



Enterprise Act 2002

2002 CHAPTER 40

PART 2

THE COMPETITION APPEAL TRIBUNAL

The Competition Appeal Tribunal

12 The Competition Appeal Tribunal

- (1) There shall be a tribunal, to be called the Competition Appeal Tribunal (in this Part referred to as “the Tribunal”).
- (2) The Tribunal shall consist of—
 - (a) a person appointed by the Lord Chancellor to preside over the Tribunal (in this Part referred to as “the President”);
 - (b) members appointed by the Lord Chancellor to form a panel of chairmen; and
 - (c) members appointed by the Secretary of State to form a panel of ordinary members.
- (3) The Tribunal shall have a Registrar appointed by the Secretary of State.
- (4) The expenses of the Tribunal shall be paid by the Competition Service.
- (5) Schedule 2 (which makes further provision about the Tribunal) has effect.

13 The Competition Service

- (1) There shall be a body corporate called the Competition Service (in this Part referred to as “the Service”).
- (2) The purpose of the Service is to fund, and provide support services to, the Competition Appeal Tribunal.

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- (3) In subsection (2) “support services” includes the provision of staff, accommodation and equipment and any other services which facilitate the carrying out by the Tribunal of its functions.
- (4) The activities of the Service are not carried out on behalf of the Crown (and its property is not to be regarded as held on behalf of the Crown).
- (5) The Secretary of State shall pay to the Service such sums as he considers appropriate to enable it to fund the activities of the Tribunal and to carry out its other activities.
- (6) Schedule 3 (which makes further provision about the Service) has effect.

14 Constitution of Tribunal for particular proceedings and its decisions

- (1) For the purposes of any proceedings before it the Tribunal shall consist of a chairman and two other members.
- (2) The chairman must be the President or a member of the panel of chairmen.
- (3) The other members may be chosen from either the panel of chairmen or the panel of ordinary members.
- (4) If the members of the Tribunal as constituted in accordance with this section are unable to agree on any decision, the decision is to be taken by majority vote.
- (5) This section has effect subject to paragraph 18 of Schedule 4 (consequences of a member of the Tribunal being unable to continue after the proceedings have begun to be heard).
- (6) Part 1 of Schedule 4 (which makes further provision about the decisions of the Tribunal and their enforcement) has effect.

15 Tribunal rules

- (1) The Secretary of State may, after consulting the President and such other persons as he considers appropriate, make rules (in this Part referred to as “Tribunal rules”) with respect to proceedings before the Tribunal.
- (2) Tribunal rules may make provision with respect to matters incidental to or consequential upon appeals provided for by or under any Act to the Court of Appeal or the Court of Session in relation to a decision of the Tribunal.
- (3) Tribunal rules may—
 - (a) specify qualifications for appointment as Registrar;
 - (b) confer functions on the President or the Registrar in relation to proceedings before the Tribunal; and
 - (c) contain incidental, supplemental, consequential or transitional provision.
- (4) The power to make Tribunal rules is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) Part 2 of Schedule 4 (which makes further provision about the rules) has effect, but without prejudice to the generality of subsection (1).

16 Transfers of certain proceedings to and from Tribunal

- (1) The Lord Chancellor may by regulations—
 - (a) make provision enabling the court—
 - (i) to transfer to the Tribunal for its determination so much of any proceedings before the court as relates to an infringement issue; and
 - (ii) to give effect to the determination of that issue by the Tribunal; and
 - (b) make such incidental, supplementary, consequential, transitional or saving provision as the Lord Chancellor may consider appropriate.
- (2) The power to make regulations under subsection (1) is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Rules of court may prescribe the procedure to be followed in connection with a transfer mentioned in subsection (1).
- (4) The court may transfer to the Tribunal, in accordance with rules of court, so much of any proceedings before it as relates to a claim to which section 47A of the 1998 Act applies.
- (5) Rules of court may make provision in connection with the transfer from the Tribunal to the High Court or the Court of Session of a claim made in proceedings under section 47A of the 1998 Act.
- (6) In this section—

“the court” means—

 - (a) the High Court or a county court; or
 - (b) the Court of Session or a sheriff court; and

“infringement issue” means any question relating to whether or not an infringement of—

 - (a) the Chapter I prohibition or the Chapter II prohibition; or
 - (b) Article 81 or 82 of the Treaty,

has been or is being committed;

but otherwise any terms used in this section and Part 1 of the 1998 Act have the same meaning as they have in that Part.

Proceedings under Part 1 of 1998 Act

17 Third party appeals

For section 47 of the 1998 Act (third party appeals) there is substituted—

“47 Third party appeals

- (1) A person who does not fall within section 46(1) or (2) may appeal to the Tribunal with respect to a decision falling within paragraphs (a) to (f) of section 46(3) or such other decision of the OFT under this Part as may be prescribed.

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- (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.”

18 Monetary claims

- (1) After section 47 of the 1998 Act there is inserted—

“47A Monetary claims before Tribunal

- (1) This section applies to—
 - (a) any claim for damages, or³
 - (b) any other claim for a sum of money,
 which a person who has suffered loss or damage as a result of the infringement of a relevant prohibition may make in civil proceedings brought in any part of the United Kingdom.
- (2) In this section “relevant prohibition” means any of the following—
 - (a) the Chapter I prohibition;
 - (b) the Chapter II prohibition;
 - (c) the prohibition in Article 81(1) of the Treaty;
 - (d) the prohibition in Article 82 of the Treaty;
 - (e) the prohibition in Article 65(1) of the Treaty establishing the European Coal and Steel Community;
 - (f) the prohibition in Article 66(7) of that Treaty.
- (3) For the purpose of identifying claims which may be made in civil proceedings, any limitation rules that would apply in such proceedings are to be disregarded.
- (4) A claim to which this section applies may (subject to the provisions of this Act and Tribunal rules) be made in proceedings brought before the Tribunal.
- (5) But no claim may be made in such proceedings—
 - (a) until a decision mentioned in subsection (6) has established that the relevant prohibition in question has been infringed; and
 - (b) otherwise than with the permission of the Tribunal, during any period specified in subsection (7) or (8) which relates to that decision.
- (6) The decisions which may be relied on for the purposes of proceedings under this section are —
 - (a) a decision of the OFT that the Chapter I prohibition or the Chapter II prohibition has been infringed;
 - (b) a decision of the OFT that the prohibition in Article 81(1) or Article 82 of the Treaty has been infringed;
 - (c) a decision of the Tribunal (on an appeal from a decision of the OFT) that the Chapter I prohibition, the Chapter II prohibition or

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- the prohibition in Article 81(1) or Article 82 of the Treaty has been infringed;
- (d) a decision of the European Commission that the prohibition in Article 81(1) or Article 82 of the Treaty has been infringed; or
 - (e) a decision of the European Commission that the prohibition in Article 65(1) of the Treaty establishing the European Coal and Steel Community has been infringed, or a finding made by the European Commission under Article 66(7) of that Treaty.
- (7) The periods during which proceedings in respect of a claim made in reliance on a decision mentioned in subsection (6)(a), (b) or (c) may not be brought without permission are—
- (a) in the case of a decision of the OFT, the period during which an appeal may be made to the Tribunal under section 46, section 47 or the EC Competition Law (Articles 84 and 85) Enforcement Regulations 2001 (S.I. 2001/2916);
 - (b) in the case of a decision of the OFT which is the subject of an appeal mentioned in paragraph (a), the period following the decision of the Tribunal on the appeal during which a further appeal may be made under section 49 or under those Regulations;
 - (c) in the case of a decision of the Tribunal mentioned in subsection (6)(c), the period during which a further appeal may be made under section 49 or under those Regulations;
 - (d) in the case of any decision which is the subject of a further appeal, the period during which an appeal may be made to the House of Lords from a decision on the further appeal;
- and, where any appeal mentioned in paragraph (a), (b), (c) or (d) is made, the period specified in that paragraph includes the period before the appeal is determined.
- (8) The periods during which proceedings in respect of a claim made in reliance on a decision or finding of the European Commission may not be brought without permission are—
- (a) the period during which proceedings against the decision or finding may be instituted in the European Court; and
 - (b) if any such proceedings are instituted, the period before those proceedings are determined.
- (9) In determining a claim to which this section applies the Tribunal is bound by any decision mentioned in subsection (6) which establishes that the prohibition in question has been infringed.
- (10) The right to make a claim to which this section applies in proceedings before the Tribunal does not affect the right to bring any other proceedings in respect of the claim.”
- (2) Section 47A applies to claims arising before the commencement of this section as it applies to claims arising after that time.

19 Claims on behalf of consumers

After section 47A of the 1998 Act (which is inserted by section 18), there is inserted—

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“47B Claims brought on behalf of consumers

- (1) A specified body may (subject to the provisions of this Act and Tribunal rules) bring proceedings before the Tribunal which comprise consumer claims made or continued on behalf of at least two individuals.
- (2) In this section “consumer claim” means a claim to which section 47A applies which an individual has in respect of an infringement affecting (directly or indirectly) goods or services to which subsection (7) applies.
- (3) A consumer claim may be included in proceedings under this section if it is—
 - (a) a claim made in the proceedings on behalf of the individual concerned by the specified body; or
 - (b) a claim made by the individual concerned under section 47A which is continued in the proceedings on his behalf by the specified body;and such a claim may only be made or continued in the proceedings with the consent of the individual concerned.
- (4) The consumer claims included in proceedings under this section must all relate to the same infringement.
- (5) The provisions of section 47A(5) to (10) apply to a consumer claim included in proceedings under this section as they apply to a claim made in proceedings under that section.
- (6) Any damages or other sum (not being costs or expenses) awarded in respect of a consumer claim included in proceedings under this section must be awarded to the individual concerned; but the Tribunal may, with the consent of the specified body and the individual, order that the sum awarded must be paid to the specified body (acting on behalf of the individual).
- (7) This subsection applies to goods or services which—
 - (a) the individual received, or sought to receive, otherwise than in the course of a business carried on by him (notwithstanding that he received or sought to receive them with a view to carrying on a business); and
 - (b) were, or would have been, supplied to the individual (in the case of goods whether by way of sale or otherwise) in the course of a business carried on by the person who supplied or would have supplied them.
- (8) A business includes—
 - (a) a professional practice;
 - (b) any other undertaking carried on for gain or reward;
 - (c) any undertaking in the course of which goods or services are supplied otherwise than free of charge.
- (9) “Specified” means specified in an order made by the Secretary of State, in accordance with criteria to be published by the Secretary of State for the purposes of this section.
- (10) An application by a body to be specified in an order under this section is to be made in a form approved by the Secretary of State for the purpose.”

Other amendments of 1998 Act

20 Findings of infringements

(1) After section 58 of the 1998 Act there is inserted—

“Findings of infringements

58A Findings of infringements

- (1) This section applies to proceedings before the court in which damages or any other sum of money is claimed in respect of an infringement of—
 - (a) the Chapter I prohibition;
 - (b) the Chapter II prohibition;
 - (c) the prohibition in Article 81(1) of the Treaty;
 - (d) the prohibition in Article 82 of the Treaty.
 - (2) In such proceedings, the court is bound by a decision mentioned in subsection (3) once any period specified in subsection (4) which relates to the decision has elapsed.
 - (3) The decisions are—
 - (a) a decision of the OFT that the Chapter I prohibition or the Chapter II prohibition has been infringed;
 - (b) a decision of the OFT that the prohibition in Article 81(1) or Article 82 of the Treaty has been infringed;
 - (c) a decision of the Tribunal (on an appeal from a decision of the OFT) that the Chapter I prohibition or the Chapter II prohibition has been infringed, or that the prohibition in Article 81(1) or Article 82 of the Treaty has been infringed.
 - (4) The periods mentioned in subsection (2) are—
 - (a) in the case of a decision of the OFT, the period during which an appeal may be made to the Tribunal under section 46 or 47 or the EC Competition Law (Articles 84 and 85) Enforcement Regulations 2001 (S.I. 2001/2916);
 - (b) in the case of a decision of the Tribunal mentioned in subsection (3) (c), the period during which a further appeal may be made under section 49 or under those Regulations;
 - (c) in the case of any decision which is the subject of a further appeal, the period during which an appeal may be made to the House of Lords from a decision on the further appeal;and, where any appeal mentioned in paragraph (a), (b) or (c) is made, the period specified in that paragraph includes the period before the appeal is determined.”
- (2) Section 58A does not apply in relation to decisions made before the commencement of this section.
- (3) In section 59(1) of that Act (interpretation), in the definition of “the court”, after “58” there is inserted “, 58A”.

Status: This is the original version (as it was originally enacted).

21 Amendment of 1998 Act relating to the Tribunal

Schedule 5 (which contains amendments of the 1998 Act relating to, and to the proceedings of, the Tribunal) has effect.