
SCOTTISH STATUTORY INSTRUMENTS

2017 No. 130

**Act of Sederunt (Rules of the Court of
Session 1994 and Ordinary Cause Rules 1993
Amendment) (Competition Proceedings) 2017**

Amendment of the Rules of the Court of Session 1994

- 2.—(1) The Rules of the Court of Session 1994(1) are amended in accordance with this paragraph.
- (2) After Chapter 86(2) (applications under section 28, 28A, 62, 62A, 63, 65G or 65H of the Competition Act 1998), insert—

“CHAPTER 86A

APPLICATIONS IN COMPETITION PROCEEDINGS

Interpretation of this Chapter

86A.1. In this Chapter—

“the 1998 Act” means the Competition Act 1998(3);

“competition authority” has the meaning given by paragraph 3(1) of schedule 8A of the 1998 Act(4);

“competition proceedings” has the meaning given by paragraph 2(4) of schedule 8A of the 1998 Act;

“the Directive” means [Directive 2014/104/EU](#) of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union as amended from time to time; and

“investigation materials” has the meaning given by paragraph 3(3) of schedule 8A of the 1998 Act.

Recovery of evidence

86A.2.—(1) This rule applies where a party in competition proceedings makes an application under rule 35.2(1) for—

- (a) a commission and diligence for the recovery of a document; or
- (b) an order under section 1 of the Administration of Justice (Scotland) Act 1972(5).

(1) The Rules of the Court of Session are in schedule 2 of the Act of Sederunt (Rules of the Court of Session 1994) 1994 (S.I. 1994/1443), last amended by S.S.I. 2017/53.

(2) Chapter 86 was inserted by S.S.I. 2004/331.

(3) 1998 (c. 41).

(4) Schedule 8A was inserted by S.I. 2017/385, schedule 1, paragraph 4.

(5) 1972 (c. 59). Section 1 was last amended by the Courts Reform (Scotland) Act 2014 (asp 18), schedule 5, paragraph 12.

(2) The applicant must intimate a copy of the motion made under rule 35.2(1) and the specification lodged under rule 35.2(2) to the Advocate General for Scotland.

(3) An application in relation to a document or other evidence that is in the possession of a competition authority must contain a statement that there is no person, other than the competition authority, reasonably able to provide the document or evidence sought.

(4) An application in relation to the investigation materials of a competition authority must contain a statement that the investigation to which those materials relate has closed.

(5) In deciding whether to grant an application made under this rule, the court must take into account Article 5(3), and, where the document or other evidence sought is in the possession of a competition authority, Article 6(4), of the Directive.

Applications in relation to alleged cartel leniency statement or settlement submission

86A.3.—(1) An application by a party under—

- (a) paragraph 4(7) of schedule 8A of the 1998 Act for a determination by the court as to whether information is a cartel leniency statement; or
- (b) paragraph 5(3) of schedule 8A of the 1998 Act for a determination by the court as to whether a document is a settlement submission,

must be made by motion.

(2) A party enrolling a motion under paragraph (1) must intimate that motion to—

- (a) the Advocate General for Scotland; and
- (b) the author (where known) of the document or information in question.

(3) The hearing of a motion enrolled under paragraph (1) must be held in private and only the persons mentioned in paragraph (2)(a) and (b) may appear at that hearing.”