

SCHEDULES

SCHEDULE 8

Sections 46(5) and 48(4).

APPEALS

PART I

GENERAL

Interpretation

- 1 In this Schedule—
- “the chairman” means a person appointed as chairman of a tribunal in accordance with paragraph 27(2)(a) of Schedule 7;
 - “the President” means the President of the Competition Commission Appeal Tribunals appointed under paragraph 4 of Schedule 7;
 - “rules” means rules made by the Secretary of State under section 48;
 - “specified” means specified in rules;
 - “tribunal” means an appeal tribunal constituted in accordance with paragraph 27 of Schedule 7.

General procedure

- 2
- (1) An appeal to the Competition Commission must be made by sending a notice of appeal to the Commission within the specified period.
 - (2) The notice of appeal must set out the grounds of appeal in sufficient detail to indicate—
 - (a) under which provision of this Act the appeal is brought;
 - (b) to what extent (if any) the appellant contends that the decision against, or with respect to which, the appeal is brought was based on an error of fact or was wrong in law; and
 - (c) to what extent (if any) the appellant is appealing against the Director’s exercise of his discretion in making the disputed decision.
 - (3) The tribunal may give an appellant leave to amend the grounds of appeal identified in the notice of appeal.

Decisions of the tribunal

- 3
- (1) The tribunal must determine the appeal on the merits by reference to the grounds of appeal set out in the notice of appeal.
 - (2) The tribunal may confirm or set aside the decision which is the subject of the appeal, or any part of it, and may—

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- (a) remit the matter to the Director,
 - (b) impose or revoke, or vary the amount of, a penalty,
 - (c) grant or cancel an individual exemption or vary any conditions or obligations imposed in relation to the exemption by the Director,
 - (d) give such directions, or take such other steps, as the Director could himself have given or taken, or
 - (e) make any other decision which the Director could himself have made.
- (3) Any decision of the tribunal on an appeal has the same effect, and may be enforced in the same manner, as a decision of the Director.
- (4) If the tribunal confirms the decision which is the subject of the appeal it may nevertheless set aside any finding of fact on which the decision was based.
- 4 (1) A decision of the tribunal may be taken by a majority.
- (2) The decision must—
- (a) state whether it was unanimous or taken by a majority; and
 - (b) be recorded in a document which—
 - (i) contains a statement of the reasons for the decision; and
 - (ii) is signed and dated by the chairman of the tribunal.
- (3) When the tribunal is preparing the document mentioned in sub-paragraph (2)(b), section 56 is to apply to the tribunal as it applies to the Director.
- (4) The President must make such arrangements for the publication of the tribunal's decision as he considers appropriate.

PART II

RULES

Registrar of Appeal Tribunals

- 5 (1) Rules may provide for the appointment by the Competition Commission, with the approval of the Secretary of State, of a Registrar of Appeal Tribunals.
- (2) The rules may, in particular—
- (a) specify the qualifications for appointment as Registrar; and
 - (b) provide for specified functions relating to appeals to be exercised by the Registrar in specified circumstances.

Notice of appeal

- 6 Rules may make provision—
- (a) as to the period within which appeals must be brought;
 - (b) as to the form of the notice of appeal and as to the information which must be given in the notice;
 - (c) with respect to amendment of a notice of appeal;
 - (d) with respect to acknowledgement of a notice of appeal.

Response to the appeal

- 7 Rules may provide for the tribunal to reject an appeal if—
- (a) it considers that the notice of appeal reveals no valid ground of appeal; or
 - (b) it is satisfied that the appellant has habitually and persistently and without any reasonable ground—
 - (i) instituted vexatious proceedings, whether against the same person or against different persons; or
 - (ii) made vexatious applications in any proceedings.

Pre-hearing reviews and preliminary matters

- 8 (1) Rules may make provision—
- (a) for the carrying-out by the tribunal of a preliminary consideration of proceedings (a “pre-hearing review”); and
 - (b) for enabling such powers to be exercised in connection with a pre-hearing review as may be specified.
- (2) If rules make provision of the kind mentioned in sub-paragraph (1), they may also include—
- (a) provision for security; and
 - (b) supplemental provision.
- (3) In sub-paragraph (2) “provision for security” means provision authorising a tribunal carrying out a pre-hearing review under the rules, in specified circumstances, to make an order requiring a party to the proceedings, if he wishes to continue to participate in them, to pay a deposit of an amount not exceeding such sum—
- (a) as may be specified; or
 - (b) as may be calculated in accordance with specified provisions.
- (4) In sub-paragraph (2) “supplemental provision” means any provision as to—
- (a) the manner in which the amount of such a deposit is to be determined;
 - (b) the consequences of non-payment of such a deposit; and
 - (c) the circumstances in which any such deposit, or any part of it, may be—
 - (i) refunded to the person who paid it; or
 - (ii) paid to another party to the proceedings.

Conduct of the hearing

- 9 (1) Rules may make provision—
- (a) as to the manner in which appeals are to be conducted, including provision for any hearing to be held in private if the tribunal considers it appropriate because it may be considering information of a kind to which section 56 applies;
 - (b) as to the persons entitled to appear on behalf of the parties;
 - (c) for requiring persons to attend to give evidence and produce documents and for authorising the administration of oaths to witnesses;
 - (d) as to the evidence which may be required or admitted in proceedings before the tribunal and the extent to which it should be oral or written;

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- (e) allowing the tribunal to fix time limits with respect to any aspect of the proceedings before it and to extend any time limit (whether or not it has expired);
 - (f) for enabling the tribunal to refer a matter back to the Director if it appears to the tribunal that the matter has not been adequately investigated;
 - (g) for enabling the tribunal, on the application of any party to the proceedings before it or on its own initiative—
 - (i) in England and Wales or Northern Ireland, to order the disclosure between, or the production by, the parties of documents or classes of documents;
 - (ii) in Scotland, to order such recovery or inspection of documents as might be ordered by a sheriff;
 - (h) for the appointment of experts for the purposes of any proceedings before the tribunal;
 - (i) for the award of costs or expenses, including any allowances payable to persons in connection with their attendance before the tribunal;
 - (j) for taxing or otherwise settling any costs or expenses directed to be paid by the tribunal and for the enforcement of any such direction.
- (2) A person who without reasonable excuse fails to comply with—
- (a) any requirement imposed by virtue of sub-paragraph (1)(c), or
 - (b) any requirement with respect to the disclosure, production, recovery or inspection of documents which is imposed by virtue of sub-paragraph (1)(g),
- is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Interest

- 10 (1) Rules may make provision—
- (a) as to the circumstances in which the tribunal may order that interest is payable;
 - (b) for the manner in which and the periods by reference to which interest is to be calculated and paid.
- (2) The rules may, in particular, provide that compound interest is to be payable if the tribunal—
- (a) upholds a decision of the Director to impose a penalty, or
 - (b) does not reduce a penalty so imposed by more than a specified percentage, but in such a case the rules may not provide that interest is to be payable in respect of any period before the date on which the appeal was brought.

Fees

- 11 (1) Rules may provide—
- (a) for fees to be chargeable in respect of specified costs of proceedings before the tribunal;
 - (b) for the amount of such costs to be determined by the tribunal.
- (2) Any sums received in consequence of rules under this paragraph are to be paid into the Consolidated Fund.

Withdrawing an appeal

- 12 Rules may make provision—
- (a) that a party who has brought an appeal may not withdraw it without the leave of—
 - (i) the tribunal, or
 - (ii) in specified circumstances, the President or the Registrar;
 - (b) for the tribunal to grant leave to withdraw the appeal on such conditions as it considers appropriate;
 - (c) enabling the tribunal to publish any decision which it could have made had the appeal not been withdrawn;
 - (d) as to the effect of withdrawal of an appeal;
 - (e) as to any procedure to be followed if parties to proceedings on an appeal agree to settle.

Interim orders

- 13 (1) Rules may provide for the tribunal to make an order (“an interim order”) granting, on an interim basis, any remedy which the tribunal would have power to grant in its final decision.
- (2) An interim order may, in particular, suspend the effect of a decision made by the Director or vary the conditions or obligations attached to an exemption.
- (3) Rules may also make provision giving the tribunal powers similar to those given to the Director by section 35.

Miscellaneous

- 14 Rules may make provision—
- (a) for a person who is not a party to proceedings on an appeal to be joined in those proceedings;
 - (b) for appeals to be consolidated on such terms as the tribunal thinks appropriate in such circumstances as may be specified.