
STATUTORY INSTRUMENTS

2003 No. 1372

The Competition Appeal Tribunal Rules 2003

PART V

GENERAL AND SUPPLEMENTARY

THE HEARING

Hearing to be in public

50. The hearing of any appeal, review or claim for damages shall be in public except as to any part where the Tribunal is satisfied that it will be considering information which is, in its opinion, information of the kind referred to in paragraph 1(2) of Schedule 4 to the 2002 Act.

Procedure at the hearing

51.—(1) The proceedings shall be opened and directed by the President or the chairman who shall be responsible for the proper conduct of the hearing.

(2) The Tribunal shall, so far as it appears to it appropriate, seek to avoid formality in its proceedings and shall conduct the hearing in such manner as it considers most appropriate for the clarification of the issues before it and generally to the just, expeditious and economical handling of the proceedings.

(3) Unless the Tribunal otherwise directs, no witness of fact or expert shall 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 limit cross-examination of witnesses to any extent or in any manner it deems appropriate.

Quorum

52.—(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 shall 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 appoint himself or some other suitably qualified person to attend the proceedings and advise the remaining members on any questions of law arising.

(3) For the purposes of paragraph (2), a person is “suitably qualified” if he 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 shall consist of the remaining two members for the rest of the proceedings.

(5) Where in pursuance of this rule the Tribunal consists of two members, a decision of the Tribunal must be unanimous.

CONFIDENTIALITY

Requests for confidential treatment

53.—(1) A request for the confidential treatment of any document or part of a document filed in connection with proceedings before the Tribunal shall be made in writing by the person who submitted the document at the latest within 14 days after filing the document indicating the relevant words, figures or passages for which confidentiality is claimed and supported in each case by specific reasons and, if so directed by the Registrar, the person making the request must supply a non-confidential version of the relevant document.

(2) No request for confidential treatment made in disregard of this rule or outside the period provided under paragraph (1) shall be permitted unless the Tribunal considers that the circumstances are exceptional.

(3) In the event of a dispute as to whether confidential treatment should be accorded, the Tribunal shall decide the matter after hearing the parties, taking into account the matters referred to in paragraph 1(2) of Schedule 4 to the 2002 Act.

DECISION OF THE TRIBUNAL

Delivery of the decision

54.—(1) The decision of the Tribunal shall be delivered in public on the date fixed for that purpose.

(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 shall 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 President shall arrange for the decision of the Tribunal to be published in such manner as he considers appropriate.

Costs

55.—(1) For the purposes of these rules “costs” means costs and expenses recoverable before the Supreme Court of England and Wales, the Court of Session or the Supreme Court of Northern Ireland.

(2) The Tribunal may at its discretion, subject to paragraph (3), at any stage of the proceedings make any order it thinks fit in relation to the payment of costs by one party to another in respect of the whole or part of the proceedings and in determining how much the party is required to pay, the Tribunal may take account of the conduct of all parties in relation to the proceedings.

(3) Any party against whom an order for costs is made shall, if the Tribunal so directs, pay to any other party a lump sum by way of costs, or all or such proportion of the costs as may be just. The Tribunal may assess the sum to be paid pursuant to any order under paragraph (1), (2) or (3) or may direct that it be assessed by the President, a chairman or the Registrar, or dealt with by the detailed assessment of a costs officer of the Supreme Court or a taxing officer of the Supreme Court of Northern Ireland or by the Auditor of the Court of Session.

(4) Unless the Tribunal otherwise directs, an order made pursuant to paragraphs (1) and (2) may be made in the decision, if the parties so consent, or immediately following delivery of the decision.

(5) The power to award costs pursuant to paragraphs (1) to (3) 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. 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

56.—(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 upon which the application was made in accordance with rule 8, and at such rate, as the Tribunal considers appropriate. Unless the Tribunal otherwise directs, the rate of interest shall not exceed the rate specified in any Order made pursuant to section 44 of the Administration of Justice Act 1970⁽¹⁾. Such interest 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.

(2) 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.

Unless the Tribunal otherwise directs, the rate of interest shall not exceed the rate specified in any Order made pursuant to section 44 of the Administration of Justice Act 1970.

Consent orders

57.—(1) If all the parties agree the terms on which to settle all or any part of the proceedings, they may request the Tribunal to make a consent order.

(2) A request for a consent order shall be made by sending to the Registrar—

- (a) a draft consent order;
- (b) a consent order impact statement; and
- (c) a statement signed by all the parties to the proceedings or their legal representatives requesting that an order be made in the form of the draft.

(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.

(4) If the Tribunal considers that a proposed consent order may have a significant effect on competition, it shall direct the Registrar as soon as practicable following receipt of the application to publish a notice on the Tribunal website or in such other manner as the Tribunal may direct.

(5) The notice referred to in paragraph (4) shall state—

- (a) that a request for a consent order has been received;
- (b) the name of each of the parties to the proceedings;
- (c) the particulars of the relief sought by those parties; and
- (d) that the draft consent order and consent order impact statement may be inspected at the Tribunal address for service or such other place as may be mentioned in the notice and

(1) 1970 c. 31.

shall so far as practicable exclude any information of the kind referred to in paragraph 1(2) of Schedule 4 to the 2002 Act.

(6) Any person may send his comments upon a request for a consent order to the Registrar within one month of the date upon which the notice was published in accordance with paragraph (4).

(7) Comments supplied in accordance with paragraph (6) shall be in writing, signed by the commentator and shall state the title of the proceedings to which the comments relate and the name and address of the commentator.

(8) The Registrar shall send all comments received in accordance with paragraph (6) to all parties to the proceedings. Any party to the proceedings may within 14 days of receipt of the comments send a response to the comments to the Registrar.

(9) In respect of any request for a consent order the Tribunal may, as it thinks fit, after hearing the parties and considering the comments of third parties—

- (a) make the order in the terms requested; or
- (b) invite the parties to vary the terms; or
- (c) refuse to make any order.

(10) This rule does not apply to claims for damages.

APPEALS FROM THE TRIBUNAL

Permission to appeal

58.—(1) A request to the Tribunal for permission to appeal from a decision of the Tribunal may be made—

- (a) orally at any hearing at which the decision is delivered by the Tribunal; or
- (b) in writing to the Registrar within one month of the notification of that decision.

(2) Where a request for permission to appeal is made in writing, it shall be signed and dated by the party or his 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 his appeal; and
- (d) state whether the party requests a hearing of his request and any special circumstances relied on.

Decision of the Tribunal on request for permission to appeal

59.—(1) Where a request for permission to appeal is made orally the Tribunal shall give its decision either orally or in writing, stating its reasons.

(2) Where a request for permission to appeal is made in writing, the Tribunal shall decide whether to grant such permission on consideration of the party's request and, unless it considers that special circumstances render a hearing desirable, in the absence of the parties.

(3) The decision of the Tribunal on a written request for permission to appeal together with the reasons for that decision shall be recorded in writing and the Registrar shall notify the parties of such decision.

REFERENCES TO THE EUROPEAN COURT

References to the European Court

60.—(1) An order 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) An order shall set out in a schedule 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 which an order 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 an order 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 Communities;

“order” means an order referring a question to the European Court for a preliminary ruling under Article 234 of the Treaty establishing the European Community, Article 150 of the Treaty establishing the European Atomic Energy Community or Article 41 of the Treaty establishing the European Coal and Steel Community.

INTERIM ORDERS AND MEASURES

Power to make interim orders and to take interim measures

61.—(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 or 47 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 the foregoing, if the Tribunal considers that it is necessary as a matter of urgency for the purpose of—

- (a) preventing serious, irreparable 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; and
- (c) the effect on competition if the relief is granted.

(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 paragraphs (1) and (2) by sending a request for interim relief in the form required by paragraph (6) to the Registrar.

(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 pursuant to 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) if no appeal or application has been made in accordance with rule 8, in respect of a decision which is the subject of the request for interim relief, an outline of the information required by rule 8(4).

(7) On receiving a request for interim relief the Registrar shall send a copy to all the other parties to the proceedings (and where no appeal or application has been made in accordance with rule 8, 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.

(8) The Tribunal shall fix a date for the hearing of the request for interim relief and give the parties any directions as may be necessary for disposing of the request for interim relief.

(9) The Tribunal may, for the purposes of this rule, join any party to the proceedings.

(10) Subject to paragraph 11, 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.

(11) If the urgency of the case so requires, the Tribunal may dispense with a written request for interim relief or grant the request for interim relief before the observations of the other parties have been submitted.

(12) Unless the context otherwise requires, these rules apply to requests for interim relief.

(13) This rule does not apply to claims for damages.

SUPPLEMENTARY

Power of President, Chairman and Registrar to exercise powers of Tribunal

62.—(1) Any procedural act required or authorised by these rules, not being one required or authorised by the following rules—

- (a) rules 10 (Power to reject) and 28(2);
- (b) rule 12 (Withdrawal of the appeal), in the case of a withdrawal during or after the hearing;
- (c) rule 40 (Power to reject);
- (d) rule 41 (Summary judgment);
- (e) rule 42 (Withdrawal), in the case of a withdrawal during or after the hearing;
- (f) rules 58 (Permission to appeal) and 59 (Decision of the Tribunal on request for permission to appeal);
- (g) rule 60 (References to the European Court),

may be done by the President acting alone.

(2) The powers of the President may be exercised by a chairman provided that the powers conferred by rule 61 may only be exercised by a chairman if the urgency of an application made in accordance with rule 61(7) so requires.

(3) If so authorised by the President, the Registrar may, subject to rule 4(4) and without prejudice to rule 55(3)—

- (a) make any order by consent (except where rule 57(4) applies);
- (b) deal with extensions or abridgments of time limits under rule 19(2)(i), except a request for an extension of time for filing an appeal or application under Part II or Part III of these rules;
- (c) deal with requests for confidential treatment under rule 53;
- (d) exercise the Tribunal's powers in respect of the service of documents under rule 63.

Documents etc.

63.—(1) Any document required to be sent to or served on any person for the purposes of proceedings under these rules may be—

- (a) delivered personally at his appropriate address;
- (b) sent to him at his appropriate address by first class post;
- (c) served through a document exchange;
- (d) where authorised by the Tribunal, sent to him by facsimile or electronic mail or other similar means.

(2) Where—

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

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

(3) Where it appears to the Tribunal that there is a good reason to authorise service by a method not 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, and specifying when the document will be deemed to be served.

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

(5) A document which is sent or served in accordance with these rules shall be treated as if it had been 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 or through a document exchange, on the second day after it was posted or left at the document exchange;
- (c) in the case of a facsimile transmitted on a business day before 4pm on that day or in any other case on the business day after the day on which it is transmitted;
- (d) in the case of electronic mail or similar means, on the second day after the day on which it is transmitted.

(6) If a document (other than a facsimile) is served after 5pm on a business day, or at any time on a Saturday, Sunday or a Bank Holiday, the document shall be treated as having been served on the next business day.

(7) 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.

(8) A person's appropriate address for the purposes of paragraph (1) is—

- (a) in the case of a document directed to the Tribunal or to the Registrar, the Tribunal address for service;

- (b) in the case of a document directed to the applicant or to his representative, the address stated in the application in accordance with rule 8(3)(c) or such other address as may be subsequently notified to the Tribunal;
 - (c) in the case of a document addressed to the respondent, the address stated in the defence in accordance with rule 14(2)(c) or such other address as may be subsequently notified to the Tribunal;
 - (d) in the case of an intervener, the address stated in the request to intervene in accordance with rule 16(4)(d) or such other address as may be subsequently notified to the Tribunal.
- (9) Anything required to be sent to or served on a company is duly sent or served if it is sent to or served on the secretary of the company at its principal place of business or registered address for the time being.
- (10) 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.
- (11) The Registrar shall, at the request of the Tribunal, or any party, certify the steps taken to serve a document pursuant to this rule, including the date and manner of service.

Time

64.—(1) 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 shall not be counted as falling within the period in question.

(2) A period expressed in weeks or months shall end 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. If, in a period expressed in months, the day on which it should expire does not occur in the last month, the period shall end with the expiry of the last day of that month.

(2) “Month” shall mean calendar month.

(3) Where the time prescribed by the Tribunal, the President, a chairman or the Registrar, or by these rules, 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.

Conditional Fee Arrangements

65. The rules on funding arrangements made under the Civil Procedure Rules 1998(2) as amended apply to proceedings before the Tribunal.

Enforcement of orders

66. Any order, direction or decision of the Tribunal is enforceable in accordance with Schedule 4 to the 2002 Act.

Irregularities

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

(2) Where any such irregularity comes to the attention of the Tribunal, the Tribunal may, and must 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 certificate under his hand.

General power of the Tribunal

68.—(1) Subject to the provisions of these rules, the Tribunal may regulate its own procedure.

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

TRANSITIONAL AND REVOCATION

Transitional

69. Proceedings commenced before the Tribunal prior to the coming into force of these rules shall continue to be governed by The Competition Commission Appeal Tribunal Rules 2000(3) as if they had not been revoked.

Revocation

70. Save as provided by rule 69, the Competition Commission Appeal Tribunal Rules 2000 are revoked.

(3) S.I. 2000/261 as amended by S.I. 2003/767 which will be treated as having been made under section 15 of the 2002 Act by virtue of paragraph 12(1) of Schedule 24 to that Act.