative in those proceedings in accordance with subsection (8), and
 - (b) in respect of claims which are eligible for inclusion in collective proceedings.

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- (6) Claims are eligible for inclusion in collective proceedings only if the Tribunal considers that they raise the same, similar or related issues of fact or law and are suitable to be brought in collective proceedings.
- (7) A collective proceedings order must include the following matters—
- (a) authorisation of the person who brought the proceedings to act as the representative in those proceedings,
 - (b) description of a class of persons whose claims are eligible for inclusion in the proceedings, and
 - (c) specification of the proceedings as opt-in collective proceedings or opt-out collective proceedings (see subsections (10) and (11)).
- (8) The Tribunal may authorise a person to act as the representative in collective proceedings—
- (a) whether or not that person is a person falling within the class of persons described in the collective proceedings order for those proceedings (a “class member”), but
 - (b) only if the Tribunal considers that it is just and reasonable for that person to act as a representative in those proceedings.
- (9) The Tribunal may vary or revoke a collective proceedings order at any time.
- (10) “Opt-in collective proceedings” are collective proceedings which are brought on behalf of each class member who opts in by notifying the representative, in a manner and by a time specified, that the claim should be included in the collective proceedings.
- (11) “Opt-out collective proceedings” are collective proceedings which are brought on behalf of each class member except—
- (a) any class member who opts out by notifying the representative, in a manner and by a time specified, that the claim should not be included in the collective proceedings, and
 - (b) any class member who—
 - (i) is not domiciled in the United Kingdom at a time specified, and
 - (ii) does not, in a manner and by a time specified, opt in by notifying the representative that the claim should be included in the collective proceedings.
- (12) Where the Tribunal gives a judgment or makes an order in collective proceedings, the judgment or order is binding on all represented persons, except as otherwise specified.
- (13) The right to make a claim in collective proceedings does not affect the right to bring any other proceedings in respect of the claim.
- (14) In this section and in section 47C, “specified” means specified in a direction made by the Tribunal.]

Textual Amendments

F11 S. 47B substituted (1.10.2015) by [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), [Sch. 8 para. 5\(1\)](#) (with [Sch. 8 para. 5\(2\)](#)); [S.I. 2015/1630](#), art. 3(j)

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[^{F12}47C Collective proceedings: damages and costs

- (1) The Tribunal may not award exemplary damages in collective proceedings.
- (2) The Tribunal may make an award of damages in collective proceedings without undertaking an assessment of the amount of damages recoverable in respect of the claim of each represented person.
- (3) Where the Tribunal makes an award of damages in opt-out collective proceedings, the Tribunal must make an order providing for the damages to be paid on behalf of the represented persons to—
 - (a) the representative, or
 - (b) such person other than a represented person as the Tribunal thinks fit.
- (4) Where the Tribunal makes an award of damages in opt-in collective proceedings, the Tribunal may make an order as described in subsection (3).
- (5) Subject to subsection (6), where the Tribunal makes an award of damages in opt-out collective proceedings, any damages not claimed by the represented persons within a specified period must be paid to the charity for the time being prescribed by order made by the Lord Chancellor under section 194(8) of the Legal Services Act 2007.
- (6) In a case within subsection (5) the Tribunal may order that all or part of any damages not claimed by the represented persons within a specified period is instead to be paid to the representative in respect of all or part of the costs or expenses incurred by the representative in connection with the proceedings.
- (7) The Secretary of State may by order amend subsection (5) so as to substitute a different charity for the one for the time being specified in that subsection.
- (8) A damages-based agreement is unenforceable if it relates to opt-out collective proceedings.
- (9) In this section—
 - (a) “charity” means a body, or the trustees of a trust, established for charitable purposes only;
 - (b) “damages” (except in the term “exemplary damages”) includes any sum of money which may be awarded by the Tribunal in collective proceedings (other than costs or expenses);
 - (c) “damages-based agreement” has the meaning given in section 58AA(3) of the Courts and Legal Services Act 1990.]

Textual Amendments

F12 S. 47C inserted (1.10.2015) by [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), [Sch. 8 para. 6](#); [S.I. 2015/1630](#), art. 3(j)

[^{F13}47D Proceedings under section 47A or collective proceedings: injunctions etc.

- (1) An injunction granted by the Tribunal in proceedings under section 47A or in collective proceedings—
 - (a) has the same effect as an injunction granted by the High Court, and
 - (b) is enforceable as if it were an injunction granted by the High Court.

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- (2) In deciding whether to grant an injunction in proceedings under section 47A or in collective proceedings, the Tribunal must—
- (a) in proceedings in England and Wales, apply the principles which the High Court would apply in deciding whether to grant an injunction under section 37(1) of the Senior Courts Act 1981, and
 - (b) in proceedings in Northern Ireland, apply the principles that the High Court would apply in deciding whether to grant an injunction.
- (3) Subsection (2) is subject to Tribunal rules which make provision of the kind mentioned in paragraph 15A(3) of Schedule 4 to the Enterprise Act 2002 (undertakings as to damages in relation to claims subject to the fast-track procedure).]

Textual Amendments

F13 S. 47D inserted (1.10.2015) by [Consumer Rights Act 2015 \(c. 15\), s. 100\(5\), Sch. 8 para. 7; S.I. 2015/1630, art. 3\(j\)](#)

[^{F14}47E] **Limitation or prescriptive periods for proceedings under section 47A and collective proceedings**

- (1) Subsection (2) applies in respect of a claim to which section 47A applies, for the purposes of determining the limitation or prescriptive period which would apply in respect of the claim if it were to be made in—
- (a) proceedings under section 47A, or
 - (b) collective proceedings at the commencement of those proceedings.
- (2) Where this subsection applies—
- (a) in the case of proceedings in England and Wales, the Limitation Act 1980 applies as if the claim were an action in a court of law;
 - (b) in the case of proceedings in Scotland, the Prescription and Limitation (Scotland) Act 1973 applies as if the claim related to an obligation to which section 6 of that Act applies;
 - (c) in the case of proceedings in Northern Ireland, the Limitation (Northern Ireland) Order 1989 applies as if the claim were an action in a court established by law.
- (3) Where a claim is made in collective proceedings at the commencement of those proceedings (“the section 47B claim”), subsections (4) to (6) apply for the purpose of determining the limitation or prescriptive period which would apply in respect of the claim if it were subsequently to be made in proceedings under section 47A.
- (4) The running of the limitation or prescriptive period in respect of the claim is suspended from the date on which the collective proceedings are commenced.
- (5) Following suspension under subsection (4), the running of the limitation or prescriptive period in respect of the claim resumes on the date on which any of the following occurs—
- (a) the Tribunal declines to make a collective proceedings order in respect of the collective proceedings;

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- (b) the Tribunal makes a collective proceedings order in respect of the collective proceedings, but the order does not provide that the section 47B claim is eligible for inclusion in the proceedings;
 - (c) the Tribunal rejects the section 47B claim;
 - (d) in the case of opt-in collective proceedings, the period within which a person may choose to have the section 47B claim included in the proceedings expires without the person having done so;
 - (e) in the case of opt-out collective proceedings—
 - (i) a person domiciled in the United Kingdom chooses (within the period in which such a choice may be made) to have the section 47B claim excluded from the collective proceedings, or
 - (ii) the period within which a person not domiciled in the United Kingdom may choose to have the section 47B claim included in the collective proceedings expires without the person having done so;
 - (f) the section 47B claim is withdrawn;
 - (g) the Tribunal revokes the collective proceedings order in respect of the collective proceedings;
 - (h) the Tribunal varies the collective proceedings order in such a way that the section 47B claim is no longer included in the collective proceedings;
 - (i) the section 47B claim is settled with or without the Tribunal's approval;
 - (j) the section 47B claim is dismissed, discontinued or otherwise disposed of without an adjudication on the merits.
- (6) Where the running of the limitation or prescriptive period in respect of the claim resumes under subsection (5) but the period would otherwise expire before the end of the period of six months beginning with the date of that resumption, the period is treated as expiring at the end of that six month period.
- (7) This section has effect subject to any provision in Tribunal rules which defers the date on which the limitation or prescriptive period begins in relation to claims in proceedings under section 47A or in collective proceedings.]

Textual Amendments

F14 S. 47E inserted (1.10.2015) by [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), **Sch. 8 para. 8(1)** (with [Sch. para. 8\(2\)](#)); [S.I. 2015/1630](#), art. 3(j)

^{F15}48 Appeal tribunals.

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Textual Amendments

F15 S. 48 repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 5 para. 3](#), **Sch. 26**; [S.I. 2003/766](#), art. 2, [Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), [Sch.](#))

^{F16}49 Further appeals

- (1) An appeal lies to the appropriate court—

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- (a) from a decision of the Tribunal as to the amount of a penalty under section 36; [F17 and]
- [F18] (b)
- (c) on a point of law arising from any other decision of the Tribunal on an appeal under section 46 or 47.
- [F19] (1A) An appeal lies to the appropriate court on a point of law arising from a decision of the Tribunal in proceedings under section 47A or in collective proceedings—
- (a) as to the award of damages or other sum (other than a decision on costs or expenses), or
- (b) as to the grant of an injunction.
- (1B) An appeal lies to the appropriate court from a decision of the Tribunal in proceedings under section 47A or in collective proceedings as to the amount of an award of damages or other sum (other than the amount of costs or expenses).
- (1C) An appeal under subsection (1A) arising from a decision in respect of a stand-alone claim may include consideration of a point of law arising from a finding of the Tribunal as to an infringement of a prohibition listed in section 47A(2).
- (1D) In subsection (1C) “a stand-alone claim” is a claim—
- (a) in respect of an alleged infringement of a prohibition listed in section 47A(2), and
- (b) made in proceedings under section 47A or included in collective proceedings.]
- (2) An appeal under this section—
- (a) [F20 except as provided by subsection (2A),] may be brought by a party to the proceedings before the Tribunal or by a person who has a sufficient interest in the matter; and
- (b) requires the permission of the Tribunal or the appropriate court.
- [F21] (2A) An appeal from a decision of the Tribunal in respect of a claim included in collective proceedings may be brought only by the representative in those proceedings or by a defendant to that claim.]
- (3) In this section “the appropriate court” means the Court of Appeal or, in the case of an appeal from Tribunal proceedings in Scotland, the Court of Session.]

Textual Amendments

- F16** S. 49 substituted (1.4.2003 for specified purposes, 18.7.2004 in so far as not already in force) by Enterprise Act 2002 (c. 40), s. 279, Sch. 5 para. 4; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.); S.I. 2004/1866, art. 2
- F17** Word in s. 49(1)(a) inserted (1.10.2015) by Consumer Rights Act 2015 (c. 15), s. 100(5), Sch. 8 para. 9(2)(a); S.I. 2015/1630, art. 3(j)
- F18** S. 49(1)(b) omitted (1.10.2015) by virtue of Consumer Rights Act 2015 (c. 15), s. 100(5), Sch. 8 para. 9(2)(b); S.I. 2015/1630, art. 3(j)
- F19** S. 49(1A)-(1D) inserted (1.10.2015) by Consumer Rights Act 2015 (c. 15), s. 100(5), Sch. 8 para. 9(3); S.I. 2015/1630, art. 3(j)
- F20** Words in s. 49(2)(a) inserted (1.10.2015) by Consumer Rights Act 2015 (c. 15), s. 100(5), Sch. 8 para. 9(4); S.I. 2015/1630, art. 3(j)
- F21** S. 49(2A) inserted (1.10.2015) by Consumer Rights Act 2015 (c. 15), s. 100(5), Sch. 8 para. 9(5); S.I. 2015/1630, art. 3(j)

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Commencement Information

- II** S. 49 wholly in force; s. 49 not in force at Royal Assent see s. 76(3); s. 49(3) in force at 1.4.1999 by S.I. 1999/505, **art. 2 Sch. 2**; s. 49(1)(2) and (4) in force at 1.3.2000 by S.I. 2000/344, **art. 2, Sch.**

Status:

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