
STATUTORY INSTRUMENTS

2015 No. 1648

The Competition Appeal Tribunal Rules 2015

PART 2

APPEALS

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.